



2017 NRMLA Annual Meeting

NOV. 13 – 15 • SAN FRANCISCO

Introductions

- ▶ **Jim Milano, Weiner Brodsky Kider, Washington, DC**
- ▶ **Kathryn Ryan, Buckley Sandler LLP, Washington, DC**
- ▶ **James Wallace Wright, Jr., Bradley Arant Boult Cummings LLP, Birmingham, AL**

High Level Outline

- ▶ State licensing
 - ▶ What kind of license is needed?
 - ▶ Renewal and other maintenance items
 - ▶ NMLS 2.0

- ▶ Substantive state restrictions and requirements
 - ▶ How to manage disclosure obligations that differ by state (e.g., Oregon)
 - ▶ What pre-closing “cooling off” periods mean for lenders (e.g., California)
 - ▶ New York 2020 changes re reverse mortgage

- ▶ State examinations / enforcements – preparation tips
 - ▶ Individual state exams and the MMC
 - ▶ Beware – enforcement trends
 - ▶ Best practices

State Licensing

Renewal and Other License Maintenance Tips

▶ License/registration requirements vary by state

- ▶ General lender license (e.g., Arkansas, Colorado)
- ▶ General servicer license (e.g., Connecticut)
- ▶ Lender/servicer license + supplemental authority (e.g., North Carolina, Tennessee)
- ▶ License to hold reverse mortgage loans and MSRMs (e.g., Georgia, Illinois, New York)



Renewals and Other License Maintenance Items

- ▶ **Navigating the Renewal Process**
 - ▶ Renew early
 - ▶ Impact of credit freezes for MLOs and control persons on renewals

- ▶ **Significant Event Reporting**
 - ▶ Types of Significant Event Reporting
 - ▶ Regulatory Events
 - ▶ Day-to-Day Business Events
 - ▶ Transaction-Related Business Events
 - ▶ How to identify state notice and reporting requirements

NMLS 2.0

- ▶ **NMLS being rebuilt into new online platform**
- ▶ **Goals**
 - ▶ Improving operations
 - ▶ Enhancing user experience
 - ▶ Strengthening supervision
- ▶ **Examples of changes**
 - ▶ One record system for each licensee
 - ▶ One account for each natural person
 - ▶ Data aggregation and leveraging
 - ▶ More automation
- ▶ **NMLS is posting “Roadmaps” for users to review and comment on**

Substantive state restrictions and requirements

Marketing, Disclosures & Advertising

How to manage disclosure obligations that differ by state (e.g., Oregon)

- ▶ Oregon – HB 2562 - Effective 1/1/18
 - ▶ Non-Bank Licensed Mortgage Lenders and Brokers must provide clear and conspicuous summaries of reverse mortgage terms
 - ▶ Concerns:
 - ▶ Some Statutory Disclosures language is incorrect, and internally inconsistent
 - ▶ Summary must be provided in every communication
 - ▶ NRMLA Requested Guidance
 - ▶ Model Disclosure
 - ▶ Allow to Provide early in the application process, and once
 - ▶ Requested Guidance on how to provide summary across different mediums

“Cooling off” periods (California)

- ▶ Recent DBO Interpretative Bulletin
- ▶ In CA – Lender can accept initial or preliminary application
 - ▶ A lender may perform any of the following activities:
 - ▶ Explain the reverse mortgage
 - ▶ Order a credit report to perform a preliminary credit review
 - ▶ Discuss whether the prospective borrower is eligible
 - ▶ Provide info regarding the fees and charges
 - ▶ Describe the potential financial implications of a reverse mortgage loan
 - ▶ Provide the borrower with copies of the mortgage, note and Loan Agreement
 - ▶ Use AVMs to perform a preliminary estimation of property value
 - ▶ Order a preliminary title search
- ▶ Counseling certificate required before receiving a final and complete application

Foreclosure Prevention? (DC)

DC Bill 22-0505

- ▶ “Qualified homeowners” can receive financial assistance in the form of a 5 year no interest loan to pay past due property tax and property insurance debts that have put the homeowner at risk of foreclosure.
- ▶ Reverse mortgage means “a mortgage, also known as a HECM, in which a homeowner relinquishes equity in their home in exchange for tax-free payments from the lender until the total principal and interest of the loan reaches the credit limit of equity in the home and the lender is either repaid in full or the homeowner relinquishes the home to the lender.”
- ▶ Public Hearing on the Bill on November 29, 2017.

State Enforcement in Advertising

Recent Washington Complaint Against Large Reverse Mortgage Lender

- ▶ Alleged deceptive and misleading reverse mortgage advertising practices
 - ▶ Complaint focuses on omissions from HECM ads
 - ▶ Examples:
 - ▶ Repayment of HECM loan is required only at the end of loan
 - ▶ Consumers can continue to live in home without monthly payments
 - ▶ Describing the max loan amount available on a HECM as a “benefit”
- ▶ Allegedly ads claimed the loans were insured by the federal government
- ▶ Complaint seeks a cease and desist order, fines totaling \$300,000 and investigation fees over \$6,000

State Enforcement in Advertising

State Allegations / Actions against reverse mortgage lenders

- ▶ Alaska – allegedly failed to display complete name on ads and NMLS number, and failed to register trade name - \$1,000 fine
- ▶ Florida – alleged deceptive advertising – fine in excess of \$5,000
- ▶ Illinois – AG action regarding allegedly misleading direct mail
- ▶ Minnesota – allegedly false statement in advertising that borrower retains complete ownership of home and cannot lose home - \$20,000 fine
- ▶ Washington – allegedly impersonating a government benefit - \$50,000 fine
- ▶ Virginia – allegedly misleading direct mail

Massachusetts Actions

▶ **Unlicensed Activity**

- ▶ Websites offered free quotes; directed the consumer to a reverse mortgage lender in the state
- ▶ Companies and individual did not hold a mortgage broker or MLO license

▶ **Character and Fitness**

- ▶ Allegedly originated reverse mortgages without MA approval
- ▶ Allegedly failed to maintain records of counseling and 7 day cooling off period

▶ **Misleading and Deceptive Advertising**

- ▶ Allegedly referred to reverse mortgages as “Lifestyle Improvement Loans”

▶ **Massachusetts AG Settlement: Reverse Mortgages and Annuities**

- ▶ Aggressive allegations of that MLO worked with financial planner and induced elderly homeowners to take out reverse and invest the proceeds in annuities

State Laws Impacting LO Comp and Refiancings

▶ **California**

- ▶ New Law expands California's Equal Pay law: Cannot seek or rely on salary history in determining offer of employment or salary offered
- ▶ Applicant can provide salary history voluntarily without prompting, and if so provided, employer can consider it in determining salary
- ▶ Upon request, employer shall provide pay scale for prospective position
- ▶ Violation carries potential misdemeanor liability

▶ **Net Tangible Benefit Laws**

- ▶ Over One Dozen States Limit the Refinancing of prior mortgages; These Laws are not New
- ▶ Most of these state laws apply to, and do not exclude reverse mortgages
- ▶ Some periods as long as 5 years
- ▶ Exceptions apply, but there must be a demonstrated "Net Tangible Benefit" to the Borrower under the Refinancing, and in many states NTB must be documented

State Examinations

- ▶ Two broad categories of state examinations:
 - ▶ Individual state examinations
 - ▶ Multistate Mortgage Committee
- ▶ Individual State Examinations
 - ▶ California Department of Business Oversight
 - ▶ New York Department of Financial Services
- ▶ Multistate Mortgage Committee
 - ▶ Representative body of state mortgage regulators appointed by American Association of Residential Mortgage Regulators ("AARMR") and Conference of State Bank Supervisors ("CSBS")
 - ▶ Represents the examination interests of combined states under the Nationwide Cooperative Protocol and Agreement for Mortgage Supervision
 - ▶ Primary focus is for nationwide lenders operating in 10 or more states

State Examinations

- ▶ **Multistate Mortgage Committee (cont'd)**
 - ▶ **Frequently conduct examinations in conjunction with Consumer Financial Protection Bureau**
 - ▶ **Information sharing agreements among state regulators and with federal regulators**
 - ▶ **Examination materials are publicly available, allowing lenders and servicers to perform self-evaluations before an actual examination**
 - ▶ **MMC Mortgage Examination Manual**
 - ▶ **AARMR/CSBS Reverse Mortgage Examination Guidelines (“RMEGs”)**
 - ▶ **Examination teams will examine institutions for compliance with state and federal laws and regulations, financial condition, general risk management, and performance of management.**

State Examinations

- ▶ **Institution Responsibilities during Multi-State Examinations (MMC Exam Manual, p. 9):**
 - ▶ State law generally requires that institutions afford full access to all premises, book, records and information that the examiner deems necessary.
 - ▶ “Institutions are expected to have policies and procedures in place to facilitate multi-state examinations and assure that each institution staff person is aware of these procedures as necessary to assist in the examination process. Meritless obstacles or resistance to the multi-state examination should be avoided as such actions or non-compliance may result in additional time, burden, and cost to the institution, as well as impede the spirit of cooperation and efficiency between the examination team and the institution.”
 - ▶ “An institution’s cooperation with examinations and investigations is factored into the management component rating. [...] It is important that examiners not allow an institution extended periods of time to produce important information without a reasonable explanation.”

State Examinations

- ▶ **Examination Scope:**
 - ▶ **Examiner in Charge (“EIC”)** determines how deeply the examination team will delve into issues, how extensive the time frame will be, and how many of what type of transactions will be reviewed.
 - ▶ **When scoping the compliance risk portion of the exam, the EIC considers prior exams, external audits, and complaints**

State Examinations

- ▶ **Examination Functions:**
 - ▶ **Examination Planning**
 - ▶ MMC Exam Manual's examination timeline provides that the examination team spends 3-4 weeks scoping the examination and preparing information requests before the institution is even alerted it will be examined
 - ▶ Identify specific high-concern areas affecting the institution, prioritize concerns according to risk, and determine how high-concern areas should be addressed.
 - ▶ Examination Notification Letter, Initial Information and Data Request, and Management Questionnaire

State Examinations

- ▶ **Examination Functions:**
 - ▶ **Standard RMEGs Information and Data Request includes the following, among other items:**
 - ▶ All policies, procedures, standards, and underwriting guidelines;
 - ▶ All marketing materials;
 - ▶ All communications, including letters, notices, instructions, warnings, and disclosures related to any type of reverse mortgage product, and effective date of each template;
 - ▶ All complaints filed by homeowners;
 - ▶ List of all entities with whom the institution regularly does business, including HECM counselors, and details of all payments made;
 - ▶ All regulatory examination reports.
 - ▶ **Standard RMEGs Management Questionnaire contains over 165 questions requiring narrative response—no “yes” or “no” questions**

State Examinations

- ▶ Examination Functions:
 - ▶ Off-Site Exam Activities
 - ▶ Review of policies, procedures, board minutes, template documents, correspondence, and loan files
 - ▶ On-Site Activities
 - ▶ Focused on information that cannot be effectively analyzed and concluded off-site
 - ▶ Interactions with institution's personnel, specifically the personnel that complete the applicable tasks and not just their supervisors
 - ▶ Reporting

State Examinations

- ▶ **MMC Examination Rating System**
 - ▶ Each of three components (financial condition, management, regulatory compliance) receives an individual rating 1-5, 1 being the best and 5 the worst.
 - ▶ **Management (MMC Exam Manual, p. 41):**
 - ▶ “Foundation of strong management in any institution is an effective, rational organizational structure, exhibited by sound and clear policies and procedures and effective internal routine and control processes. There must also be a culture of accountability which is demonstrated by clearly delineated operational controls.... The Board of Directors and senior management must demonstrate their commitments to maintaining an effective compliance management system and to set a positive climate for compliance.”
 - ▶ **Regulatory Compliance (MMC Exam Manual, p. 43):**
 - ▶ “An effective compliance management function should include a process for assessing and monitoring compliance performance, training, and for implementing corrective action based on identified deficiencies.”

State Examinations

- ▶ MMC Examination Rating System
 - ▶ Consumer Protection is not part of the MMC Rating System, but it is tested as part of an MMC examination
 - ▶ Consumer protection standards are largely based on the practices that have been deemed unfair and deceptive by state and federal regulators
 - ▶ Note: current MMC Exam Manual does not address potentially “abusive” practices

State Examinations

- ▶ **Reverse Mortgage-Specific Exam Guidelines**
 - ▶ **MMC Exam Manual** section regarding reverse mortgages last updated in October 2010, so it is missing information on key changes to the program since that time (Financial Assessment, Non-Borrowing Spouses, etc.)
 - ▶ Largely focused on origination-related issues (TILA/Reg Z disclosures)
 - ▶ **RMEGs** last updated in 2012

State Examinations

- ▶ **Familiarize yourself with Exam Manual and RMEGs**
- ▶ **Logistics – begin planning for examiners' arrival**
 - ▶ Examiner work space, private meeting spaces, system access, building security, etc.
- ▶ **Identify single point of contact and internal exam team**
- ▶ **Develop internal exam protocols**
 - ▶ Process for handling information request
 - ▶ Process for handling supplemental requests
 - ▶ Daily/weekly meetings
- ▶ **Develop request trackers**
- ▶ **Develop examination theme and narrative regarding good faith compliance efforts**

State Examinations

- ▶ **Prepare for Information and Data Request**
 - ▶ Policies, procedures, organizational charts, etc.
- ▶ **Immediately analyze Information and Data Request upon receipt**
 - ▶ Will provide valuable info on areas/modules that will be part of the exam
- ▶ **Identify information that may be sensitive and/or privileged and determine strategy**
- ▶ **Prepare for “Entrance Meeting”**
- ▶ **Prepare for individual business unit meetings**

State Examinations

▶ **Consumer Focus**

- ▶ Be sensitive to issues from the borrower's perspective and the fact that a major focus of examinations is consumer protection
- ▶ Be sensitive to the possibility of borrower harm, including potential borrower confusion
- ▶ Before interview, remind employees the rationale behind the institution's policies and procedures—compliance with applicable laws and best practices

▶ **Individual Preparation**

- ▶ Be familiar with institution policies and procedures related to your role
- ▶ Refresh your recollection of recent changes to policies and procedures, as well as any training sessions regarding legal or regulatory changes you have recently attended
- ▶ Not a closed book exam—employees can use their resources during interviews or side-by-sides

State Examinations

- ▶ **Examiners continue to emphasize consumer protection over safety and soundness concerns**
 - ▶ Not to say they are not reviewing the latter, but significantly more supplemental requests and interviews related to consumer protection
 - ▶ Follow CFPB's lead
- ▶ **Increased emphasis on data security and protecting customer data**
 - ▶ Expect rigorous questionnaires regarding information technology
- ▶ **Licensing issues**
 - ▶ While FHA mortgagee approval gives institutions broad ability to operate, state licenses can be a potential trap for the unwary
 - ▶ Different licenses may be required based on whether the institution is an originator, servicer, or both, and if the institution is an originator, different channels may require different licenses
- ▶ **State-specific laws**
 - ▶ Thirty-eight states have statutes relating to reverse mortgages (note: not each state's law imposes duties on reverse mortgage lenders/servicers)
 - ▶ Be familiar with laws of states represented on examination team