

# Key Regulatory/Compliance Considerations

NRMLA 2024 Annual Meeting

September 24, 2024

**Presented by:**

**Jim Brodsky, Partner, Washington, DC**

**Joel Schiffman, Counsel, Irvine, CA**

# Presenter

## Jim Brodsky

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Jim Brodsky is a founding member of the Washington, DC law firm of Weiner Brodsky Kider PC, who advises clients on strategic business initiatives, federal compliance and regulatory matters, mergers and acquisitions, asset purchases and sales, and secondary mortgage market transactions. As a former HUD Deputy Assistant Secretary, he has deep experience in FHA and Ginnie Mae (as well as Fannie Mae and Freddie Mac) requirements, issues, and opportunities. He is the Co-General Counsel of the National Reverse Mortgage Lenders Association.

Jim is a Director of Enterprise Community Development, the nation's fifth-largest affordable housing developer and community owner with well over a billion dollars of investments in almost 13,000 homes with more than 21,000 residents in 112 communities in four mid-Atlantic states and the District of Columbia. Jim also formerly served as a director (and as initial lead director and as chair of the Compensation Committee) of MFA Financial, Inc., a multi-billion-dollar NYSE-listed REIT that invests, on a leveraged basis, in residential mortgage financial assets and that owns Lima One Capital.

# Presenter

## Joel Schiffman

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Joel focuses on the representation of banks, savings associations, mortgage banking companies, and their holding companies and affiliates. His practice embraces a variety of matters relating to mortgage banking, including the marketing, origination, servicing and secondary market disposition of mortgage loans, with an emphasis on reverse mortgages.

Joel is Co-General Counsel of the National Reverse Mortgage Lenders Association and serves on several committees, including Ethics. Before joining Weiner Brodsky Kider PC, Joel served as Senior Vice President and General Counsel of Financial Freedom Senior Funding Corporation, the nation's largest reverse mortgage lender and servicer.

# Agenda

- Overview
- Reconsiderations of Value
- CFPB Oversight Activity
- HMBS 2.0 Ginnie Update
- FTC Noncompete Update
- Recent State Law Updates
- NRMLA Participation

# Why Are Seniors Interested?

## Demographics are changing

In 2020, the senior population in the U.S. (persons 65 or older) was **55.8 million – 16.8% of the U.S. population.**

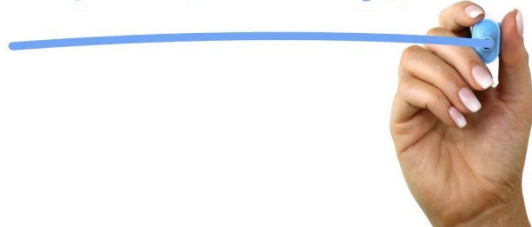
By 2030 – **21% of the U.S. population** will be 65 or older.



- Untapped home value: Q1 2024 - U.S. homeowners 62 and older had \$13.19 trillion in home equity.
- Historically, RMs typically were used as a “last resort” out of necessity. Now, more and more often, seniors are using RMs to “age in place” comfortably.
  - Loan proceeds can be used to pay for long term care or to remodel homes to make them more “senior-friendly.”
- Longer lifespans: People are living longer = more financial resources needed.
- Fluctuating retirement plan values: Seniors do not want to take money out of their retirement accounts and want access to a different source of funds.

# Reconsiderations of Value (ROVs)

REVERSE



- ML 2024-07, dated May 1, 2024.
- Implemented for FHA case numbers assigned on or after September 2, 2024.
- Made potential violations of fair housing laws a “material deficiency” in an appraisal.
- Underwriter may forgo communication with the original appraiser before obtaining a second appraisal.
- Underwriter must be trained to recognize appraisal deficiencies.
- Describes what should be included in ROV request from underwriter.
- Borrower also can initiate an ROV – Mortgagee must have specific process for this.
- These new standards must be in the Mortgagee Quality Control Plan.

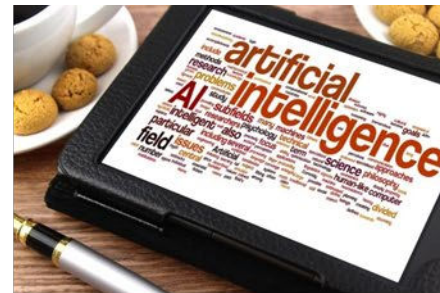
# CFPB Oversight Activity - AI

August 12, 2024 Comment to Treasury Dept. on AI in Financial Services notes:

- CFPB is taking steps to evaluate whether and how companies are testing the algorithms they use to make lending decisions to ensure compliance with the law.
- Innovative technologies must comply with consumer financial protection laws.
- CFPB 2023 Guidance on Credit Denials Using Artificial Intelligence – Reasons provided for adverse actions must be accurate and specific.

Final rule on use of AI/algorithms in home appraisals.

- Published August 7, 2024; Effective October 1, 2025.
- Adopted collectively by OCC, Board, FDIC, NCUA, CFPB, and FHFA.
- Certain institutions that make credit decisions must implement quality control standards on automated valuation models used for home appraisals.



# CFPB Oversight Activity - Enforcement

Recent Action Against Sutherland Global and NOVAD Management Consulting (reverse mortgage servicing):

- Issued June 18, 2024;
  - Alleged that company failed to communicate with borrowers – not responding to consumer communications;
  - Alleged that company sent misleading repayment letters; and
  - Alleged that company failed to acknowledge, investigate, and timely respond to notices of error and information requests.
- Penalty: \$11.5 million in consumer redress, plus \$5 million civil money penalty.
- Banned from reverse mortgage servicing.



## HMBS 2.0

Ginnie Mae Home Equity Conversion Mortgages (HECM) Mortgage-Backed Securities (HMBS) Program:

- Currently, when loans reach a certain percentage of the MCA, they must be bought out of the Ginnie Mae pool.
- This requirement creates liquidity pressures on the Issuers (ex. RMF).

HMBS 2.0 draft:

- Would permit the pooling of HECMs with an outstanding unpaid principal balance of no less than 98 percent and no greater than 148 percent of MCA.
- Provides Issuers some servicing income to sustain customer service operations and meet borrower needs.
- Gives Issuers time for resolution of issues that prevent HECM assignment to FHA.



# FTC Noncompete Update

- With limited exceptions, the rule effectively bans noncompete clauses in employment agreements with individuals.
- The rule was scheduled to be effective starting September 4, 2024.
- On August 20, 2024, a federal court ordered a nationwide injunction.
- A separate federal court earlier had upheld the rule in denying a preliminary injunction.
- The FTC may appeal the nationwide injunction ruling. As of now, the noncompete rule is not effective, but the FTC notes that it may address issues with these through case-by-case enforcement actions.



# Recent State Law Updates

## Massachusetts

- Real-time video and telephone conference counseling authorized permanently.

## Florida

- Changes to documentary stamp tax.



## NRMLA commented on pending legislation:

- New Jersey – Proposed in-person counseling mandate and a 7-day “cooling off” period.

# NRMLA Participation

- Participation on committees encouraged.
- Committees include:
  - Diversity, Equity and Inclusion
  - Education
  - Ethics
  - Risk & Compliance
  - Independent Certification (ICC)
  - HMBS Issuer
  - HUD Issues
  - PR
  - State & Local Issues
  - Servicing
- Chance to help shape the regulatory and legislative changes affecting the reverse industry.
- CRMP Program



# Questions?

## Additional Information

- WBK is honored to serve as General Counsel for the National Reverse Mortgage Lenders Association (NRMLA).
- Among many other things, our Regulatory Compliance Practice assists clients with the design, development, and implementation of proprietary reverse mortgage products. We counsel clients regarding state disclosure, fee, and licensing requirements that are unique to reverse mortgage products.
- Other practice areas include financial services-related: Investigation and Enforcement; Licensing and Approvals; Litigation; and Transactional and Corporate.
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# Thank You!