A New Year and a New Decade – the Regulatory Outlook for the Reverse Mortgage Industry

Below is a summary of several important law changes that will become effective either on January 1, 2010 or early in 2010. This is by no means a complete summary of all of the legal and regulatory changes that took place in 2009 affecting reverse mortgages, and is by no means an overview of all that we expect to see or occur on the legal/regulatory front in 2010.

For a summary of legal and regulatory compliance updates that occurred in 2009, including important Truth-in-Lending related changes, see our Counsel's summary, attached, that was part of the NRMLA's November 2009 Annual conference handouts and booklet.

RESPA

Perhaps taking up most every one's "bandwith" over these past few weeks are the new RESPA rules which will become fully effective on January 1, 2010.

HUD finalized the rule on November 17, 2008, but it has taken over a year and many rounds of FAQ's for everyone to "get up to speed." However, those changes are now upon us and the RESPA rule revisions will go into effect for loans closed on or after January 1, 2010. This significant overhaul of RESPA includes major changes to the content and issuance of the Good Faith Estimate and the HUD-1/1A. The reforms also affect rules governing tolerances for changes in disclosed fees and the ability of borrowers to shop for third party services, as well as measures to ensure that consumer's know the final cost of settlement and their loan terms.

The new GFE must be issued within three days of taking the application and receiving several pieces of information from the applicant, including: name, Social Security number, property address, monthly income, and best estimate of property value and loan amount. The new GFE is now three pages, the first of which is designed to provide information in a summary so that the consumer may shop his or her loan around to other lenders. The second page contains information about settlement and origination costs. The third page outlines how origination and settlement costs may change. Importantly, once issued, most lender related and processing and administrative fees quoted in the new GFE cannot change at closing with the issuance of the HUD-1 absent "changed circumstances", and in most instances many third party closing fees, such as title related fees, cannot change outside of a 10% tolerance. If fees are out of tolerance, the lender will have to refund such fees to the borrower in order to cure the tolerance variance.

The new HUD-1/1A is a form designed specifically to correspond to the new GFE so as to allow for easy comparison by the consumer. The new HUD-1 is three pages long, rather than two, with the third page containing similar information to the now-defunct closing script that the original proposed rule required lenders to read at closing. The script was not adopted as part of the final rule.

Specifically, for reverse mortgages, HUD's RESPA FAQ's provide, among other things that:

- The initial loan amount for purposes of the GFE and HUD-1 is the initial principal limit (with instructions that, in completing line 202 of the HUD-1 Settlement Statement, any initial draw can be shown in lines 204 thru 209 in the borrower's column);

- The loan term for a reverse mortgage generally should be listed as "N/A";

- The amount for payment of principal, interest or mortgage insurance for a reverse mortgage may be entered either "Not Applicable" or "N/A";

- The box entitled "Even if you make payments on time, can your loan balance rise?", should be checked "Yes", however, the maximum to which the loan balance can rise may be reported as "Unknown".

- Originators may check the "No" box in response to the question on the GFE "Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?"

- The repayment of a reverse mortgage is not considered a balloon payment;

- Regarding the statement on page 3 of the HUD-1 in the "Loan terms" section, the statement, "Your initial monthly amount owed for principal, interest and any mortgage insurance is," an entry indicating "Not Applicable" or "N/A" should be utilized, and the boxes for principal, interest and mortgage insurance should not be checked; and

- The counseling fee should be disclosed in Block 6 on page 2 of the new GFE form.

FHA Appraisal Issues

In Mortgage Letter 2009-28 (ML 09-28) issued September 18, 2009, HUD outlined new appraisal requirements for FHA mortgages with case numbers assigned on or after January 1, 2010. The Letter outlines new rules on who can be involved in the appraisal process, ensuring that appraisers are correctly identified in FHA Connection, and the utilization of appraisal management companies. ML 09-28 also reiterates information about existing rules designed to prevent improper influence on appraisers and ensure that appraisers are independent and have sufficient local knowledge to make accurate appraisals.

ML09-28 has two parts: (i) a prohibition of mortgage brokers and commission-based lender staff from the appraisal process, and (ii) appraiser selection in FHA Connection.

The new rules prohibit mortgage brokers or commission based lender staff from involving themselves in the appraisal process. In a subsequent FAQ, HUD defines "mortgage broker" as

"one who facilitates transactions between mortgage borrowers and lenders."[1] HUD indicates that in ML 09-28 "mortgage broker" means an FHA-approved Loan Correspondent. HUD clarified, however, on informal queries and follow up that the term "mortgage broker" as used in ML 09-28 does not include either a Principal or Agent in a properly structured FHA Principal Agent relationship.

After its issuance, HUD subsequently announced that ML 2009-28, originally slated for a January 1, 2010 implementation date, will be delayed until February 15, 2010. The effective date for ML 2009-28 will now take effect for all case numbers assigned on or after February 15, 2010.

Other new rules govern appraiser selection. Lenders are now required to ensure that the appraiser who conducts the actual appraisal is correctly identified in FHA Connection. FHA lenders using appraisal management companies (AMCs) must also ensure that certain practices are followed regarding limits to and disclosure of fees paid to the appraiser and the AMC.

ML 09-29 also becomes effective on January 1, 2010 and addresses appraisal portability in connection with FHA-insured single family loans.

In cases where a borrower has switched lenders, the first lender must, at the borrower's request, transfer the case to the second lender. FHA does not require that the client name on the appraisal be changed when it is transferred to another lender.

In accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), the lender is not permitted to request that the appraiser change the name of the client within the appraisal report unless it is a new appraisal assignment. To effect a client name change, the second lender and the original appraiser may engage in a new appraisal assignment wherein the scope of work is limited to the client name change. A new client name should include the name of the client (lender) and HUD.

Further, ML 09-30 provides that, effective for all case numbers assigned on or after January 1, 2010, the validity period for all appraisals on existing properties will be 120 days. This is a change from the current validity periods of six months for an appraisal of an existing property that is complete.

The SAFE Act

The SAFE Act, enacted as part of the HERA in 2008, requires states to enact laws requiring that loan originators be licensed. Prior to the SAFE Act, over 30 states had already had in force

[1] FHA ML 09-28 Appraiser Independence FAQs

some form of loan officer licensing. The SAFE Act requires that all states now have such rules in place, and that such rules meet certain federal minimum standards for "mortgage loan originator" licensing. Several states enacted laws that became effect during 2009, but a substantial number of state enacted laws in 2009 that are slated to take effect in the beginning of 2010 (or the very end of 2009).[The SAFE Act also directs the federal banking agencies to implement regulations that require bank loan officers to be "registered." The banking agencies have proposed rules which should go into effect during the early part of 2010.]

States with licensing requirements going into effect in January 1, 2010 include: Georgia, Indiana, Iowa, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Utah, Washington, and Wisconsin. In addition, the licensing requirements of the District of Columbia and Maryland are set to take effect December 31, 2009.

The SAFE Act provides a comprehensive definition of "loan originator" as well as minimum licensing standards. Under this definition, a loan originator is an individual who "takes a residential mortgage loan application; and… offers or negotiates terms of a residential mortgage loans for compensation or gain." However, most states adopted a model law published by the CSBS and AARMR that states that a loan originator is one who takes a residential mortgage loan application; or… offers or negotiates terms of a residential mortgage loans for compensation or gain." Loan processors and underwriters generally are not covered if they work for a loan originator, and real estate agents also are exempted. Questions remains whether employees of servicers engaged in loss mitigation activities will be required to become licensed as loan originators.

Minimum licensing standards include requirements that in order to be licensed, a loan originator must not have had a license previously revoked or been convicted of a felony in the past seven years. If they have been convicted of a felony involving fraud, dishonesty, or other types of financial deception, the loan originator is permanently barred from getting licensed. In addition, loan originators must clear a background check, satisfy education and training requirements, meet a net worth or surety bond requirement, and be of sound financial character and general fitness.

Many states' SAFE Act related laws also made changes to other mortgage banking requirements, such as required disclosures, fee limitations, and regulatory reporting requirements.

California Assembly Bill 329

Assembly Bill 329 revises provisions of the California Civil Code on reverse mortgages to enact the Reverse Mortgage Elder Protection Act of 2009. The revised statute is designed to further protect and inform seniors of the complexity and potential pitfalls of reverse mortgages. The original version of the Bill contained a provision requiring reverse mortgage lenders to have

fiduciary duty; however, through the work of NRMLA, that provision was dropped and not included in the final law.

The Act prohibits individuals involved in reverse mortgage origination from having direct involvement in other businesses selling financial or insurance products unless proper safeguards are established, consistent with FHA HECM rules. The important reverse mortgage disclosure has been revised, and the Act requires that the prospective borrower receive this disclosures prior to counseling, and changes the language of this disclosure. Lenders also must now provide seniors interested in a reverse mortgage with a more robust list of HUD approved counselors prior to completing a loan application. The lender also must provide the senior with a checklist detailing issues to be discussed with the counselor. The senior must sign this checklist and provide a copy to the lender; if the senior attends counseling in person, the counselor must sign it as well.

The Act becomes effective January 1, 2010.

What's ahead for 2010?

A few of the items we expect to see in 2010 are as follows.

FHA has proposed rules to do away with its approval of Loan Correspondents, leaving the monitoring of Loan Correspondents to mortgagee sponsors, and increase the net worth requirement for mortgagees over three years up to $2.5 million. The rules were proposed on November 30, 2009 and comments were due on December 30, 2009. NRMLA commented on behalf of this members urging HUD to reconsider some of these proposals, and to give lenders (and brokers) more time to adjust to changes that may be brought about if the rule is finalized as drafted.

The Federal Reserve Board on August 26, 2009 proposed to substantially amend the open end and closed end credit disclosure rules under Regulation Z, as well as re-vamp and re-structure mortgage broker and loan officer compensation models, including so-called YSPs.

In 2010, the Federal Reserve Board will review and revise Regulation Z's provisions on reverse mortgage disclosures and practices. NRMLA is working with Fed Staff on these new rules.

The federal banking agencies proposed guidance for federally chartered or insured banks making, holding and servicing reverse mortgage loans. NRMLA is working with is members to prepare comments to this proposed guidance, which comments are due on February 16, 2010.

We began to hear reports as early as November 2009 that many states legislators are gearing up to introduce, consider and enact new reverse mortgage related legislation, not the least of which will be a second try in the state of Minnesota, Last year, NRMLA attempted to work with the Minnesota's Attorney's General and several high ranking Minnesota legislators, to no avail.

The Minnesota legislature enacted a bill that contained some provisions problematic and onerous for the reverse mortgage industry. While the Minnesota Governor vetoed that bill, the Minnesota Attorney General will promote another reverse mortgage bill this year. NRMLA already has begun to consider such efforts and will attempt again this year to reach a more balanced, reasoned and workable approach in Minnesota, and in other states, that protects seniors without creating a “chilling effect” upon legitimate business activity.

FHA has announced numerous considerations and initiatives to improve the HECM program. NRMLA’s HUD Working Group Committee has been, and will continue to be an integral partner, working with HUD to help shape those ideas and policies.

Legislation is currently pending in Congress to totally revamp the regulation of financial services in our country through the creation of a Consumer Financial Protection Agency, along with a whole host of other changes to our financial services regulatory framework and multiple segments of the financial services industry regulated by those laws, including reverse mortgage companies. NRMLA is working with members, Counsel, staff and lobbyists to ensure that provisions affecting reverse mortgages are logically considered and do not have untended effects or consequences. While the bill is not final, thus far, we have successfully included in the bill important provisions that preserve the viability of reverse mortgages.

And, of course, at NRMLA, we have come to expect the unexpected.

Stay tuned !

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