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Legislative Changes and Regulatory Updates Impacting the Residential Mortgage Industry[i]

The Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), which incorporates several separate new laws, including the Mortgage Reform and Anti-Predatory Lending Act (the "Mortgage Reform Act"), which is Title XIV of the Act, and the Consumer Financial Protection Act of 2010 (Title X of the Act), which creates the new Bureau of Consumer Financial Protection (the "Bureau").

Below is a more detailed summary of some of the most important parts of the Act for mortgage lenders. Title XIV will be of most immediate concern as the Bureau begins to exercise its rulemaking authority. A summary of Title X which creates the Bureau and describes its authority and priorities also is outlined below. The Bureau will have the ability to seek and obtain incredibly broad relief from lenders on its own behalf as well as on behalf of particular consumers. The Bureau will have a major role in regulating mortgage lending as well as other financial products.

The Mortgage Reform Act (Title XIV)

The Mortgage Reform Act contained in Title XIV of the Act amends the Truth in Lending Act ("TILA") and other consumer protection statutes in myriad ways to add provisions imposing specific standards on residential mortgage loans including limitations on mortgage originator compensation and permissible activities (Subtitle A), to add an ability to repay standard for residential mortgage loans (Subtitle B), to add many additional disclosure for residential mortgage loans (Subtitle B), to add a new definition and new requirements with respect to high cost mortgage loans (Subtitle C), to add a new Office of Housing Counseling in the Department of Housing and Urban Development (Subtitle D), to add new obligations on loan servicers by amendments to TILA and RESPA (Subtitle E), to add new loan appraisal requirements to replace the Home Valuation Code of Conduct (Subtitle F), to add enhancements to the HAMP program (Subtitle G) and to make various other changes.

Although the Act provides for extensive, wide sweeping changes across the industry, it largely defers the parsing out of the details to the federal agencies and primarily to the new Bureau of Consumer Financial Protection ("Bureau"). The Mortgage Reform Act states the provisions under Subtitle A, B, C and E, below are "enumerated consumer laws," and as a result, the provisions in those subtitles will fall under the supervision of the new Bureau.

Section 1400 of the Mortgage Reform Act provides that regulations under the various provisions added by the Mortgage Reform Act must be prescribed in final form before the end of the 18 month period beginning on the "designated transfer date." The designated transfer date was set as July 21, 2011.

Regulations issued by the Bureau implementing the changes made by the Mortgage Reform Act must be effective not later than 12 months after they are issued. Presumably, the Bureau could set an effective date for regulations of less than the full twelve months.

The new provisions in the Mortgage Reform Act that require regulatory implementation will be effective on the date the regulations are effective. If regulations are not needed or the regulations are not issued 18 months after the designated transfer date, the provisions in this title will generally take effect on that date.

Subtitle A—Residential Mortgage Loan Origination Standards

The primary focus of Subtitle A is the placing of significant restrictions on two practices prevalent in the mortgage industry: mortgage originator compensation and steering incentives.

Please note, however, that the Federal Reserve board issued final Loan Originator compensation rules under Regulation Z, and those rules become effective for loan applications taken on or after April 11, 2011. Those rules are discussed further below in these Handout materials.

Mortgage Originator Compensation.

A mortgage originator will be able to receive compensation from either the creditor or the consumer – but not both.

The mortgage originator cannot receive compensation that varies based upon any term of the loan except for the amount of principal, including an express prohibition on yield-spread premiums.

Incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time are expressly permitted.

The Act does not limit the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser (other than in a table-funded transaction).

Steering Prohibitions.

Future regulations will prohibit mortgage originators from steering any consumer to a residential mortgage loan that: (a) the consumer lacks a reasonable ability to repay; or (b) has predatory characteristics such as equity stripping, excessive fees or abusive terms.

The Bureau is required to prescribe regulations prohibiting mortgage originators from steering any consumer away from a qualified loan to a loan that is not a qualified loan. See the discussion below for a definition of a qualified loan.

Key Definitions.

The definition of “mortgage originator” is much broader than under the SAFE Act and many state law definitions. A mortgage originator is any person (e.g. individuals or entities) who, for or in the expectation of direct or indirect compensation or gain, (a) takes a residential mortgage loan application; (b) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (c) offers or negotiates terms of a residential mortgage loan. A person “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on residential mortgage loan terms (including rates, fees and other costs), preparing residential mortgage loan packages or collecting information on behalf of the consumer with regard to a residential mortgage loan.

However, individuals who perform purely administrative or clerical tasks on behalf of a mortgage originator are expressly exempt from the mortgage originator requirements.

Notable other exemptions.

Servicers (as defined under RESPA) and servicer employees, agents and contractors are exempt, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind; and

Licensed real estate brokers not compensated by a mortgage lender, mortgage broker or mortgage originator are also exempt.

Additional Requirements.

TILA is modified to require mortgage originators to be qualified and (when required) registered and licensed as a mortgage originator under applicable State or Federal law.

Additionally, a mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry (NMLS).

Regulatory Authority.

The Bureau has broad discretionary authority to regulate terms, acts or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA, necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections or are not in the interest of the borrower. The Bureau's regulations will, at a minimum, prohibit a mortgage originator from:

(a) Engaging in abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender or age;

(b) Mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer; or

(c) Mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit.

Subtitle B: Minimum Standards for Mortgages

Because of the many detailed provision is this Subtitle and certain of the other subtitles to the Mortgage Reform Act, we present certain subtitles in a Section by Section description of the new provisions. We have omitted some few sections which are of lesser interest to reverse mortgage lenders.

Section 1411 Ability to Repay.

This section adds a new provision to TILA to create a new "ability to repay" standard for residential

mortgage loans. Lenders will see that there is significant complexity, and implementation will benefit from the regulations to be written.

Reasonable Ability to Repay.

New Section 129C of TILA provides that a creditor may not make a "residential mortgage loan" unless the creditor makes a reasonable and good faith determination that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms.

Exemptions.

The statute specifically exempts reverse mortgage and bridge loans with a term of 12 months or less, including any purchase loan of a new dwelling where the consumer plans to sell a different dwelling within 12 months

In addition, FHA, VA and other government agencies which insure or guarantee residential mortgage loans will be able to exempt any streamlined refinancing program from the reasonable ability to repay standard provided the refinancing meets certain standards:

• The consumer is not more than 30 days or more past due on the prior loan.

• The refinancing does not increase the principal balance on except to the extent of fees and charges allowed by the agency.

• Total points and fees (as defined in Section 103(aa)(4)), other than bona fide third party charges not retained by the mortgage originator, creditor or an affiliate do not exceed 3 percent of the total new loan. See the discussion regarding the new definition of points and fees under Section 1431, below.

• The interest rate on the new loan is lower than the interest rate on the existing loan or the borrower is refinancing from an adjustable rate loan to a fixed rate loan.

• The new loan provides for a payment schedule that fully amortizes the loan in accordance with agency regulations.

• The new loan does not have a balloon payment.

• The existing and new loan both meet the agencies' standards for insuring or guaranteeing the loan.

Section 1412 Safe Harbor and Rebuttable Presumption.

Despite its title, this section does not create any safe harbor for lenders seeking to meet the Ability to Repay Standard described above. It does attempt to create a class of loans called "qualified mortgages" that qualify for a rebuttable presumption that the loan meets the standard. Note, however, that the definition of qualified mortgage is used for other purposes such as the limitations on prepayment penalties discussed below.

Qualified Mortgage Defined. A qualified mortgage is any residential mortgage loan that meets the following standards:

a. Except for certain balloon loans describe below, the regular periodic payments on the loan may not result in an increase in the principal balance or allow the consumer to defer repayment of any principal.

b. Except for certain balloon loans as described below, the loan cannot provide for any payment that is twice as large as the average of earlier scheduled payments.

c. The income and financial resources relied upon to qualify the consumers are verified and documented.

d. For fixed rate loans, the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments.

e. For variable rate loans, the underwriting is based on the maximum rate permitted under the loan during the first five years of the loan and a payment schedule that fully amortizes the loan over the loan term and takes into account applicable taxes, insurance and assessments.

f. The loan meets debt to income ratios established by the Bureau or alternative measures of ability to pay established by the Bureau.

g. Total points and fees for the loan do not exceed 3% of the loan amount. See Section 1431 below, for a discussion of the new definition of points and fees.

The Bureau may publish rules with respect to smaller balance loans that would permit lenders to meet the presumption with respect to those loans. The Bureau is to consider the impact of the rules on rural areas where home values are lower.

Balloon Payment Loans. For balloon payment loans, the Bureau may issues regulations defining such loans as qualified mortgages if the loans meet qualifications c., e., f., and g., above, and the following additional requirements:

a. The regular periodic payments do not result in an increase in the principal balance.

b. The creditor determines that the borrower can make all regularly scheduled payments, except the balloon payment, from income and assets other than the property securing the loan.

c. Underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance and assessments.

d. The loan is made by a creditor that (1) operates predominately in a rural or underserved area; (2) together with affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board; (3) retains the loans in its portfolio; and (4) meets any asset size threshold and any other criteria as the Bureau may establish.

Points and Fees. For purposes of calculating the 3% cap on points and fees, the lender will begin with the new definition of points and fees described in Section 1431, below. From this total of points and fees, the creditor may exclude either (1) two bona fide discount points payable by the consumer, but only if the interest rate from which the borrower's rate will be discounted does not exceed the average prime offer rate by more than 1 percentage point; or (2) one bona fide discount point, but only if the interest rate from which the borrower's rate will be discounted does not exceed the average prime offer rate by more than 2 percentage points.

Bureau Regulations. The Bureau will have authority to revise, add to, or subtract from the criteria for determining what constitutes a qualified mortgage, upon a finding that the regulations are necessary and proper, to (1) ensure that responsible, affordable credit remains available to consumers; (2) to effectuate the purposes of the ability to repay standard and the provisions regarding loan originator compensation; or (3) to prevent evasion or circumvention of the requirements.

Agency Definitions. In addition to the exemption from the requirements for the ability to repay standard for certain refinancings described above, the Department of Housing, Department of Veterans Affairs, the Department of Agriculture and the Rural Housing Service may, after consultation with the Bureau, define the loans that they insure, guarantee or administer that are "qualified mortgages." The rules may revise, add to, or subtract from the qualified mortgage criteria. The agencies must make a finding that the rules are consistent with the purposes of the rules on qualified mortgages, prevent circumvention or evasion of the rules or facilitate compliance with the rules.

Further, in the case of a reverse mortgage (except for the purposes of the Ability to Repay requirements, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of the overall definition of a "qualified mortgage", will be deemed a qualified mortgage.

Section 1413 Defense to Foreclosure.

This section provides that a borrower can assert a violation of the limitations on steering and loan officer compensation or the ability to repay standard at any time as a defense by recoupment from the creditor in response to a collection action or a foreclosure. There is no time limit on the period for which the borrower can assert these violations in this type of action.

Section 1416 Amendments to Civil Liability Provisions.

Civil Liability under Truth in Lending. This section amends the civil liability provisions of TILA and extends the statute of limitations for certain violations to 3 years.

For consumer leases, the minimum statutory damages award is increased from $100 to $200 and the maximum is increased from $1000 to $2000, to be consistent with credit transactions. Of more significance for lenders, the maximum statutory damages award in class actions is increased from $500,000 to $1,000,000. The statutory damages are awarded in addition to actual damages and attorney's fees.

Of most significance to residential mortgage lenders, the violations of the steering and loan originator compensation provisions and the ability to repay provisions added by this statute will carry additional

statutory damages equal to the sum of all finance charges and fees paid unless the lender can demonstrate that the violation was not material.

Most actions for a violation of TILA must be brought within one year of the date of the violation. This bill would extend this time period to three years for violations related to Section 32 loans (HOEPA loans), violations related to the new provisions on steering and loan officer compensation and violations related to the new ability to repay standard.

Section 1417 Lender Rights in the Context of Borrower Deception.

This section provides that a borrower could not seek damages under TILA after the borrower or a co-borrower had been convicted of fraud in obtaining the loan.

Section 1419 Required Disclosures.

This section provides for new items of information that must be included in closed-end loan Truth in Lending disclosures.

New Truth in Lending Disclosures. For residential mortgage loans with a variable rate and for which an escrow or impound account is established for payment of taxes and insurance, the lender must disclose the following:

• The amount of the initial monthly payment of principal and interest and the amount of such payment including the amount to be deposited in escrow.

• The amount of the fully indexed monthly payment and the amount of the fully indexed payment which includes the amount to be deposited in escrow.

For all residential mortgage loans, the following new disclosures are required:

• Aggregate amount of settlement charges for all settlement services to be provided in connection with the loan;

• The amount of the charges that are included in the loan;

• The amount of the charges that the borrower must pay at closing;

• The approximate “wholesale rate of funds” in connection with the loan;

• The aggregate amount of other fees or required payments in connection with the loan;

• The aggregate amount of fees paid to the loan originator, including the amount paid directly by the consumer and any additional amounts paid by the creditor;

• The amount of interest that the consumer will pay over the life of the loan stated as a percentage of the

loan amount.

Section 1420 Disclosures Required in Monthly Statements for Residential Mortgage Loans.

Billing Statements for Variable Rate Loans. This section will do away with coupon billing for residential mortgage loans with variable rates and require monthly billing statements. The billing statements must include the following:

• The amount of the principal obligation under the loan;

• The current interest rate in effect for the loan;

• The date on which the interest rate may next adjust or reset;

• The amount of any prepayment penalty fee to be charged, if any;

• A description of any late payment penalty fees;

• A telephone number and email address that may be used to obtain information regarding the loan;

• The names, addresses, telephone numbers and internet addresses of HUD or State housing authority approved counseling agencies reasonably available to the consumers; and

• Additional information that the Bureau may require.

For fixed rate loans, this information, as applicable, must be provided in a coupon book if monthly statements are not provided.

The Bureau is to develop standard forms for this disclosure requirement.

Section 1422 State Attorney General Enforcement Authority.

This section extends authority to state attorneys general to enforce the provisions added by Subtitle B similar to the authority they have to enforce the HOEPA provisions.

Subtitle C—High-Cost Mortgages

Section 1431 Definitions Relating to High-Cost Mortgages.

This section provides a new, more extensive definition of a “high cost mortgage” for purposes of TILA and HOEPA. It adjusts the percentages for the annual percentage rate test for high cost mortgages, redefines “points and fees” for purposes of the points and fees test and adds a new prepayment penalty test.

High Cost Mortgages Defined. The term “high cost mortgage” will include any consumer credit transaction

that is secured by the consumer's principal dwelling other than a reverse mortgage if it meets one of the three tests shown below. Note that the definition will no longer exclude purchase money transactions or open end credit transactions.

Since reverse mortgages continue to be exempted from the high cost rule, we do not review the high cost provisions herein.

Subtitle D: Expand and Preserve Home Ownership through Counseling Act

Subtitle D contains the Expand and Preserve Home Ownership through Counseling Act ("EPHOTCA").

Among other things, EPHOTCA creates the Office of Housing Counseling ("OHC") within the Department of Housing and Urban Development ("HUD") and imposes a requirement that only HUD-certified counselors may be used to meet any homeownership counseling or rental housing counseling required under, or provided in connection with, any program administered by HUD.

EPHOTCA modifies the Department of Housing and Urban Development Act (42 U.S.C. § 3533) to give the OHC Director the primary responsibility within HUD for all activities and matters relating to homeownership counseling and rental housing counseling, including:

• Research, grant administration, public outreach and policy development relating to such counseling; and

• Establishment, coordination and administration of all regulations, requirements, standards and performance measures under programs and laws administered by HUD that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure) and rental housing counseling.

The OHC Director must establish rules necessary for each of the following:

• The counseling procedures for homeownership counseling and rental housing counseling provided in connection with any HUD program, including all requirements, standards and performance measures that relate to homeownership and rental housing counseling;

• Contributing to the distribution of home buying information booklets pursuant to RESPA;

• Carrying out the counseling organization certification program;

• Carrying out the homeownership and rental counseling assistance program;

• Carrying out any functions regarding abusive, deceptive, or unscrupulous lending practices relating to residential mortgage loans that the Secretary considers appropriate, which shall include conducting the GAO default and foreclosure study;

• Providing for operation of the advisory committee;

• Collaborating with community-based organizations with expertise in the field of housing counseling; and

• Providing for the building of capacity to provide housing counseling services in areas that lack sufficient services, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing.

EPHOTCA requires:

• Only HUD-certified counselors may be used to meet any homeownership counseling or rental housing counseling required under, or provided in connection with, any program administered by HUD;

• HUD to establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four unit residential properties and make such information publicly available;

• Modifications to the Special Information Booklet provisions under RESPA, which will now be referred to as the Home Buying Information Booklet.

EPHOTCA does not specify an effective date, so its provisions will presumably take effect (as with the rest of the Mortgage Reform Act) on the date the final regulations implementing such section or provision take effect, or on the date that is eighteen (18) months after the designated transfer date, whichever is earlier. The effective date is particularly significant with respect to the requirement to use HUD-certified counselors in connection with all programs administered by HUD and the disclosure requirements on lenders with respect to the new Home Buyers Information Booklet and the list of HUD-certified counselors.

Mortgage Information Booklet. The Mortgage Reform Act modifies the Special Information Booklet provisions under RESPA. The booklet will now be referred to as the Home Buying Information Booklet and the responsibility for preparing and distributing the booklet will move from the Secretary to the Director of the Bureau of Consumer Financial Protection. Additional changes include the requirement for the Director:

• to prepare an updated booklet at least once every five (5) years;

• to prepare the booklet in various language and cultural styles so it is understandable and accessible to homebuyers of different ethnic and cultural backgrounds; and

• to distribute to lenders a list of certified homeownership counselors, organized by location.

Additionally, the Director is specifically required to include much more information in the booklet for the consumer, including:

• Specific information about balloon payments, prepayment penalties, the advantages of prepayment and the trade-off between closing costs and the interest rate over the life of the loan;

• A list and explanation of questions a consumer should ask regarding the loan, including whether the

consumer will have the ability to repay the loan, whether the consumer sufficiently Shopped for the loan, whether the loan terms include prepayment penalties or balloon payments and whether the loan will benefit the borrower;

• An explanation of the right of rescission as to certain transactions under TILA;

• A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled "Consumer Handbook on Adjustable Rate Mortgages," published by the Director;

• Information about homeownership counseling services available, a recommendation that the consumer use such services and notification that a list of certified providers of homeownership counseling in the area, and their contact information, if available;

• An explanation of a consumer's responsibilities, liabilities and obligations in a mortgage transaction; and

• An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

A lender will be required to provide a borrower:

• The Home Buying Information Booklet in the version that is most appropriate for the person receiving it, and

• A reasonably complete or updated list of certified homeownership counselors located in the area of the lender.

Home Inspection Counseling. Each FHA-approved lender must provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval or initial application, with the following three publications which will be published and distributed by HUD: (1) the HUD/FHA form HUD 92564–CN entitled "For Your Protection: Get a Home Inspection; (2) the HUD/FHA booklet entitled "For Your Protection: Get a Home Inspection; and (3) the HUD document entitled "Ten Important Questions To Ask Your Home Inspector."

Foreclosure Rescue Scam Warnings. EPHOTCA earmarks a portion of HUD's budget to be used for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure, specifically:

(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home, and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including HUD;

(4) that they should contact their lender immediately, contact HUD to find a housing counseling agency certified by HUD to assist in avoiding foreclosure, or visit HUD's website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the HUD housing counseling line, and the URLs of the HUD Web sites for housing counseling and for tips for avoiding foreclosure.

Subtitle E—Mortgage Servicing

Section 1461 Escrow and Impound Accounts Relating to Certain Consumer Credit Transactions

This section amends TILA to create a new requirement for mandatory escrow accounts for taxes and insurance for certain consumer credit transaction secured by a first lien on the consumer's principal dwelling.

Exemptions. The requirements do not apply to open-end credit plans, reverse mortgages, and loans secured by shares in a cooperative. Insurance amounts need not be escrowed where the insurance is maintained under a master policy by a homeowners association.

Section 1463 Real Estate Settlement Procedures Act of 1974 Amendments.

This section makes several changes to RESPA.

Force Placed Insurance. This amendment will impose requirements on servicers of federally related mortgage loans with respect to force placed insurance.

The servicer may not obtain force placed insurance unless there is a "reasonable basis" to believe the borrower has failed to comply with the loan contract requirements. The servicer will not be deemed to have a reasonable basis unless the servicer complies with the following:

• The servicer has sent a notice by first class mail containing a reminder of the borrower's obligation to maintain insurance; a statement that the servicer does not have evidence of the insurance; a clear and conspicuous statement of the procedures by which the borrower can demonstrate that the borrower has insurance coverage; and a statement that the servicer may obtain coverage at the borrower's expense if the borrower does not demonstrate coverage in a timely manner;

• The servicer has sent a second notice at least 30 days after the first notice with all of the same information; and

• The servicer has not received any demonstration of insurance coverage by the end of the 15 day period beginning on the date the second notice was sent.

A demonstration of insurance coverage shall include the existing policy number along with the identity of, and contact information for, the insurance company or agent.

Within 15 days of receiving confirmation of existing insurance coverage, the servicer must terminate any force placed insurance and refund any premiums paid for the force placed insurance during the period the borrower's insurance was in effect.

All charges for force placed insurance must be "bona fide and reasonable."

Additional Prohibitions for Servicers. RESPA is amended to prohibit the following:

• Charging fees for responding to qualified written requests;

• Failing to take timely action to correct errors relating to payment allocations, final balances for purposes of a payoff or avoiding foreclosure, or other servicer duties;

• Failing to respond in 10 business days to a request for identity and contact information for the owner or assignee of the loan;

• Failing to comply with other obligations as established by the Bureau by regulation.

Qualified Written Requests. The time limits for responding to qualified written requests have been reduced. The initial response will now be due in 5 days (reduced from 20) and final resolution will be due in 30 days (reduced from 60). The servicer can take an additional 15 days to provide the final response if the servicer provides a notice to the borrower of the need for the extension and the reason it is needed.

Increased Penalties. The penalties are increased for certain violations of RESPA from $1,000 to $2,000 per violation and $500,000 to $1 million for class actions. These penalties relate to the RESPA provisions related to notices with respect to transfer of servicing, the administration of escrow accounts, the handling of qualified written requests and the new provisions added by this Section 1463.

Subtitle F—Appraisal Activities

Introduction.

Subtitle F of the Mortgage Reform Act (Title XIV of the Act) addresses appraisal activities, including imposing a requirement on lenders to use only appraisals provided by certified or licensed appraisers in connection with higher-risk mortgages and imposing independence and disclosure requirements in connection with all appraisals. Significantly, the provisions abolish the Home Valuation Code of Conduct ("HVCC"), effective on the date the interim final regulations are promulgated under the newly enacted section 129E of TILA (as created by § 1472 of the Act).

Section 1471 Property Appraisal Requirements.

Section 1471 modifies TILA by adding a new section 129H that regulates appraisal requirements with respect to higher risk mortgages. Specifically, the new provisions prohibit a creditor from extending credit in the form of a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with certain requirements. An appraisal of property to be secured by a higher-risk mortgage does not meet the requirement of this section unless it is performed by a certified

or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.

In addition, a creditor must obtain a second appraisal from a different certified or licensed appraiser if the purpose of a higher-risk mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property. The cost of the second appraisal must not be charged to the applicant, and the appraisal must include an analysis of the difference in sale prices, changes in market conditions and any improvements made to the property between the date of the previous sale and the current sale.

Definitions. The term “higher-risk mortgage” means a residential mortgage loan that:

• Is not a reverse mortgage loan that is a qualified mortgage;

• Is secured by a principal dwelling;

• Is not a qualified mortgage; and

• Has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as defined in section 129C of TILA, as of the date the interest rate is set by the following specified percentage points corresponding to the loan: o by 1.5 or more percentage points in the case of a first lien residential mortgage loans having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) “(the FHLMA Limit”);

o by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount exceeding the FHLMA Limit; and

o by 3.5 or more percentage points for a subordinate lien residential mortgage loan.

A “certified or licensed appraiser” means a person who is, at a minimum, certified or licensed by the State in which the property to be appraised is located and performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”) and title XI of FIRREA, and the regulations prescribed under such title, as in effect on the date of the appraisal.

Disclosures. At the time of the initial mortgage application, the creditor must provide the applicant with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant. A creditor must provide a copy of each appraisal conducted in connection with a higher-risk mortgage to the applicant without charge and at least three (3) days prior to the transaction closing date.

Regulations. Regulations implementing these provisions will be prescribed jointly by the Federal Agencies and may exempt a class of loans from such requirements if the exemption would be in the public interest and promote the safety and soundness of creditors.

Liability. In addition to any other liability to any person under TILA, a creditor found to have willfully failed to obtain an appraisal as required is liable to the applicant or borrower for the sum of $2,000.

Section 1472 Appraisal Independence Requirements.

Section 1472 also modifies TILA by adding another new section 129E that sets forth appraisal independence requirements. Specifically, the new section prohibits, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, engaging in any act or practice that violates appraisal independence as described in the new Section 129E or the implementing regulations.

In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards, including a conflict of interest, may not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

Acts or practices that violate appraisal independence include:

(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes or intimidates a person, appraisal management company, firm or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

Exceptions. Section 1472 is not to be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer or any other person with an interest in a real estate transaction from asking an appraiser to undertake one or more of the following:

• Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

• Provide further detail, substantiation or explanation for the appraiser's value conclusion.

• Correct errors in the appraisal report.

Mandatory Reporting. The new provisions impose a duty on any other person involved in a real estate transaction, including mortgage lenders and brokers, real estate brokers and appraisal management company employees, involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, to refer the matter to the applicable State appraiser certifying and licensing agency.

Customary and Reasonable Fee.

Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies. In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

Definitions. A "fee appraiser" means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the USPAP; or

(B) a company not subject to the requirements of section 1124 of the FIRREA that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

Regulations. The Federal Agencies may jointly issue rules, interpretive guidelines and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction.

For purposes of Section 129E of TILA, the Board will prescribe interim final regulations, no later than ninety (90) days after the date of enactment of the section, defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Such rules prescribed by the Board will be

deemed to be rules prescribed by the agencies jointly.

The Federal Agencies may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

Liability. In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues. For subsequent violations, such person shall forfeit and pay a civil penalty of not more than $20,000 with respect to all subsequent violations.

Section 1473 Amendments Relating to Appraisal Subcommittee of FFIEC, Appraiser Independence Monitoring, Approved Appraiser Education, Appraisal Management Companies, Appraiser Complaint Hotline, Automated Valuation Models, and Broker Price Opinions.

Section 1473 modifies various sections of FIRREA and one section of the Federal Financial Institutions Examination Council Act of 1978. FIRREA currently only applies to financial institutions or appraisals for federally related transactions, i.e., any real estate-related financial transaction requiring the services of an appraiser which a federal financial institutions regulatory agency (the Board, FDIC, OCC, OTS and NCUA) or the Resolution Trust Corporation engages in, contracts for or regulates. Before the Act, non-depository institutions were generally not covered; however, specified provisions appear to go beyond federally related transactions and apply more broadly to any residential mortgage loan for purchase of a consumer's principal dwelling. Moreover, enforcement of at least one of the new sections added to FIRREA state that regulations issued under that section will be enforced by the FTC, Bureau and a State attorney general with respect to non-financial institution participants in the market for appraisals of one- to four unit single family residential real estate. Subsequently, it is not entirely clear whether non-depository institutions will now be subject to all or just select parts of FIRREA and the regulations promulgated under it.

The Mortgage Reform Act modifies various sections of FIRREA to, among other things:

• Expand the members, responsibilities and authority of the Appraisal Subcommittee;

• Add the designees of the heads of the Bureau of Consumer Financial Protection and the Federal Housing Finance Agency to the Appraisal Subcommittee;

• Require Bureau concurrence to establish threshold levels below which a certified or licensed appraiser is not required;

• Require a national registry of appraisal mortgage companies and increase annual registration fees for individual appraisers;

• Add the requirement that appraisals in connection with federally related transactions be in compliance with the USPAP;

• Add a definition for a complex single family residential appraisal.

At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification or professional designation within the appraisal profession.

The Subtitle adds a requirement for the Appraisal Subcommittee to monitor the state requirements for the registration and supervision of the operations and activities of an AMC and maintain a national registry of AMCs that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a federally regulated financial institution.

Appraisal Management Companies ("AMCs"). The Federal Agencies must issue joint regulations to establish minimum requirements to be applied by a State in the registration of appraisal management companies ("AMCs"), which must include a requirement that AMCs:

(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

(2) verify that only licensed or certified appraisers are used for federally related transactions;

(3) require that appraisals coordinated by an AMC comply with the USPAP; and

(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of TILA (see discussion above).

An AMC that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency is not required to register with a State; however such AMC must still adhere to the above requirements. States are permitted to establish additional requirements or standards for AMCs exceeding the federal requirements.

In order to be registered by a State or included on the national registry:

• an AMC may not be owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation or revoked in any State;

• each person that owns more than ten percent (10%) of an AMC must be of good moral character, as determined by the State appraiser certifying and licensing agency; and

• each person that owns more than ten percent (10%) of an AMC must submit to a background investigation carried out by the State appraiser certifying and licensing agency.

Effective Date.

An AMC may not perform services related to a federally related transaction in a State after the date that is thirty-six (36) months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form, unless such company is either registered with such State or subject to oversight by a federal financial institutions regulatory agency. The Appraisal Subcommittee may extend the effective

date of the requirements for the registration and supervision of AMCs by up to twelve (12) months under limited circumstances.

Under FIRREA, states may establish a state appraiser certifying and licensing agency ("State Appraiser Agency"). Subtitle F provides that the duties of a State Appraiser Agency may additionally include the registration and supervision of AMCs and the addition of information about the AMC to the national registry.

Definition of Appraisal Management Company. An "appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than fifteen (15) certified or licensed appraisers in a State or twenty-five (25) or more nationally within a given year (a) to recruit, select and retain appraisers; (b) to contract with licensed and certified appraisers to perform appraisal assignments; (c) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or (d) to review and verify the work of appraisers.

Additional Requirements.

Each State with a State Appraiser Agency must:

(1) transmit reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee; and

(2) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken.

Registry Fee. The Mortgage Reform Act provides for an increase the annual registry fee for individuals who perform appraisals in federally related transactions from $25 to not more than $40. It also adds a requirement for each State Appraiser Agency to collect from an AMC that either has registered with a State Appraiser Agency or operates as a subsidiary of a federally regulated financial institution, an annual registry fee that differs based upon whether the company that has been in existence for more than a year. For those AMCs that have been in existence for more than a year, the fee is $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year. For AMCs in existence for a year or less, the fee is $25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year.

In connection with registry fees, the Appraisal Subcommittee:

• May adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this title.

• Must consider at least once every five (5) years whether to adjust the dollar amount of the registry fees to account for inflation.

• Must provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees.

• Has the discretion to impose a minimum annual registry fee for an AMC to protect against the under reporting of the number of appraisers working for or contracted by the AMC.

Incremental revenues collected pursuant to the required increases will be placed in a separate account at the United States Treasury, entitled the "Appraisal Subcommittee Account." In addition to the items provided under FIRREA, the funds in the Appraisal Subcommittee Account will be used to:

• Make grants to State Appraiser Agencies, in accordance with policies to be developed by the Appraisal Subcommittee, to support the efforts of such agencies to comply with this title, including: o the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

o the submission of data on State licensed and certified appraisers and AMCs to the National appraisal registry, including information affirming that the appraiser or AMC meets the required qualification criteria and formal and informal disciplinary actions.

• Report to all State Appraiser Agencies when a license or certification is surrendered, revoked or suspended.

These authorized obligations may not exceed seventy-five percent (75%) of the fiscal year total of incremental increase in fees collected and deposited in the Appraisal Subcommittee Account.

Definition of State Licensed Appraiser.

Subtitle F modifies the definition of "State licensed appraiser" to mean means an individual who has satisfied the requirements for State licensing in a State or territory whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers.

Minimum Qualification Requirements. Any requirements established for individuals in the position of "Trainee Appraiser" and "Supervisory Appraiser" must meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee has the authority to enforce these requirements.

Monitoring of State Appraiser Agencies. The Appraisal Subcommittee must monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency:

(1) has policies, practices, funding, staffing and procedures that are consistent with this title;

(2) processes complaints and completes investigations in a reasonable time period;

(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

(4) maintains an effective regulatory program; and

(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee has the authority to:

• Remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis, not to exceed ninety (90) days, pending State agency action on licensing, certification, registration and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title.

• Impose sanctions against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee must include an analysis of:

o the licensing and certification of appraisers,

o the registration of AMCs,

o the issuance of temporary licenses and certifications for appraisers,

o the receiving and tracking of submitted complaints against appraisers and AMCs,

o the investigation of complaints, and

o enforcement actions against appraisers and AMCs.

• Impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the de-recognition of a State agency.

A federally related transaction may not be appraised by a certified or licensed appraiser unless the State Appraiser Agency of the State certifying or licensing such appraiser has in place a policy of issuing a reciprocal certification or license for an individual from another State when

(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.

Appraiser Independence Monitoring.

The Appraisal Subcommittee is responsible for monitoring each State Appraiser Agency for the purpose of determining whether such agency's policies, practices and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations and policies aimed at maintaining appraiser independence. The Appraisal Subcommittee must encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program.

Appraiser Complaint Hotline. If, six (6) months after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and USPAP, including complaints from appraisers, individuals or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee must establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee will refer complaints for further action to appropriate governmental bodies, including a State Appraiser Agency, a financial institution regulator or other appropriate legal authorities. For complaints referred to State Appraiser Agencies or to Federal regulators, the Appraisal Subcommittee has the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.

Automated Valuation Models.

Automated valuation models ("AVMs") must adhere to quality control standards designed to:

• Ensure a high level of confidence in the estimates produced by automated valuation models;

• Protect against the manipulation of data;

• Seek to avoid conflicts of interest;

• Require random sample testing and reviews; and

• Account for any other such factor that the agencies determine to be appropriate.

An "automated valuation model" is any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

The Federal Agencies, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, must promulgate regulations to implement the quality control standards required. Compliance with such regulations will be enforced by:

• With respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

• With respect to other participants in the market for appraisals of 1-to-4 unit single family residential real estate, the Federal Trade Commission, the Bureau and a State attorney general.

Broker Price Opinions.

In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

The term "broker price opinion" means an estimate prepared by a real estate broker, agent or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model.

Section 1474 Equal Credit Opportunity Act Amendment.

Subtitle F modifies the Equal Credit Opportunity Act to require each creditor to furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than three (3) days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

• The applicant may waive the three (3) day requirement, except where otherwise required in law.

• The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

• The creditor must provide a copy of each written appraisal or valuation at no additional cost to the applicant.

• At the time of application, the creditor must notify an applicant in writing of the right to receive a copy of each written appraisal and valuation.

Note that a "valuation" includes any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an AVM, a broker price opinion or other methodology or mechanism.

Section 1475 RESPA Amendment Relating to Certain Appraisal Fees.

Subtitle F's amendment to RESPA provides that the Uniform Settlement Statement may include, in the case of an appraisal coordinated by an AMC (as defined under FIRREA, see above), a clear disclosure of the following:

(a) The fee paid directly to the appraiser by such company; and

(b) The administration fee charged by such company.

Subtitle G—Mortgage Resolution and Modification

Section 1481 Multifamily Mortgage Resolution Program.

Multifamily Mortgage Program. This section recognizes that foreclosure on multifamily properties can have severe impact on tenants in the property. The Secretary of HUD is directed to develop a program which will ensure the protection of current and future tenants in at-risk multifamily properties. This section provided factors that the program should include:

• Creating sustainable financing that takes rental income and the need for operating reserve into consideration;

• Maintaining the level of Federal, State and city subsidies;

• Providing funds for rehabilitation; and

• Facilitating transfer of such properties to new owners and ensuring affordability for such properties.

This section also denies assistance under the Making Home Affordable Program to those convicted of felony larceny, theft, fraud, forgery, money laundering or tax invasion in connection with a real estate transaction.

Bureau of Consumer Financial Protection (Title X)

Title X of the Act creates a Bureau of Consumer Financial Protection (the “Bureau”) as an independent entity within the Federal Reserve System (“Federal Reserve”), to regulate the offering and provision of consumer financial products or services under federal consumer protection laws. The Bureau’s expansive power to make and revise rules on a panoply of subjects, as well as its unprecedented enforcement authority, mean that all financial services companies will be impacted by the changes brought on by this statute.

Authority and Purpose. The Act states that markets should be “fair, transparent, and competitive,” and directs the Bureau to ensure that: 1) consumers are provided with timely and understandable information to make responsible decisions; 2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; 3) outdated, unnecessary and unduly burdensome regulations are identified and eliminated; 4) federal consumer financial law is enforced consistently to promote fair competition; and 5) markets operate transparently and efficiently to promote both access and innovation. In light of these provisions, the Bureau is likely to take an aggressive position on fair lending and access to credit, which, based upon previously announced administration policy, will probably include enforcement based upon so-called disparate impact theory.

The Bureau will have rulemaking and enforcement authority under federal consumer protection laws with respect to persons offering or providing financial products or services to consumers, assuming most non-supervisory consumer protection authority over depository institutions from all agencies except for the

Federal Trade Commission, and exercising supervisory authority with respect to consumer protection over depository financial institutions with more than $10 billion in assets. Prudential regulators will retain primary consumer protection enforcement authority over depository financial institutions with less than $10 billion in assets. Prudential regulation of all depository financial institutions will remain with the prudential regulators, except that the Office of Thrift Supervision has been abolished and its functions and employees incorporated into the Office of the Comptroller of the Currency. Among the laws for which the Bureau will assume responsibility, all of HUD's consumer protection functions under RESPA, the SAFE Act, and the Interstate Land Sales Full Disclosure Act will be transferred to the Bureau. In addition, the Bureau will have primary rulemaking authority for TILA, FCRA, FDCPA, and other major consumer laws. The Bureau will publish a list of the existing rules and orders that it will enforce in the Federal Register before the designated transfer date.

Title X makes it unlawful to engage in any unfair, deceptive or abusive act or practice with respect to the offering or provision of consumer financial products or services, and gives the Bureau broad authority to interpret these terms by regulation. This has the effect of giving the Bureau its own federal trade commission act to interpret and enforce, as well as expanding the Federal Trade Commission Act ("FTCA")'s prohibitions beyond the jurisdictional requirements of the FTCA (which are relaxed under the Act for the FTC as well). Additionally, the Act makes it unlawful for any person (including people otherwise not covered by the Act) to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the Act.

Beyond this very broad authority to prescribe rules to implement the Act, the Bureau is instructed to study a broad array of issues, from reverse mortgages to mandatory arbitration clauses, and to report on many of these issues to Congress at various times over the next one to three years, and is varyingly required or authorized to propound rules regarding many of them. The Bureau is further required periodically to review essentially all regulations under federal consumer law regarding financial products and services, propounding changes as needed. The combined effect of all of this rulemaking, studying, reporting and recommending, will be a volume of regulatory activity without precedent since the New Deal, affecting almost every aspect of the markets for consumer financial products and services. Companies and trade organizations, and their attorneys, will have to be prepared to monitor and submit comments with respect to multiple simultaneous studies and regulations, covering everything from all aspects of long-established regulatory regimes to proposals for entirely new fields of regulation.

In addition to the existing enforcement mechanisms in each of the enumerated consumer laws, the Bureau is given extremely broad enforcement powers. The Bureau may commence both administrative proceedings and civil suits. The Bureau can go to court in its own name, using its own attorneys, and ask the court to order rescission or reformation of contracts, refund of moneys or return of real property, restitution, disgorgement, compensation for unjust enrichment, damages, public notification of violations with costs to be borne by the violator, limits on activities or functions, and civil money penalties of up to $1 million per day. The Bureau may not seek punitive damages, however, and settlements must be approved by the court. Additionally, even companies not subject to the Bureau's jurisdiction under the Act may have to submit information to the Bureau to establish that, in fact, they are not subject to its jurisdiction.

Preemption. Title X severely limits federal preemption of state consumer laws, which will only be preempted if they discriminate against national banks, if they permit lower standards than federal law requires, or if they prohibit alternative mortgage transactions. Moreover, state attorneys general will have the authority to enforce certain consumer law provisions in court, as parens patriae for consumers in their states, including seeking damages on behalf of individual consumers.

Effective Date. The Bureau was created as of the enactment of the statute. Until a Director is confirmed by the Senate, the Secretary of the Treasury will exercise the Director's powers. The transfer of rulemaking, supervisory and enforcement authority will take place on a "designated transfer date," to be announced within 60 days. This designated transfer date will be at least 180 days but no more than 18 months from now. Prior to the designated transfer date, the Bureau will publish a list in the Federal Register of the rules and orders that it will be enforcing.

Additionally, the Act provides a broad range of effective dates and timetables for regulatory changes and reports, ranging from immediate to several years in the future. We will be providing updates, including detailed regulatory analysis, as key dates approach.

Formal Studies. Under Title X, the Bureau and certain other agencies have been tasked with conducting formal studies and/or proposing new rules on a broad range of topics, including the following items:

• Study mandatory pre-dispute arbitration clauses in consumer financial contracts.

• Propose rules and a model disclosure combining TILA and RESPA sections 4 & 5 (may instead approve the joint Fed/HUD proposal).

• Study and report on the feasibility of using a consumer's remittance history in credit score calculation.

• Treasury Department to study ending the conservatorship of Fannie and Freddie, with report due end of January 2011.

• Bureau and other agencies are directed to develop and improve methods of matching addresses with census tracts to make compliance with HMDA cheaper.

• More regulation of remittance transfer providers, including required disclosures.

• Fed given authority to prescribe regulations regarding interchange transaction fees for electronic debit transactions, to cover institutions with assets over $10 billion.

• Study reverse mortgages and may issue regulations. Bureau may prescribe an integrated disclosure form, and may issue regulations before completing the study.

• Director of the Bureau (with Secretary of Education) required to submit legislative proposals regarding private education loans and lenders.

• Study exchange facilitators and report to Congress recommending legislation and new regulations.

• Sentencing Commission to study sentences for securities fraud and fraud offenses relating to financial institutions or federally related mortgage loans.

• Bureau to assist HUD in its study (under Title XIV), jointly establishing and maintaining a database of foreclosures and defaults.

• Study appraisal report portability (under Title XIV).

Transfer of Rulemaking Authority.

The Bureau will take over rulemaking authority for the following consumer laws:

• Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. § 3801 et seq.);

• Consumer Leasing Act of 1976 (15 U.S.C. § 1667 et seq.);

• Electronic Fund Transfer Act (15 U.S.C. § 1693 et seq.), except with respect to section 920 of that Act;

• Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.);

• Fair Credit Billing Act (15 U.S.C. § 1666 et seq.);

• Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. §§ 1681m(e), 1681w);

• Home Owners Protection Act of 1998 (12 U.S.C. § 4901 et seq.);

• Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.);

• Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. § 1831t(c)–(f));

• Sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6802–6809), except for section 505 as it applies to section 501(b);

• Home Mortgage Disclosure Act of 1975 (12 U.S.C. § 2801 et seq.);

• Home Ownership and Equity Protection Act of 1994 (15 U.S.C. § 1601 note);

• Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2601 et seq.);

• S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. § 5101 et seq.);

• Truth in Lending Act (15 U.S.C. § 1601 et seq.);

• Truth in Savings Act (12 U.S.C. § 4301 et seq.);

• Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8);

• Interstate Land Sales Full Disclosure Act (15 U.S.C. § 1701); and

• Large portions of the Mortgage Reform and Anti-Predatory Lending Act, which is Title XIV of the Act, are also designated as enumerated consumer laws, under the purview of the Bureau.

The Bureau has the authority to exempt most classes of covered persons by rule, whether in whole or in part. It may also prescribe rules regarding registration requirements for non-depository covered persons and may publicly disclose the registration information.

The Act also provides a mechanism for the states to force the Bureau to engage in a rulemaking. When a majority of states has enacted a resolution in support of the establishment or modification of a consumer protection regulation, the Bureau shall issue a notice of proposed rulemaking.

Enforcement Key Points.

The Bureau may conduct hearings and adjudication proceedings in order to enforce both Title X and the other laws that it enforces.

Civil penalties are available in three tiers. The first tier, for all violations, is up to $5,000 per day of the violation; the second tier, for reckless violations, is up to $25,000 per day; and the third tier, for knowing violations, is up to $1 million per day.

The Bureau can seek an extremely broad array of relief, including rescission or reformation of contracts, refund of moneys or return of real property, restitution, disgorgement, compensation for unjust enrichment, damages, public notification of violations with costs to be borne by the violator, limits on activities or functions, and civil money penalties.

The Bureau and the FTC will negotiate a coordination agreement.

When the FTC or the Bureau has initiated an enforcement action, the other can intervene but can't initiate a separate action.

The Bureau can issue subpoenas and go to court to enforce them.

The Bureau can issue civil investigative demands, which may require written or oral answers as well as documents.

Each civil investigative demand must state the nature of the conduct constituting the alleged violation and the applicable provision of law.

The Bureau can grant immunity in order to compel answers.

The statute of limitations for violations under Title X is 3 years, but the statutes of limitations for other statutes will continue to apply to claims under those statutes.

The Bureau is required to pass along evidence regarding the commission of any crime, or failure to pay federal taxes, to the appropriate authorities.

Additional Information Gathering.

ECOA is amended to require financial institutions to track whether an applicant for credit is a women-owned, minority-owned, or small business. The information is to be reported and made available to the public, similar to HMDA data.

HMDA will now require collection and reporting of data on:

• The age of the applicant;

• Points and fees;

• APR spread;

• Term of prepayment penalty;

• Value of real property to be pledged;

• Term of introductory rate;

• Presence of terms permitting payments other than fully amortizing payments;

• Term of loan;

• Channel through which application was made; and

• If the Bureau decides to require them by rule, unique identifiers for originator, loan, and property parcel, as well as applicants' credit score.

Consumer Right to Information.

Covered persons are required, upon request, to provide information to a consumer about that consumer's financial product or service in a timely manner and in a usable electronic format, but they are not required to maintain additional records beyond what is otherwise required. Financial institutions must provide consumers with the credit score that formed part of the basis for adverse action on a credit application.

Credit Agencies.

The FTC is given the authority to enforce the Act against credit reporting agencies. The FTC may seek civil penalties in court, but only for violation of an order or injunction. The Bureau will enforce the rules regarding furnishing information to credit agencies, with respect to any person subject to Title X, and has the authority to prescribe regulations on credit reporting, which will apply to any covered person.

Miscellaneous Provisions in Title X.

The TILA exemption for large non-mortgage, non-student loans and leases is increased to $50,000 (from $25,000), and is indexed to inflation going forward.

Title X provides whistleblower protections, to be enforced by the Secretary of Labor, and prohibits the application of pre-dispute arbitration agreements to whistleblower disputes under it.

The Act explicitly permits (but does not require) a creditor to consider seasonality or irregularity of income in underwriting residential mortgage loans.

The statute of limitations for prosecutions for securities fraud is set at 6 years. False claims act civil suits based on retaliation may be brought within 3 years of the retaliation.

Although the Bureau replaces the FTC with respect to rulemaking under the FDCPA, any violation of the FDCPA is deemed an unfair practice under the FTCA and is subject to FTC enforcement.

Federal Banking Guidance on Reverse Mortgages

On August 17, 2010 the OCC, FRB, FDIC, OTS and NCUA issued final guidance entitled “Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.”

The guidance focuses on how institutions can provide information about reverse mortgages and qualified independent counseling to consumers. The guidance also indicates ways to avoid conflicts of interest, and provides information on policies, procedures, internal controls and third party risk management. The guidance is applicable to banks and their subsidiaries, bank holding companies (other than foreign banks) and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, credit unions, U.S. branches and agencies of foreign banks engaged in reverse mortgage transactions, and any other entity supervised by those adopting the guidance.

Proprietary Reverse Mortgages

With respect to risks faced by lenders of proprietary reverse mortgage products, in particular, the guidance states that institutions offering these loans should “follow or adopt as appropriate, relevant HECM requirements, as amended from time to time, in general areas of mandatory counseling, disclosures, restrictions on cross-selling of other products, and reliable appraisals.”

The Agencies make clear the guidance does not intend to set fee limits. Institutions offering proprietary reverse mortgages should “reasonably price such products, including with respect to origination fees, consistent with safe and sound banking practices, and with appropriate consideration of costs, risks, and returns.”

Moreover, although the Agencies expect institutions to take steps to ensure consumers will be able to pay required taxes and insurance, the Agencies point out that they are not imposing credit underwriting standards in this guidance.

Communications with Consumers

The guidance states that institutions should provide timely and descriptive information to borrowers that would serve as an important supplement to the disclosures required by specific laws and regulations. In all information presented to consumers, institutions should provide clear and balanced product descriptions—not just upon the submission of a loan application or at consummation. The guidance provides a list of items that should normally be included in promotional materials and other product descriptions. The guidance also cautions that institutions should ensure that marketing and advertising materials do not provide misleading information about product features, loan terms, or product risks, or about the borrower's obligations with respect to taxes, insurance and home maintenance.

In issuing the final guidance, the Agencies emphasized that the guidance does not, and is not intended to, impose suitability obligations on lenders. Instead, the provision of clear and balanced information and qualified independent counseling are intended to ensure that borrowers do not enter into transactions that are not appropriate to their financial circumstances and needs. In addition, the Agencies clarified that they did not intend to incorporate Regulation Z's standard for "clear and conspicuous" disclosures in requiring that all information in marketing materials be provided clearly and conspicuously. Rather, the Agencies intend that important information be presented in a clear and prominent manner. We note, however, advertisements and other marketing materials continue to be subject to various laws and regulations, including Regulation Z and the FTC Act.

Qualified Independent Counseling

The guidance states that reverse mortgage lenders offering proprietary products should require that the consumer obtain counseling from qualified independent counselors before an institution processes an application for a reverse mortgage loan or charges an application fee. However, before counseling, institutions may provide information that both consumers and counselors may find useful in evaluating reverse mortgages. In addition, if no fee is charged, an institution may perform a preliminary assessment of the value of the consumer's property using an automated valuation model. The guidance provides that institutions should adopt policies that prohibit steering a consumer to a particular counseling agency and that prohibit contacting a counselor on the consumer's behalf. In addition, institutions should strongly encourage in-person counseling. The Agencies clarified that institutions are not expected to supervise or monitor the activities of qualified independent counselors.

Avoidance of Potential Conflicts

According to the guidance, institutions should take all reasonably necessary steps to avoid any appearance of a conflict of interest. The guidance provides a list of examples that institutions should follow, such as:

- Adopting clear written policies and internal controls designed to ensure that the institution does not violate any applicable anti-tying restrictions (such as requiring the borrower to purchase an annuity or any product other than a traditional banking product in order to obtain the reverse mortgage);

- Adopting clear policies designed to ensure that loan originators and brokers acting on behalf of the institution do not have an inappropriate incentive to sell other products that may appear to be linked to the granting of the reverse mortgage or to engage in inappropriate cross-marketing of other products.

Policies, Procedures and Internal Controls

The guidance further provides that institutions should have effective internal controls to monitor whether actual practices are consistent with their policies and procedures relating to reverse mortgages. Such policies and procedures include: (i) training designed to teach lending personnel to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner, and (ii) reviews of consumer complaints to identify potential compliance and reputation risks. In addition, legal and compliance reviews should include oversight of compensation programs to ensure avoidance of conflicts of interest.

Moreover, the guidance indicates institutions should take steps to manage the risks presented when making, purchasing or servicing reverse mortgages through a third party, including conducting due diligence and establishing criteria for entering into and maintaining relationships with such third parties (including criteria for third party compensation designed to avoid providing incentives inconsistent with the institution's policies and procedures); establishing monitoring activities for ongoing compliance with applicable agreements, policies, laws and regulations; and implementing corrective actions in the event that the third party fails to comply with applicable agreements, polices or laws and regulations.

Note that, while this guidance is generally only applicable to financial institutions, such as banks and credit unions, state mortgage regulators have already been influenced by the guidance. For example, the Maryland Office of the Commissioner of Financial Regulation stated in January that "[a]lthough the Guidance is not yet final, the Commissioner strongly encourages Maryland lenders offering, or considering offering, reverse mortgage products to review the Guidance to help ensure that they have appropriate risk management and consumer protection policies and practices in place."

The Guidance became effective October 18, 2010.

Revisions to Regulation Z

Federal Reserve Issues Final Rules Regarding Loan Originator Compensation Practices

On August 16, 2010, the Federal Reserve announced final rules regarding loan originator compensation practices. On Friday, September 24, 2010, the final rules were published in the Federal Register. The stated goals of the new rules are to protect mortgage borrowers from unfair, abusive, or deceptive lending practices and to help ensure that consumers can choose from loan options that include the lowest interest rate and lowest amount of points and origination fees. The new rules apply to mortgage brokers and the companies that employ them, as well as mortgage loan officers employed by depository institutions and other lenders who originate mortgage loans covered by Regulation Z. These new rules also apply to all closed-end consumer credit transactions secured by a dwelling regardless of price or lien position. Further, the dwelling need not be the consumer's principal dwelling.

These final rules prohibit a loan originator from:

- receiving compensation that is based on the interest rate or other loan terms (other than the loan amount);
- receiving compensation from the lender or another party if the loan originator is receiving compensation directly from the consumer; and
- directing or "steering" a consumer to accept a mortgage loan that is not in the consumer's interest in order to increase the loan originator's compensation.

The Federal Reserve, under its authority to prohibit unfair or deceptive acts or practices, found that paying a loan originator based on the terms or conditions of the loan, other than the amount of credit extended, or steering consumers to loans that are not in their interest to maximize loan originator compensation are unfair practices. The Federal Reserve also found that disclosure could not remedy these practices. The Federal Reserve concluded that these practices cause substantial injury to consumers, which consumers cannot reasonably avoid, and that the injuries are not outweighed by the benefits to either consumers or to competition in the marketplace. The focus of the analysis of injury sustained by consumers was yield spread premiums.

Therefore, these final rules effectively eliminate the use of a yield spread premium as a way for a lender to pay a mortgage broker compensation that is based on the interest rate at which the broker delivers the loan to the lender. However, the final rules permit compensation to be based on a percentage of the loan amount and afford creditors some flexibility in loan pricing, such that they can preserve the consumer benefits of compensating a loan originator, or paying for all or part of the closing costs, through the interest rate (so long as any creditor-paid compensation retained by the loan originator is not based on the loan terms or conditions). The final rules note that the permissibility of compensation based on the loan amount may, in the future, be subject to a minimum or maximum dollar amount.

Moreover, as proposed, the final rule defines a "loan originator" to include both persons who are covered by the current definition of a "mortgage broker," as well as those employees of a creditor who are not otherwise already considered to be "mortgage brokers." The final rule also defines a loan originator as covering both a natural person and a mortgage broker company, including those mortgage broker companies that close a loan in their name, but use table-funding from a third party to fund the loan. However, a creditor that funds a transaction out of its own funds is excluded from the definition of a loan originator. Thus, secondary market gain on sale compensation is not subject to the rule.

As the Federal Reserve is well aware, these rules and the definition of "loan originator" will have a significant impact on smaller firms, such as small mortgage broker companies, and will likely extend to community banks and credit unions acting as mortgage brokers in particular transactions. However, like the provisions of the Dodd-Frank Wall Street Reform Act, the definition and final rules do not address secondary market transactions between creditors and secondary market investors. The rules also do not consider mortgage servicers as "loan originators," where the servicer is modifying an existing loan on behalf of the current owner of the loan.

As stated above, the final rules apply to all closed-end consumer credit transactions secured by a dwelling, regardless of price or lien position, in order to be consistent with the definition of "residential mortgage

loan," as defined in the Dodd-Frank Wall Street Reform Act. The dwelling need not be the consumer's principal dwelling.

While the rules do not apply to HELOCs, timeshare transactions, or loans secured by real property that do not include a dwelling, the Federal Reserve will consider whether broader coverage is necessary in a future rulemaking.

New Federal Reserve Staff commentary indicates examples of those things determined not to be "terms or conditions" of the loan, as well as examples of permissible compensation practices. For example, the staff commentary clarifies that credit scores or similar indicators of credit risk, such as the debt-to-income ratio, are not terms or conditions of the loan. However, staff commentary provides that these items may act as a "proxy" for a terms or conditions of the loan (through, for instance, risk based pricing), and thus may not be utilized when setting loan originator compensation. Staff commentary also clarifies that a payment that is fixed in advance for each originated loan and compensation that accounts for a loan originator's fixed overhead costs are permissible compensation methods.

These final rules permit creditors to compensate their loan officers differently than mortgage brokers. It is also permissible to compensate loan originators based on loan volume, whether by the total dollar amount of credit extended or the total number of loans originated over a given time period. However, such compensation adjustments must only be made prospectively. These compensation programs may also be periodically reviewed by the creditor to determine if loan originator compensation should be revised. However, the Federal Reserve does not permit compensation to vary based on the loan program and does not permit compensation to be paid by both the consumer and another source.

Finally, loan originators are prohibited from directing or ''steering'' a consumer to consummate a dwelling-secured loan based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. The Federal Reserve intended to preserve consumer choice by ensuring that consumers have loan options that reflect considerations other than the maximum amount of compensation that will be paid to the originator.

Therefore, the Federal Reserve created a safe harbor where a loan originator is deemed to have complied with these anti-steering rules if the loan originator satisfies the following three requirements:

1. For each type of transaction in which the consumer expresses an interest, the consumer must be presented with, and able to choose from, loan options that include a loan with the lowest interest rate, a loan with the lowest total dollar amount for origination points or fees and discount points, and a loan with the lowest rate with no risky features, such as a prepayment penalty or negative amortization;

2. The loan options presented to the consumer are obtained by the loan originator from a significant number of the creditors with whom the loan originator regularly does business; and

3. The loan originator believes in good faith that the consumer likely qualifies for the loan options presented to the consumer.

Special Considerations for Reverse Mortgages

Despite comments submitted to Board staff asking that the loan amount for purposes of reverse mortgages be equated to a "maximum claim amount" (a "loan amount" equivalent commonly used to calculate and originate reverse mortgages), the Board ignored such comments in its final rule. Further, statements in the Preamble to the rule regarding Community Reinvestment Act (CRA) eligible loans have been mis-construed by some as a flat prohibition on compensating loan originators differently for different loan programs.

First, with respect to loan amounts for reverse mortgages, arguably the maximum claim amount is the superior method to utilize as a reverse mortgage loan amount, as this is the concept employed in the federal FHA-insured HECM program to define and limit origination fees (among other things) and is one method of allowable compensation to loan originators. Next, the comment on CRA loans is in the Preamble to the rule, not in the rule or commentary, and no further definitive explanation with regard to compensating for different loan types of program is given in the rule or commentary. However, the rule does provide that a loan originator may be compensated based on flat fees or hours expended to originate a loan, in addition to, or in lieu of, a percentage of the loan amount, and a creditor may compensate its loan officers differently than mortgage brokers. Thus, strong and reasonable arguments can be made that the time and effort necessary to originate a reverse mortgage are greater than that usually required for "forward" mortgages, and, therefore, creditors should be able to compensate reverse mortgage loan originators in connection with closed end loans based on other permissible criteria that are distinct from those used for its forward mortgage loan originators.

These new rules become effective April 1, 2011.

Federal Reserve Board Issues Final Rules on Mortgage Transfer Notices to Borrowers

Section 404 of the Helping Families Save Their Homes Act, that became effective on May 20, 2009, amended the Truth-in-Lending Act (TILA) to require purchasers or assignees of residential mortgage loans to provide a written notice to borrowers within 30 days of a sale or other transfer of the ownership of their loan. On Monday, August 16, 2010, the Federal Reserve released final rules to implement this statutory change. On September 24, 2010, these final rules were published in the Federal Register.

The final rule requires an acquiring party to provide the required disclosures to the borrower no later than 30 days after the date of sale, assignment or transfer. This disclosure must state:

- The name, address and telephone number of the new owner of the mortgage loan;
- The transfer or acquisition date;
- The name, address and telephone number of an agent or other party authorized to receive a consumer's rescission notice and resolve issues concerning the consumer's payments on the loan (if other than the owner);
- Where the transfer of ownership is recorded, or that it has not been recorded as of the date of the disclosure; and

- Any other information that the covered persons, in their sole discretion, deem relevant or helpful to consumers.

These disclosure requirements are imposed on any person or entity that acquires ownership (legal title) of an existing consumer mortgage loan (debt obligation).

Significantly, these final rules apply to a person that acquires mortgage loans without regard to whether the person also extends consumer credit by originating mortgage loans, but only if such person acquires more than one loan in a 12-month period. Moreover, a party servicing a mortgage loan is not treated as the owner of the obligation, if the obligation was assigned to the servicer solely for administrative convenience of the servicer in servicing the obligation.

The final rules provide for three (3) exceptions. Under the final rule, a covered person must mail or deliver the required disclosures on or before the 30th day following the date the covered person acquired legal title to the loan. However, if the covered person transfers or assigns all of its interest in the loan to another party on or before that date, disclosures are not required to be given by that covered person. Second, where the owner of the mortgage loan transfers legal title to the loan in a transaction that is subject to a repurchase agreement, disclosures are not required to be given if the transferor is obligated to repurchase the loan. Third, where a covered person acquires only a partial interest in the loan and the party authorized to resolve issues concerning the consumer's payments on the loan or receive the rescission notice on behalf of a current owner does not change as a result of the transfer, no disclosure is required to be given.

Please note that the Federal Reserve published interim rules in November of 2009 regarding mortgage transfer notices that became effective upon publication in the Federal Register. In connection with this latest publication in the Federal Register, the mandatory compliance date is January 1, 2011; however, covered persons may continue to comply with the November 2009 interim rules until January 1, 2011.

Federal Reserve Issues Interim Rule to Revise Disclosure Requirements under Regulation Z

On August 16, 2010, the Federal Reserve also issued an interim rule that further implements provisions of the Mortgage Disclosure Improvement Act. On September 24, 2010, this interim rule was published in the Federal Register. The interim rules amend the disclosure requirements for closed-end mortgage loans under Regulation Z and require lenders to disclose to borrowers how their mortgage rates and/or payments can change throughout the life of the loan in connection with variable rate or payment loans.

As part of the Housing and Economic Recovery Act of 2008, Congress enacted the Mortgage Disclosure Improvement Act (MDIA), which amended the federal Truth-in-Lending Act to provide for additional disclosures for variable rate, closed-end residential mortgage loans. The MDIA, as originally enacted, provided that these changes would become effective upon the earlier of 30 months from the Act or the issuance of regulations by the Federal Reserve Board. The Board issued these interim rules to give creditors guidance on the statutorily mandated disclosures by the 30 month effective date. Note, however, that while the MDIA requires these additional disclosures for variable-rate transactions secured by a dwelling, this interim rule expands this requirement to cover fixed-rate transactions secured by a dwelling, as well as transactions secured by real property without a dwelling.

In order to disclose applicable changes to the rates and/or payment of the mortgage loan, lenders' cost disclosures must include a payment summary that is disclosed in a table format. Under the interim rule, the disclosure must contain the following:

- The initial interest rate and corresponding monthly payment;
- For adjustable-rate or step-rate mortgage loans, the maximum interest rate and payment possible during the first five (5) years of repayment and a "worst case" scenario that displays the maximum interest rate and payment possible over the entire life of the loan; and
- The fact that consumers might not be able to avoid increased payments by refinancing the loan (the "no-guarantee-to-refinance" statement).

Additional specialized disclosures are also required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments and balloon payments.

The tabular format of the interest rate and payment summary replaces the payment schedule that was previously required as part of the TILA disclosures. These new disclosures are required for all transactions secured by a dwelling, other than a timeshare transaction, as well as for loans secured by real property that does not include a dwelling. The disclosures for non-mortgage, closed-end consumer credit will continue to include the current payment schedule.

For purposes of these new disclosures, the interim rule outlines the following definitions:

- ''Adjustable-rate mortgage'' means a loan in which the annual percentage rate may increase after consummation.
- ''Step-rate mortgage'' means a loan in which the interest rate will change after consummation, and the rates and periods in which they will apply are known.
- ''Fixed-rate mortgage'' means a loan that is not adjustable-rate or step-rate.
- ''Interest-only'' means that one or more periodic payments may be applied solely to interest and not to loan principal.
- An ''interest-only loan'' is a loan that permits interest-only payments.
- An ''amortizing loan'' is defined as a loan in which the regular periodic payments cannot cause the principal balance to increase.
- ''Negative amortization'' means the regular periodic payments may cause the principal balance to increase.
- ''Negative amortization loan'' means a loan with a negative amortization feature but explicitly excludes a reverse mortgage.

- ‘‘Fully-indexed rate’’ means the interest rate calculated using the index value and margin.

Each of these terms triggers specific disclosure requirements with respect to the payments and interest rates associated with such loans. For example, for fixed-rate mortgages, the interim rule requires creditors to disclose the interest rate applicable at consummation. If the transaction does not provide for any payment increases, then only one interest rate is disclosed.

However, some fixed-rate mortgages may have scheduled payment increases. In these cases, creditors must show the interest rate associated with such payments, even though the rate has not changed.

Also, for example, the interim rule requires creditors to disclose examples of payment increases, including the maximum possible payment for adjustable-rate mortgages and other mortgages where payments may vary. Creditors must disclose more than one interest rate for adjustable-rate mortgages and step-rate mortgages because the payments can vary.

Moreover, as noted above, the interest rate at consummation must be disclosed, as well as the maximum possible rate at any time during the first five years after consummation, even if that is not the first adjustment, and the earliest date that rate may apply. The Federal Reserve has solicited comments as to whether five years is the appropriate time frame for this disclosure.

With respect to the payment disclosures, the interim rule requires disclosure of the principal and interest payment that corresponds to each interest rate disclosed, as well as the total estimated monthly payment. For transactions where the regular periodic payment fully amortizes the loan, the payment amount including both principal and interest must be disclosed. The rule also requires disclosure of the payment amount at any scheduled payment increase that does not coincide with an interest rate adjustment, and the date on which the increase is scheduled to occur.

If an escrow account is to be established, creditors must disclose the estimated payment amount for taxes and insurance, including mortgage insurance. However, staff commentary indicates that premiums or payments for credit protection should not be included in the disclosed escrow amounts.

In addition, with respect to the total estimated monthly payments to be disclosed, if any regular periodic payment amounts will include interest, but not principal, all payments for the loan must be itemized into principal and interest.

For negative amortization loans, for each interest rate disclosed, the creditor must disclose payments in two separate rows. One row of the table shows the fully amortizing payment for each interest rate. To calculate these payments, the creditor must assume the interest rate reaches the maximum at the earliest possible date and that the consumer makes only fully amortizing payments. The second row of the table shows the minimum required payment for each rate, until the “recast point.” At the “recast point,” the minimum payment row shows the fully amortizing payment. For purposes of the minimum payment row, creditors must assume the interest rate reaches the maximum at the earliest possible date and that the consumer makes only the minimum required payment for as long as permitted under the terms of the legal obligation.

If a loan provides for a balloon payment, it must be disclosed in a specific manner in the table, depending on whether it coincides with an interest rate adjustment or other payment increase.

Finally, the interim rule adds another new section to TILA that requires creditors to disclose a statement that there is no guarantee that the consumer will be able to refinance the loan to obtain a lower interest rate and payment; the

Federal Reserve provides a model disclosure to comply with this requirement. Note that while the MDIA requires this statement for variable-rate transactions secured by a dwelling, this interim rule expands this requirement to cover fixed-rate transactions secured by a dwelling, as well as transactions secured by real property without a dwelling.

This interim rule becomes effective on October 25, 2010; however, compliance is optional until January 30, 2011. These rules are being implemented under the MDIA now, and compliance is expected by January 30, 2011 for the disclosure of examples of payment adjustments. Lenders must comply with these rules for applications received on or after January 30, 2011. Comments on this interim rule are required to be submitted by November 23, 2010.

Federal Reserve Board Issues Significant Proposed Consumer Protection and Disclosure Rules for Reverse Mortgages and other Home Loans

On August 16, 2010, the Federal Reserve also issued a set of proposed rules that are aimed at enhancing consumer protection and clarity of disclosures for open-end and closed-end mortgage transactions, including reverse mortgage transactions. On September 24, 2010, the proposed rule was published in the Federal Register for public comment.

This is the second major rulemaking phase to improve consumer disclosures and to prohibit certain practices in the mortgage lending industry. The first phase began with rules proposed in August 2009. This phase represents significant changes to Regulation Z that include changes to reverse mortgages and all other mortgages.

Summary of Major Proposed Provisions

This latest proposed rule contains significant changes to required disclosures and practices in connection with reverse mortgage transactions, including:

- Improving consumer disclosures provided in connection with reverse mortgage loans, including changes to the timing, format and content of such disclosures;
- Requiring a new, two-page disclosure to be given at application for a reverse mortgage loan to clarify basic features and risks of reverse mortgages;
- Prohibiting certain practices in the sale of financial products in connection with a reverse mortgage loan, including prohibiting a creditor from conditioning a loan on the purchase of another financial or insurance product;
- Requiring counseling about reverse mortgages at least three business days before a creditor can impose any nonrefundable fees or close a reverse mortgage loan; and

- Imposing new rules on the advertising of reverse mortgage loans.

The proposed rule also makes significant changes to all home loan transactions, including:

- Requiring a transaction-specific disclosure within three days of receiving an application;
- Providing final disclosures at least three days before closing;
- Improving disclosures to clearly explain to the consumer that they have a right to rescind certain mortgage transactions;
- Ensuring that new disclosures are provided when a modification to an existing closed-end mortgage loan occurs;
- Revising the definition of a "higher-priced mortgage loan" in order to ensure exclusion of prime loans;
- Clarifying the responsibilities of the creditor if a consumer exercises a right to rescind;
- Requiring the refunding of fees if a consumer decides to withdraw the application within three days after receiving the disclosures; and
- Requiring a loan servicer to respond to a borrower request for information on the ownership of their loan within 10 business days.

Detail on Major Proposed Provisions

The Consumer's Right to Rescind

The proposed revisions to Regulation Z would:

- Simplify and improve the notice of the right to rescind provided to consumers at closing by including:
    - The calendar date when the three business- day rescission period expires, without the explanation of how to calculate the deadline.
    - A statement that the consumer's right to cancel the loan may extend beyond the date stated in the notice and, in that case, the consumer must send the notice to either the current owner of the loan or the servicer.
    - A ''tear off'' form that a consumer may use to exercise his or her right to rescind.
- Require that the information in the rescission notice be disclosed:

- In a tabular format, as opposed to the narrative format used in the current model rescission forms.

- On the front side of a one-page document, separate from all other unrelated material; and

- In a minimum 10-point font;

- Require only one notice of the right to rescind be provided to each consumer entitled to rescind, instead of the currently required two notices;

- Revise the list of ''material disclosures'' that can trigger the extended right to rescind to focus on disclosures that testing shows are most important to consumers with respect to closed-end transactions and HELOCs, such as:

  - Including the credit limit applicable to the HELOC plan;

  - Adding a disclosure of the total one-time costs imposed to open a HELOC plan (i.e., total closing costs), but the proposed rule removes an itemization of these costs.

  - Adding tolerances for accuracy of the credit limit and the total one-time costs imposed to open a HELOC plan to ensure inconsequential errors in these disclosures do not result in extended rescission rights.

  - Adding information about the interest rate, the total settlement charges, and whether a loan has negative amortization or permits interest-only payments for closed-end loans;

  - Adding disclosures of the loan amount and the loan term (e.g., 30 year loan) to the definition of ''material disclosures.'' These disclosures would replace disclosures of the amount financed, and the total and number of payments.

  - Adding other disclosures to the definition of ''material disclosures,'' such as disclosure of any prepayment penalty.

  - Retaining the current rule's existing tolerances for certain material disclosures, and providing tolerances for certain of the proposed material disclosures, such as the total settlement charges, the loan amount and the prepayment penalty, to ensure inconsequential errors in these disclosures do not result in extended rescission rights; and

- Clarify the parties' obligations when the extended right to rescind is asserted, to reduce uncertainty and litigation costs by proposing a revised process for rescission in the extended right context.

The proposed rule provides that if a creditor receives a consumer's notice of rescission outside of a court proceeding, the creditor must send a written acknowledgement to the consumer within 20 calendars days of receipt of the notice. The acknowledgement must indicate whether the creditor will agree to cancel the transaction. If the creditor agrees to cancel the transaction, the creditor must release its security interest upon the consumer's tender of the amount provided in the creditor's written statement.

The proposed rule would also amend Regulation Z to provide that:

- A consumer who exercises the extended right may send the notice to the servicer rather than the current holder, because many consumers cannot readily identify the holder;

- Certain events terminate the extended right to rescind, such as a refinancing with a new creditor;

- Bona fide personal financial emergencies that enable a consumer to waive the right to rescind will usually involve imminent property damage or threats to health or safety, not the imminent expiration of a discount on goods or services; and

- A consumer who guarantees a loan that is subject to the right of rescission and who pledges his principal dwelling has a right to rescind.

Loan Modifications That Require New TILA Disclosures

The proposed rule would provide that new TILA disclosures are required when the parties to an existing closed-end loan secured by real property or a dwelling agree to modify key loan terms, without reference to state contract law.

New disclosures would be required when, for example, the parties agree to change the interest rate or monthly payment, advance new money, or add an adjustable rate or other risky feature, such as a prepayment penalty.

Consistent with current rules, no new disclosures would be required for modifications reached in a court proceeding, and modifications for borrowers in default or delinquency, unless the loan amount or interest rate is increased, or a fee is imposed on the consumer.

Certain beneficial modifications, such as ‘‘no cost’’ rate and payment decreases, would also be exempt from the requirement for new TILA disclosures.

The proposed rule would require new TILA disclosures when the same creditor and the consumer agree to modify certain key mortgage loan terms, including modifications:

- changing the interest rate or monthly payment;

- advancing new debt;

- adding an adjustable rate or other risky feature such as a prepayment penalty.

Whenever a fee is imposed on a consumer in connection with a modification, including a modification for a consumer in default, a ‘‘new transaction’’ would occur requiring new TILA disclosures.

If the new transaction's APR exceeds the threshold for a "higher-priced mortgage loan," then special HOEPA (TILA Section 32) protections would apply to the new transaction.

The right of rescission would likely apply to any new transactions. However, transactions are exempt from rescission if they:

- o involve the original creditor who is also the current holder of the note;
- o do not involve an advance of new money; and
- o do not add a new security interest in the consumer's principal dwelling.

Coverage Test for 2008 HOEPA Final Rule and HOEPA

The Board proposes to revise how a creditor determines whether a closed-end loan secured by a consumer's principal dwelling is a ''higher-priced mortgage loan'' subject to the Board's 2008 HOEPA Final Rule in § 226.35, and how points and fees are calculated for coverage under the HOEPA rules in §§ 226.32 and 226.34.

The proposed rule would replace the APR as the metric a creditor compares to the average prime offer rate to determine whether the transaction is a higher-priced mortgage loan.

Creditors instead would use a ''coverage rate'' that would be closely comparable to the average prime offer rate, and would not be disclosed to consumers.

The proposed rule would clarify that most third party fees would not be counted towards ''points and fees'' that trigger HOEPA coverage.

Consumer's Right to a Refund of Fees

For closed-end loans secured by real property or a dwelling, the proposed rule would require a creditor to:

- Refund any appraisal or other fees paid by the consumer (other than a credit report fee), if the consumer decides not to proceed with a closed-end mortgage transaction within three business days of receiving the early disclosures (fees imposed after this three-day period would not be refundable); and
- Disclose the right to a refund of fee to consumers at the time of application for a closed-end mortgage loan.

The proposed rule will likely cause a delay in processing the transaction and may result in creditors waiting until 4 days after the consumer receives the initial disclosures to charge any fees in order to avoid having to refund fees later.

Reverse Mortgage Disclosures

The proposed rule would require a creditor to provide a consumer with new and revised reverse mortgage disclosures.

Disclosures at Application

Currently, a creditor is required to provide a consumer with a Board-published, 20-page long HELOC brochure, or similar, at the time of an application for a HELOC. However, it does not contain information specific to reverse mortgages.

Before the consumer applies for a mortgage, the creditor must provide a new two-page notice summarizing basic information and risks regarding reverse mortgages, entitled "Key Questions To Ask about Reverse Mortgage Loans" to replace the current HELOC and closed-end application disclosures.

The proposed rule would require a creditor to provide the new ''Key Questions'' document for all reverse mortgages, whether open- or closed-end, or fixed- or adjustable-rate.

Within three business days of application, and again before the reverse mortgage loan is consummated (or the account is opened, for an open-end reverse mortgage), the following must be provided:

- Loan cost information specific to reverse mortgages that is integrated with information required to be disclosed for all home-equity lines of credit (HELOCs) or closed-end mortgages, as applicable; and
- A table expressing total costs as dollar amounts, in place of the table of reverse mortgage ''total annual loan cost rates.''

Reverse Mortgage Cost Disclosures

Currently, all reverse mortgage creditors must provide the TALC disclosure at least three business days before account-opening for an open-end reverse mortgage, or consummation for a closed-end reverse mortgage.

For closed-end reverse mortgages, creditors must provide early TILA disclosures within three business days after a consumer's application and at least seven business days before consummation.

If the early TILA disclosure becomes inaccurate, the creditor must provide corrected disclosures before consummation. Under the MDIA, if the APR changes and exceeds certain tolerances, the creditor must provide a corrected disclosure that the consumer must receive at least three business days before consummation.

For open-end reverse mortgages, creditors must provide disclosures on or with an application that contains information about the creditor's open-end reverse mortgage plans. Creditors are then required to disclose transaction-specific costs and terms at the time that an open-end reverse mortgage plan is opened.

The proposed rule creates three consolidated reverse mortgage disclosure forms:

- An early disclosure for open-end reverse mortgages;
- An account-opening disclosure for open-end reverse mortgages; and
- A closed-end reverse mortgage disclosure.

Rather than receiving two or more disclosures under TILA at different times and in different formats, under the proposed rule, consumers would receive all the disclosures in a single format regardless of whether the reverse mortgage is structured as open-end or closed-end credit.

The proposed rule also provides creditors with a single set of forms that are specific to and designed for reverse mortgages, rather than requiring creditors to modify and adapt disclosures designed for forward mortgages.

For reverse mortgages, the proposed rule requires creditors to provide either:

- The ‘‘early’’ open-end reverse mortgage disclosure within three business days after application, and the account-opening disclosure at least three business days before account opening; or
- The closed-end reverse mortgage disclosures within three business days after application and again at least three business days before consummation.

Information about Reverse Mortgage Total Costs

Currently, Regulation Z requires reverse mortgage creditors to disclose a table of TALC rates to show consumers how the cost of the reverse mortgage varies over time and with house price appreciation.

The proposed rule would replace the TALC rates disclosure with “more meaningful” information for consumers and requires a table that demonstrates how the reverse mortgage balance grows over time. The table expresses this information as dollar amounts, rather than as annualized loan cost rates.

Under the proposed rule, creditors must provide three items of information:

- The sum of all advances to and for the benefit of the consumer;
- The sum of all costs and charges owed by the consumer; and
- The total amount the consumer would be required to repay.

This information must be provided for each of three assumed loan periods of one year, 5 years, and 10 years.

Other Reverse Mortgage Cost Information

The proposed reverse mortgage disclosures would combine reverse-mortgage-specific information with information that was proposed for HELOCs and closed-end mortgages in 2009.

The proposed disclosure includes information about APRs, variable interest rates and fees. However, because not all of the information currently required for HELOCs and closed-end mortgages is relevant or applicable to reverse mortgage borrowers, the proposed rule removes, or replaces, disclosures that are not likely to provide a meaningful benefit to reverse mortgage consumers.

For open-end reverse mortgages, the proposed rule requires creditors to provide disclosures at least three business days before account opening, consistent with the current rule for the TALC disclosure.

Required Counseling for Reverse Mortgages

The proposed rule requires counseling of consumers seeking to obtain a reverse mortgage loan prior to a creditor charging fees or originating a reverse mortgage loan.

Prospective borrowers of FHA-insured reverse mortgages, known as Home Equity Conversion Mortgages (HECMs), must receive counseling before obtaining a HECM.

The proposed would prohibit a creditor, or other person, from:

- Originating a reverse mortgage before the consumer has obtained independent counseling from a counselor that meets the qualification standards established by HUD, or substantially similar standards;

- Imposing a nonrefundable fee on a consumer (except a fee for the counseling itself) until three business days after the consumer has received counseling from a qualified counselor; and

- Steering consumers to specific counselors or compensating counselors or counseling agencies.

The proposed rule applies to HECMs as well as proprietary reverse mortgages. Similar rules already apply to FHA-insured HECM loans under current FHA rules and guidelines.

To confirm that the consumer completed the counseling, creditors would rely on a certificate of counseling in a form approved by HUD, or a substantially similar form.

Prohibition on Cross-Selling for Reverse Mortgage

The Federal Reserve is proposing anti-tying rules specific to reverse mortgages to cover all reverse mortgage originations – including HECMs, proprietary reverse mortgage products and reverse mortgages originated by depository and nondepository institutions. The proposed rule would:

- Prohibit a creditor or broker from requiring a consumer to purchase another financial or insurance product (such as an annuity) as a condition of obtaining a reverse mortgage; and

- Provide a ‘‘safe harbor’’ for compliance if, among other things, the reverse mortgage transaction is consummated (or the account is opened) at least ten calendar days before the consumer purchases another “financial or insurance product.”

- Define ‘‘financial or insurance product’’ to include both bank products, such as loans and certificates of deposit, and non-bank products, such as annuities, long-term care insurance, securities, and other nondepository investment products.

- Exempt from the definition of ‘‘financial or insurance product’’ savings and certain other deposit accounts established to disburse reverse mortgage proceeds, as well as products and services intended to protect the creditor’s or insurer’s investment, such as mortgage insurance, property inspection services, and appraisal or property valuation services.

Reverse Mortgage Advertising

The proposed rule amends Regulation Z to revise the advertising rules for reverse mortgages.

Regulation Z currently contains rules that apply to advertisements of HELOCs and closed-end mortgages, including reverse mortgages. Advertisements containing certain specified credit terms, including payment terms, must also include additional advertising disclosures under Regulation Z, such as the APR.

For closed-end mortgages, including reverse mortgages, Regulation Z prohibits seven misleading or deceptive practices in advertisements, including:

- o Misleading advertising of ``fixed'' rates and payments;
- o Misleading comparisons in advertisements;
- o Misrepresentations about government endorsement;
- o Misleading use of the current lender's name;
- o Misleading claims of debt elimination;
- o Misleading use of the term “counselor;” and
- o Misleading foreign-language advertisements.

Moreover, a clarifying statement would be required for:

- o Advertisements stating that a reverse mortgage ‘‘requires no payments;’’

o Advertisements stating that a consumer need not repay a reverse mortgage ‘‘during your lifetime;’’ and

o Advertisements stating that a consumer ‘‘cannot lose’’ or there is ‘‘no risk’’ to a consumer’s home with a reverse mortgage.

For example, the proposed rule requires advertisements that state that a reverse mortgage ‘‘requires no payments’’ to clearly disclose the fact that borrowers must pay taxes and required insurance.

Other Proposed Revisions

The proposed rule would contain several changes to the rules for HELOCs and closed-end mortgage loans. These changes include:

- Conforming advertising rules for HELOCs to rules for closed-end mortgage loans adopted as part of the Board’s 2008 HOEPA Final Rule;

- Clarifying how creditors may comply with the 2008 HOEPA Final Rule’s ability to repay requirement when making short-term balloon loans;

- Clarifying that certain practices regarding prepayment of FHA loans constitute prepayment penalties for purposes of TILA disclosures and the Board’s 2008 HOEPA Final Rule;

- Requiring servicers to provide consumers with the name and address of the holder or master servicer of the consumer’s loan obligation, upon the consumer’s written request; and

- Revising the disclosure rules related to credit insurance and debt cancellation and suspension products.

In connection with this second phase of the Federal Reserve’s rulemaking regarding improving consumer disclosures, the Federal Reserve indicated that it expects to issue final rules in the future that will combine the first and second phases of this rulemaking. The comment period for this set of rules ends on December 23, 2010.

FHA Announces Significant Changes to the HECM Program

On September 21, 2010, HUD issued Mortgagee Letter 2010-34 (ML 10-34) that implemented several significant changes to the FHA-insured Home Equity Conversion Mortgage (HECM) program. ML 10-34 announced the creation of a new HECM product called the “HECM Saver.” ML 10-34 also implemented certain HECM program changes, including changes: (1) setting initial and monthly mortgage insurance premiums (MIP); (2) establishing a formula for initial MIP in HECM refinance transactions; (3) reducing HECM principal limit factors and the effective interest rate floor; (4) providing for management of the existing pipeline of HECM loans; and (5) updating HECM loan documents. This article provides a general overview of these important HECM program changes.

The HECM Saver

Effective for all HECM case numbers assigned on or after October 4, 2010, borrowers may choose from two HECM pricing options. Borrowers may choose either a HECM Saver or a HECM Standard option. The HECM Saver is a new HECM pricing option with significantly reduced upfront closing costs designed for senior borrowers who wish to receive less cash proceeds from their HECM loan than the proceeds that otherwise would be available under the HECM Standard option. The HECM Saver provides for a significantly lower initial MIP.

HECM Saver Program Features

All existing program features currently available with the HECM Standard are also available with the HECM Saver. This includes all HECM transaction types (traditional, purchase money and refinance), all five payment plans (tenure, term, line of credit, modified tenure and modified term), adjustable and fixed interest rate features, and all interest rate indices (CMT and LIBOR).

Initial and Monthly Mortgage Insurance Premiums (MIP)

For the HECM Saver, the initial MIP will be 0.01% of the maximum claim amount (or MCA). For the HECM Standard, the initial MIP will continue to be 2% of the MCA. Monthly MIP for both HECM Saver and HECM Standard will be charged at an annual rate of 1.25% of the outstanding loan balance.

Initial MIP Calculation for Refinance Transactions

ML 10-34 requires HECM lenders and counselors to use the following formula to calculate the initial MIP in connection with refinance transactions (for both HECM Saver and HECM Standard):

(1) New MCA multiplied by new initial MIP (%) = New MIP

(2) Old MCA multiplied by old initial MIP (%) = Old MIP

(3) Subtracting the result of (2) from the result of (1) yields the MIP amount owed to HUD

ML 10-34 provides examples for calculating the initial MIP due on HECM refinance transactions.

Reduced Principal Limit Factors and Interest Rate Floor

Effective October 4, 2010, HUD has lowered the principal limit factors that apply to the HECM Saver and the HECM Standard. The new principal limit factors are available on HUD's web site at:

http://www.hud.gov/offices/hsg/sfh/hecm/hecmhomelenders.cfm. In general, the reduction in principal limit factors results in reduced maximum principal limit available to the borrower at loan origination. However, HUD also lowered the effective interest rate floor from 5.5 to 5 percent. The effective interest rate is used in determining the initial principal limit for a HECM loan. This change may counter-act the reduction in

principal limit factors and, in some cases, increase the maximum principal limit available to HECM borrowers at loan origination.

Existing Pipeline of HECM Loans

For all HECM Standard loans that have not closed and for which the FHA case number was assigned as of October 3, 2010, the lender may process such loans using an initial MIP of 2%, a monthly MIP of 0.5% and the fiscal year 2010 principal limit factor table. Thus, for HECM Standard loan applications in the pipeline with case numbers assigned on or before October 3, 2010, HECM lenders have the option of closing the loan with the "old" initial and monthly MIP amounts and 2010 principal limit factors. Further, for such "pipeline" loans, FHA will permit borrowers with case numbers that were assigned on or before October 3, 2010, but the loan has not closed before that date, to convert to HECM Saver.

Changes to HECM Loan Documents

ML 10-34 provides certain specific changes to Section 1.7 of the model HECM Loan Agreement that was originally published in the HUD HECM Handbook 4235.1 REV-1 and recently amended in Mortgagee Letter 2010-07. Section 2.13 of the model HECM Loan Agreement provides in part that monthly MIP shall be calculated as provided in 24 CFR Part 206. This reference will need to be changed to also make reference to ML 10-34.

HUD also reiterated its long standing policy that lenders must adapt their HECM legal documents as necessary to ensure compliance with the program requirements. HUD also reminded lenders that they are permitted to make the necessary and appropriate modifications to the HECM legal documents to ensure compliance with FHA requirements, as well as other federal, state and local laws. Lenders also will want to review their disclosure for HECM Standard (2011) loans, particularly the Truth-in-Lending Open End Important Terms disclosures, to assure any references to on-going MIP state 1.25% and not .50%, and to make changes to the figures or descriptions stated for up-front MIP on the HECM Saver, and HECM-to-HECM streamline refinances.

FTC Issues Notice of Proposed Rulemaking on Mortgage Advertising

On September 22, 2010, the Federal Trade Commission ("FTC") issued a notice of proposed rulemaking that would prohibit material misrepresentations in advertising about consumer mortgages. The proposed rule would apply to mortgage lenders, brokers and servicers; real estate agents and brokers; advertising agencies; home builders; lead generators; rate aggregators; and other entities under the FTC's jurisdiction.

The proposed rule would prohibit any person from making any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product. The proposed rule defines "mortgage credit product" as any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family or household purposes. The proposed rule includes a non-exhaustive list of 19 misrepresentations that would violate the proposed rule. However, the proposed rule does not include any advertising disclosure requirements.

Currently, the FTC Act authorizes the FTC to bring actions seeking injunctive relief against those under the FTC's jurisdiction who engage in deceptive mortgage advertising. The proposed rule would authorize the

FTC to bring actions seeking civil penalties in addition to injunctive relief. Additionally, the proposed rule would allow states to bring actions for civil penalties for violations of the proposed rule.

The FTC is seeking comments on the costs and benefits of the proposed rule, including whether any alternatives would adequately protect consumers at a lower cost. Additionally, the FTC seeks public input on whether there are advertising disclosures that should be included in the proposed rule. The FTC is also seeking comments on whether the proposed rule should prohibit persons from providing substantial assistance to those who violate the rule.

Comments are due by November 15, 2010. A copy of the Federal Register Notice is available at: http://www.ftc.gov/os/fedreg/2010/september/100922mortgageadvertising.pdf

State Law Updates

Colorado

The Colorado Division of Real Estate recently revised the regulations for mortgage loan originators regarding a disclosure required to be provided by such licensees under Colorado statutes.

Prior to the changes to the Good Faith Estimate ("GFE") by HUD effective January 1, 2010, mortgage loan originators used the GFE to meet the requirements of the Colorado statute and regulations requiring a itemization of loan charges. Due to the 2010 changes to the GFE made under the revised RESPA regulations, the Division of Real Estate has determined that the federal GFE form no longer provides sufficient itemization of charges to meet the Colorado disclosure requirements contained in the Mortgage Loan Originator Licensing Act. Accordingly, mortgage loan originators must create and implement a form that itemizes all third-party fees and costs in compliance with the Colorado statute. The disclosure shall include mortgage loan originator and borrower signatures and dates in which the disclosure was completed and signed.

In Colorado, mortgage loan originators are individuals who (1) take a residential mortgage loan application; or (2) offer or negotiate terms of a residential mortgage loan. Such individuals must be licensed as mortgage loan originators. The disclosures must be made within three business days after receipt of a loan application or any moneys from a borrower.

The Colorado legislature recently enacted a bill (2010 Colo. H.B. 1141) into law requiring mortgage companies to register with the Nationwide Mortgage Licensing System and Registry (the "NMLS"). The new law amends the current mortgage loan originator licensing law, which will now be named "Mortgage Loan Originator Licensing and Mortgage Company Registration Act" (the "Act"). Under the Act as revised, a "mortgage company" is defined as a person other than an individual who, through employees or other individuals, takes residential loan applications or offers or negotiates terms of a residential mortgage loan.

Although the revised statute becomes effective August 11, 2010, mortgage companies have until January 1, 2011 to register. The Act also extends the deadline for mortgage loan originator registration with the NMLS from July 31, 2010 to December 31, 2010. In addition, the Act creates the Board of Mortgage Loan Originators within the Division of Real Estate to enforce the requirements imposed on licensed mortgage loan originators and registered mortgage companies.

Prior to this bill, Colorado mortgage lending companies were only regulated under the Uniform Consumer Credit Code ("UCCC") with respect to subordinate lien residential mortgage loans and certain first lien loans. The Act provides an exemption from mortgage company registration under its provisions for banks and savings associations and their subsidiaries; however it does not provide an exemption for entities licensed under the UCCC. The Act also narrowed the exemptions previously provided for certain individuals.

Persons involved in the mortgage loan business in Colorado should carefully review the new definitions and requirements of the Act to ensure they are properly licensed or registered, as applicable, by the respective deadlines.

Florida

Under Florida's recent modifications to its mortgage licensing laws, the definition of loan originator was expanded to require generally most loan processors and underwriters to be licensed, effective October 1, 2010. Unless an individual is performing purely administrative or clerical tasks (which, by definition, include generally quoting available interest rates, physically handling a *completed* application form, or transmitting a completed form to a lender on behalf of a prospective borrower), it appears that such individual would be required to obtain a loan originator license in the state. Therefore, individuals handling or requesting additional information from a borrower in connection with a specific or partially completed loan application are likely required to obtain a loan originator license in Florida.

The Assistant General Counsel of the Florida Office of Financial Regulation, on August 17, 2010, published an informal opinion indicating that a loan originator license is not required for an underwriter who is a W-2 employee of a licensed mortgage lender. While favorable for lenders, the letter changes previous interpretations of the Florida mortgage licensing statute in this area. Apparently an "exempt" underwriter may only underwrite residential mortgage loans that his or her employer intends to make. This calls into question whether a "private label" service could conduct conventional loan underwriting activities for more than one entity, and not have its underwriters licensed under state law. (Readers will recall that FHA raises particular issues for private label providers as well.) Note further the letter states that in-house underwriters employed by a licensed mortgage lender must be supervised by a licensed loan originator, which may present challenges in the context of appraisal independence.

Florida will be transitioning from the REAL System to the NMLS. The Florida Office of Financial Regulation has announced that it ceased accepting applications through the REAL System on July 8, 2010, and that it began accepting applications through the NMLS on October 1, 2010. The Florida Office of Financial Regulation also indicated that due to the anticipated volume of loan originator license applications, it is encouraging all individuals who will be required to obtain a loan originator license as of October 1, 2010, to apply for a Florida Mortgage Broker license by July 8, 2010. Failure to have submitted Mortgage Broker license applications by July 8, 2010 may result in a termination of all business activities in Florida, beginning October 1, 2010, until such individuals obtain a loan originator license, which may take a few months. If an individual's Mortgage Broker license is obtained prior to October 1, 2010, then such individual may continue business operations seamlessly while the loan originator license application is processed and approved. The Mortgage Broker license is effective until the end of 2010.

New Hampshire

Effective July 1, 2010, the New Hampshire legislature, at the request of the Banking Department, amended the Non-depository Mortgage Bankers and Brokers Act and the Mortgage Servicing Companies Act to impose new requirements on branch managers of mortgage bankers, brokers and servicers. House Bill 1279 requires branch managers of all licensed branch locations, whether located inside or outside of New Hampshire, to be licensed as mortgage loan originators. In addition, the Bill requires mortgage servicers and debt adjusters to license or register their branch offices. The Bill also revises the date by which all mortgage servicer loan originators must be licensed from July 31, 2010, to on or before July 31, 2011. New Hampshire mortgage bankers, brokers, servicers and debt adjusters should take immediate steps to ensure all branch locations and branch managers are properly licensed.

New York

In August 2008, the Mortgage Lending Reform Law was enacted which created a regulatory framework for mortgage servicers. Pursuant to that law, mortgage servicers are required to register with the New York State Banking Department prior to engaging in servicing activities. In response to this law, the New York State Banking Department enacted regulations as Part 418 in July 2009. Part 418 clarifies the registration process and financial responsibility standards for mortgage servicers.

In an effort to further clarify the Mortgage Lending Reform Law, in July 2010, the New York State Banking Department promulgated Part 419 of the Superintendent's Regulations on August 10, 2010,. Part 419 explains the business conduct rules for mortgage servicers and includes consumer protections for individuals whose mortgage loans are being serviced. The regulations address the business practices of servicers and establishing additional consumer protections for homeowners. The regulations specify that servicers have a duty of good faith and fair dealing to the borrowers in connection with the servicing of the borrowers' loans. This duty includes the duty to pursue loss mitigation with the borrower whenever possible in accordance with the regulations. The regulations also set forth detailed standards for the handling of loss mitigation efforts. In addition, the regulations require, among other things, that the servicer: (1) comply with other state and federal laws relating to mortgage loan servicing; (2) have procedures and systems for handling consumer complaints and inquiries; (3) provide plain language annual account statements to borrowers; and (4) follow limits and rules on late fees.

Some of the business conduct rules that may impact business operations of mortgage servicers include the requirement to state specific contact information on billing statements and welcome packets, posting a schedule of fees on the servicer's website, and filing quarterly reports on state specific forms. In addition, the consumer protections afforded by Part 419 include prohibiting a servicer from engaging in unfair or deceptive business practices or misrepresenting or omitting any material information in connection with the servicing of the loan; placing hazard, homeowner's or flood insurance on the mortgage property when the servicer knows or has reason to know that the borrower has an effective policy for such insurance; and requiring funds to be remitted by means more costly to the consumer than a bank or certified check or attorney's check from an attorney's account. Part 419 becomes effective on October 1, 2010.

Vermont

Effective, January 1, 2011, third-party mortgage loan servicers are required to obtain a license in Vermont. Pursuant to Senate Bill 287, "third party loan servicer" means a person who engages in the business of

servicing a residential mortgage loan, directly or indirectly, owed or due or asserted to be owed or due another. Debt adjusters, depository institutions and licensed lenders are among some of the entities that are exempt from the licensing requirement.

It appears from the language of the bill that the application will be available through the Nationwide Mortgage Licensing System (NMLS). The requirements for submitting an application include obtaining a surety bond in the amount of $100,000 as well as a $1,000 investigation fee and a $1,000 license fee payable to the state.

State Reverse Mortgage Legislation

Arizona

Summary: Arizona enacted House Bill 2242 to impose additional disclosure requirements, additional contract requirements and restrictions on lenders offering reverse mortgages.

Loans Covered: The new legislation covers loans secured by a borrower's principal dwelling. A reverse mortgage is defined as a nonrecourse consumer credit obligation to which all of the following apply: (a) a consensual security interest securing one or more advances is created in the borrower's principal dwelling; (b) any principal, interest or shared appreciation or equity is due and payable only after the borrower dies, the dwelling is transferred or the borrower ceases to occupy the dwelling as a principal dwelling (except in the case of default); and (c) cash advances may be provided to a borrower: (i) based on the equity or the value in the borrower's owner occupied principal residence, or (ii) if loan proceeds are used by the borrower to purchase the borrower's dwelling that secures the reverse mortgage.

Importantly, the legislation will not affect Home Equity Conversion Mortgages (HECM) insured by the Federal Housing Authority. The bill contains a specific exemption for such reverse mortgages.

Effective Date: The new requirements became effective in late August 2010.

Specific Requirements: The new legislation provides several additional disclosures to be made in connection with a reverse mortgage.

a. Before accepting a final and complete application or charging any fees, lenders must do the following:

   (1) Provide borrowers with the names of at least five housing agencies that provide counseling, at least two of which must provide counseling by telephone.
   (2) Receive a certification, signed by both the borrower and the counselor, that the borrower has received such counseling.

b. Lenders must provide borrowers with a statement at least ten (10) days prior to closing advising borrowers that their liability is limited and describing the borrower’s rights, obligations and remedies in certain situations, such as payment default by the loan originator, absences from the home and late payments.
c. Before entering into a reverse mortgage, the lenders must also disclose the following:

(1) the costs being paid which are required for obtaining the loan and those not required that are being charged by the originator;
(2) information regarding insurance, repairs, alterations, tax payments, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity and additional secondary liens; and
(3) the projected total cost of the loan.

d. Lenders must prominently display in the agreement any interest rate or other fees to be charged.
e. Lenders must provide an annual statement that includes specified information regarding principal, deferred interest and the loan balance.

The bill includes qualifying requirement for agencies providing counseling.

The bill specifies the types of reverse mortgages that a lender can offer (fixed, variable or shared appreciation), and details the payment plans that a lender may offer including: lump sum payment, a line of credit, monthly payments based on a term specified by borrower or a line of credit, monthly payments based plan based on tenure of loan ("tenure based plan") or tenure and line of credit ("modified tenure plan"). Except for certain lump sum disbursal plans, the borrower may change payment plans.

The bill also establishes specific terms and provisions for reverse mortgages, including provisions on maturity events, statute of limitations, lien protections and penalties.

Finally, the bill also places restrictions on borrower liability, unnecessary costs to the borrower for obtaining the reverse mortgage, prepayment penalties and tying arrangements or referrals for other financial services products.

Louisiana

On June 21, 2010, the Louisiana Governor signed House Bill 1468 to revise provisions of the Louisiana S.A.F.E. Residential Mortgage Lending Act to add definitions for three reverse mortgage related terms and to add a new Part IV to that Act to provide requirements for reverse mortgage loans. The new provisions became effective on August 15, 2010.

Importantly, the Bill creates two defined types of reverse mortgages, a “conventional reverse mortgage loan” and a “program reverse mortgage loan.” A “conventional reverse mortgage loan” is any reverse mortgage loan other than a “program reverse mortgage loan,” and a “program reverse mortgage loan” is an FHA-insured home equity conversion mortgage loan (or HECM).

With respect to all reverse mortgage loans (conventional and program loans), the Bill, among other things: (1) permits prepayment of such mortgages in whole or in part at any time without penalty; (2) provides that such mortgages may have either a fixed or adjustable interest rate; (3) provides that a reverse mortgage may include costs and fees charged by the lender; and (4) provides that, if a reverse mortgage loan provides for periodic advances to a borrower, the advances may not be reduced in amount or number based on any interest rate adjustment. The Bill also provides that for all reverse mortgage loans, there are express occurrences or maturity events that trigger when a reverse mortgage becomes due and payable.

In addition, the Bill prohibits a reverse mortgage lender from obligating the borrower to purchase (or referring the borrower to anyone for such purchase) of an annuity, an investment or long term care insurance before the loan closes or prior to the expiration of any rescission period under the loan. This prohibition does not apply to title insurance or hazard insurance normally obtained in mortgage transactions.

A lender must provide a prospective borrower with a "checklist" of seven enumerated items that the interested senior should discuss with a counselor. If the senior meets with a counselor prior to speaking with a prospective lender, the counselor must review the items with the senior and provide the senior with the checklist. The Bill requires lenders, in connection with a conventional reverse mortgage loan, to provide the prospective borrower with a list of HUD approved counseling agencies. FHA rules already impose similar requirements with respect to HECM loans.

Additionally, in connection with a conventional reverse mortgage loan, the Bill provides for a cooling-off period, which obligates the lender to provide the borrower, seven (7) calendar days prior to closing, a loan term sheet or commitment letter outlining the terms of the loan and informing the borrower that the borrower is not obligated to proceed with the transaction. The Bill also requires that the security instrument with any reverse mortgage contain a legend in ten point bold type stating: "This mortgage secures a reverse mortgage loan."

Maryland

Effective Date: October 1, 2010, applies prospectively only

Applicable to: All Reverse mortgages (i.e., no HECM exemption)

Operative provisions: HECM rules shall apply to all reverse mortgages in Maryland, including HECMs and proprietary loans, except that, FHA provisions on mortgagee approval, insuring of loans, or loan amounts shall not apply to proprietary loans. Other Maryland law provisions, such as licensing, etc., also continue to apply to all reverse mortgages in Maryland.

The intent of the legislative language is that the HECM origination fee formula will apply to proprietary reverse mortgages in Maryland, but the $6,000 HECM cap on origination fees will not apply to proprietary reverse mortgages in Maryland. For example, on a proprietary reverse mortgage secured by a property located in Maryland valued at $1 million, the origination fee could be up to $12,000.

Definition of a reverse mortgage: A reverse mortgage is defined as a non-recourse loan secured by a dwelling (which could include co-ops) where purchase money proceeds are provided or the equity in the home is accessed, and is not due until principal and interest become due (thru maturity, or default, or the term of the loan is reached, for term loans). Thus, purchase money, co-ops and term loans are included.

Disclosures: At application, the lender or broker shall provide a checklist to the borrower advising the borrower to discuss certain items with the counselor, including options other than a reverse mortgage, whether the borrower intends to use the reverse mortgage to purchase other financial services products, and how a non-owning spouse may be affected by the reverse mortgage transaction. If the prospective

borrower goes to counseling prior to applying for a loan, the counselor shall provide the senior with the checklist.

Counseling: Interestingly, through the several revisions of the bill, the requirement that a lender explicitly refer a borrower to counseling was deleted. HECM counseling is still required for HECM loans under HECM rules, and for proprietary loans, implicitly, in providing the borrower with a "checklist", the lender must refer the borrower to a counselor.

Payment plans: On non-HECM loans, a lender need only offer certain payments plans it chooses to offer. For example, a lender could offer only line of credit plans, or one or more of the following plans: line of credit plans, tenure based plans or modified tenure plans.

Eligible properties: On non-HECM loans, a lender need only offer loans secured by certain collateral, as it chooses. For instance, a lender may, but is not required to offer proprietary reverse mortgages secured by long term lease and/or life estate property.

Other financial services products: A lender or broker may not require a senior to purchase an annuity, long term care policy or other financial or insurance product as a condition of obtaining a reverse mortgage. A lender or broker may however require a borrower to obtain hazard, flood or other peril insurance and any other financial or insurance product that is required for HECM loans.

A lender or broker may not refer a senior to any person for the purchase an annuity or other financial or insurance product as a condition of obtaining a reverse mortgage before closing or during the rescission period, however a lender or broker may offer or require a borrower to obtain hazard, flood or other peril insurance and any other financial or insurance product that is required for a reverse mortgage loan.

Penalties: On on-HECM loans, a violation of the Act is a UDAP violation, except that the UDAP criminal penalty provisions of the UDAP law do not apply. Maryland UDAP provisions do not apply to HECM loans, but a violation of HECM rules is cited as a violation under the Act and such transgressions are subject to the penalties under the HECM rules.

Massachusetts

Among other things, Senate Bill 2407 provides that no mortgagee who makes a reverse mortgage loan to a mortgagor shall make a reverse mortgage loan unless (1) the mortgagor affirmatively opts in writing for the reverse mortgage and (2) at or before closing, the mortgagee has received written certification from a counselor with a third-party organization that the mortgagor has received counseling in person on the suitability of the loan transaction; provided further that said third party organization shall have been approved by the Massachusetts Executive Office of Elder Affairs. If a reverse mortgage loan is made by a mortgagee with a mortgagor that has not received counseling by an approved third party organization, the terms of the loan shall not be enforceable. The Commissioner of Banks shall adopt regulations to administer and implement this section.

Note that, pursuant to the amendments adopted, the in-person counseling requirement will take effect on August 1, 2012, but the remaining reverse mortgage provisions of the bill are to take effect on November 1, 2010.

Minnesota

On May 19, 2010, the Minnesota Governor signed Senate File 2430 that includes provisions amending current Minnesota statutes that regulate reverse mortgages. Senate File 2430 becomes effective August 1, 2010.

Senate File 2430 amends Minn. Stat. 47.58 to require a lender to refer a prospective borrower to an independent housing counseling agency for reverse mortgage counseling prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees. The counseling session must be no less than 60 minutes, and must cover certain specific topics provided in the statute.

Senate File 2430 also provides for a 7-day "cooling off" period for the borrower. Specifically, the borrower would not be bound for seven (7) days after the borrower's written acceptance of the lender's written commitment to make the reverse mortgage loan, and the borrower cannot be required to close or proceed with the loan during that time period. Senate File 2430 mirrors current federal regulations by providing that the borrower may rescind any reverse mortgage within three (3) days of execution.

In addition, Senate File 2430 also prohibits a lender, mortgage broker, or residential mortgage originator from requiring the purchase of an annuity, investment, life insurance, or long-term care insurance product as a condition of obtaining a reverse mortgage loan. Moreover, the borrower may not enter into any agreement to make a reverse mortgage loan that obligates the borrower to purchase an annuity, investment, life insurance, or long-term care insurance product. No lender, mortgage broker, or residential mortgage originator may receive compensation for providing the borrower with information related to an annuity, investment, life insurance, or long-term care insurance product.

A lender who fails to make loan advances with respect to a mortgage that is not federally insured, as required in the loan documents (and fails to cure an actual default after notice), shall forfeit any right to repayment of the outstanding loan balance.

No person acting as a residential mortgage originator or servicer (including a person required to be licensed under the Minnesota Residential Mortgage Originator and Servicer Licensing Act), and no person exempt from licensing under that Act, may make, provide, or arrange for a reverse mortgage without complying with Minn. Stat. Ann. § 47.58.

Note that last year, Minnesota amended the definition of the term "lender" as contained in Minn. Stat. 47.58, and a lender now includes any residential mortgage originator subject to the Minnesota Residential Mortgage Originator and Servicer Licensing Act. That amendment became effective July 1, 2009.

Nebraska

LB 892 amends Nebraska Residential Mortgage Licensing Act (the "Act") to include following provisions regarding reverse mortgages: Provides that reverse mortgage loans shall be governed without regard to certain requirements set out elsewhere for other types of mortgage transactions; reverse mortgage loans may be made or acquired without regard to certain provisions for other types of mortgage transactions; A licensee may in connection with a reverse mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed 2% of the appraised value of the owner-occupied principal residence

at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the licensee, and (c) such other fees as are necessary and required, including fees for inspections, insurance, appraisals, and surveys; a licensee failing to make loan advances as required in the loan documents and failing to cure the default as required in the loan documents shall forfeit to the borrower an amount equal to the greater of $200.00 or 1% of the amount of the loan advance the licensee failed to make. The bill was approved by Governor on March 3, 2010.

Pennsylvania

On July 10, 2010, the Department of Banking has issued a statement of policy on reverse mortgages "to provide guidance to licensees regarding the Department's interpretation of the proper conduct of making originating or servicing reverse mortgage loans and to inform licensees of the proper use of, and risk associated with, reverse mortgage loans."

The statement directs reverse mortgage lenders to consider such factors as the applicant's circumstances (unsuitability), the discussion of alternatives to reverse mortgages loans with the borrower, borrower counseling, the impact of the loan on nonborrower spouses, conflicts of interests, mental capacity of the borrower, and loans made pursuant to powers of attorney. The statement also addresses several issues impacting proprietary reverse mortgage lenders, in particular, including the financial strength of the lender and consumer protections in proprietary reverse mortgage loan agreements.

[i] PLEASE TAKE NOTE: The above materials are only an overview of some of the federal and state laws and regulations that may affect reverse mortgage lending, servicing and investing. These materials are designed to alert the reader to the general provisions of law and regulation that may have a bearing upon the reader's business activities. The materials are not intended to and do not provide legal advice. Most provisions described are paraphrased, and a careful reading of the relevant laws, regulations or cases thereunder may reveal exceptions or different interpretations that might be applicable to particular facts. The materials cover areas in which the proper interpretation of law and regulation can be highly dependent upon particular facts. Accordingly, taking action simply upon the basis of information provided in these materials is not advisable. The materials are not a substitute for consultation with qualified legal counsel regarding the manner in which the laws and regulations referenced herein may be interpreted and apply to particular facts.