

REVERSE MORTGAGE DISCLOSURE AND DOCUMENTATION REQUIREMENTS

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I. Introduction

A. WHAT IS A REVERSE MORTGAGE?

1. A reverse mortgage loan is a loan product that enables eligible homeowners (age 62 or older, own their home free and clear or with a small mortgage balance) to access the built-up equity in their homes by providing funds without incurring a monthly payment burden during their lifetime in the home. Senior homeowners can borrow against their home equity to create a regular and tax-free source of income or a significant source of ready cash, all while they continue living in their home with no monthly repayment obligation.

Reverse mortgages are called so because of the flow of payments -- instead of making mortgage payments, the Borrower receives money from the lender. The loan balance of a reverse mortgage grows larger over time. The loan principal increases with each payment that the Borrower receives, and interest and other charges accrue each month on the total funds advanced to the Borrower to date.

Reverse mortgages allow the Borrower to retain ownership of his or her home, and generally do not require repayment for as long as the Borrower lives in his or her home, pays property taxes and hazard insurance charges, and maintain the property. When the Borrower leaves the home permanently the loan balance becomes due and payable. The loans are non-recourse—that is, the Borrower’s legal obligation to repay the loan can be no more than the market value of the home at the time the Borrower dies or leaves the property.

B. WHY NOW?

1. Reverse Mortgages were originally offered in the U.S. in the early 80s, gained some legitimacy and attention when HUD announces insured product, the Home Equity Conversion Mortgage (or HECM) in 1989 and Fannie Mae introduced its Home Keeper product in 1995. Third available product won Financial Freedom’s Cash Account → jumbo product.

– Period of slow growth for 1990 – 2002, followed by exponential growth in the last few years. For example, more than 300,000 HECMs have been originated since 1990. In 2000, only 6,637 were originated. By 2006, 76,000 were originated.

– In the past 2 years, we have seen more potential growth: the development of numerous proprietary products (jumbo) and entry into the market place of large national lenders such as Countrywide and Bank of America.

2. Interest in reverse mortgages continues to grow both by lenders and consumers. The origination of Home Equity Conversion Mortgages, which accounts for over 90% of reverse mortgage loans, grew by 77% in the fiscal year ending September 30, 2006. Approximately 90,000 reverse mortgages, totaling ten billion dollars of loans, were originated in 2006, doubling the number from 2005. Bigger players in the mortgage market have also gotten the fever and have entered the market.

3. Certain forces are operating to fuel this interest even further.

a. Demographics. Baby Boomers are becoming age-eligible: The GAO expects Americans age 65 & over to grow from 32 million to 70 million by 2030.

In 2007, OB of Reverse Mortgages → estimate at \$5 billion.

Projections: by 2015, OBs will increase to \$20 – 25 billion.

Significant – estimate \$4.3 trillion in home equity hold held by Americans age 62 & over.

Increase in equity over past 10 years (even with recent market decreases) – less than 1% market.

b. Financial Mindset. Original borrowers were not as financially savvy and had depression-era mentality – conservative, fear of debt.

(i) New borrowers → Baby Boomers are more familiar with financial issues, less concern about – more likely to tap equity to chance their retirement.

(ii) Becoming more mainstream – recognized by financial planners.

(iii) Can use funds to stay in home with in-home health care rather than a home.

(iv) → Decreased costs.

(v) → State laws → MN offering financial incentives if use Reverse Mortgage to stay in home for care.

c. Increasing Costs of Retirement. Medical and health insurance costs real estate taxes and other costs are increasing at a time when fewer pensions available, Social Security may not be available or future is uncertain.

(i) Medicare may be cut back.

- (ii) Length of retirement is increasing as population lives longer.
- d. Number of Lenders and Investors. Number of major players, as well as the number of investors, has increased.
 - (i) Larger players are making it easy to enter the market – some offering turn-key operations to smaller shops.
 - (ii) Now other Wall Street firms are likely to bid on reverse mortgage pools – Lehman, Deutsche Bank, UBS Financial and Greenwich Capital.
- e. Variety of Products.
 - (i) Change from one size fits all to tailored Reverse Mortgage products.
 - (ii) Increase in number of lenders and investors have brought more competition to the industry which has resulted in lower pricing and product innovation.
 - (a) Lowering interest rates – BNY HECM – lowering rates by 50 BUs – followed by other players FF lowers interest rate on cash account by 150 BUs.
 - (b) Fixed rate products.
 - (c) Closed-end credit products.
 - (d) Lowering or waiver of closing costs.
 - (e) Condos, co-ops, second homes home purchase.
 - (f) Choice of indices Treasury – CMT and LIBOR (amend by HUD on Friday)
 - (iii) Fueled by: FHA Modernization Bill
 - (a) Remove restriction on number of HECMs HUD can insure
 - (b) Increase FHA Loan limits
 - (c) Permit Co-ops
 - (d) HEMCs for Home Purchase
- f. Securitizations. The growth in the number of Reverse Mortgages has created a critical mass ripe for securitizations which will create increased liquidity, increased yield for lenders and decreases in loan costs to borrowers.
 - (i) Some Securitizations on Wall Street have continued.

- (ii) Much excitement last year when Ginnie Mae announced its new HECM securitization program.
- (iii) Recent amendment to Tax Code – allowed Reverse Mortgage in a REMIC structure.
 - (a) HECM securitization – before mostly propriety product.
 - (b) GM MBS – backed by full faith and credit of the U.S.
 - (c) No reserve fund to pay for subsidized advances.
 - (d) Can securitize lump sum in one security and other monthly advances in another.
 - (e) Easier for smaller lenders to participate.

II. Reverse Mortgage Elements and Issues

A. ELEMENTS OF A REVERSE MORTGAGE

1. Amount of Loan

- a. The amount of money available to the Borrower under a reverse mortgage depends on the Borrower's age (or the age of the youngest Borrower if more than one), appraised home value, current interest rates, and where the Borrower lives. In general, the older the Borrower and the more valuable the home (and the less the Borrower owed on the home), the more money available.
- b. For HECMs, the amount of the loan is based on the Maximum Claim Amount. Maximum Claim Amount is the lesser of the appraised value of the home or HUD's maximum loan limit for the location of the home. Loan limits for FHA HECMs now range from \$ 200,160 to \$362,790. For Home Keeper's, the loan amount is based on the Adjusted Property Value, which is the lesser of the appraised value on FNMA's loan limit. Fannie Mae's loan limit for 2008 is \$417,000.
- c. Jumbo products – there are a number of jumbo products currently on the market, and I understand there are others currently in development. The loan amount on these is generally based on the appraised value, including homes of values of up to \$3 million and above.
- d. Interest rates play a factor because the higher the interest rate, the less funds will be available for borrowing. Since interest is added to the outstanding balance each month, it must be taken into account in determining the amount actually available to the Borrower.

2. Payment Plans

- a. The Borrower can obtain advances in a number of ways. The payment plan chosen can generally be changed throughout the loan term.
- b. With a Home Equity Conversion Mortgage, the Borrower can receive loan proceeds from among five possible HECM payment plans:
 - (i) Tenure (monthly payments for as long as the Borrower occupies the property);
 - (ii) Term (monthly payments for a specified time period);
 - (iii) Draws on a line of credit (which also allows for a lump sum payment by drawing down the entire line);
 - (iv) Modified term (a term plan combined with a line of credit);
or
 - (v) Modified tenure (a tenure plan combined with a line of credit).

The most popular option – chosen by more than 80% of Borrowers – is the line of credit.

- c. A consumer may choose to receive the funds from a Home Keeper as:
 - (i) Fixed monthly payments for life (i.e., for as long as the Borrower occupies the home as his or her principal residence);
 - (ii) A line of credit; or
 - (iii) A combination of monthly payments and line of credit.
- d. Newer products generally offer fewer choices, but most include at least an L of C option and a lump sum.

3. Rates & Fees

- a. Reverse mortgages typically have an adjustable interest rate – either annual adjustments or monthly adjustments. The HECM does provide for a fixed rate option, but Fannie Mae has not been willing to purchase them and to my knowledge the fixed rate has never been offered. Home Keepers may only have a monthly adjusting rate.
 - (i) Annual rate caps are 2% per year with a 5% lifetime cap.

- (ii) Monthly adjusting loans have no interim rate cap, but have a 10% lifetime cap for HECMs and a 12% cap for Home Keepers.
 - (iii) Expected Interest Rates on HECMs used to calculate the principle limit can now be locked-in for 120 days to protect Borrowers in a rising rate environment.
- b. Changes in Pricing Structure – Recently we are seeing a change in the rates and fees on reverse mortgage loans.
 - (i) Higher payment for these loans are allowing lenders to pass on savings to borrowers.
 - (ii) New HECM 100, which has a reduced margin of 100 BP – down 50 BP, was first offered by BNY Mortgage Co. Wells and Seattle Mortgage quickly followed suit
 - (a) Allows borrower more funds
 - (b) Cuts interest costs
 - (1) Changes in fee options as well
- c. The basic charges (other than interest) on a HECM include four types of fees:
 - (i) An origination fee
 - (a) HUD caps the amount of the origination fee that can be charged to the Borrower and also permits the Borrower to finance the entire amount of the fee. The origination fee amount for HECMs is limited to the greater of \$2,000 or 2 percent of the maximum claim amount on the mortgage. For Home Keepers, it is equal to 2% of the Adjusted Property Value
 - (b) The Borrower is not permitted to pay any additional origination fees of any kind to a mortgage broker or loan correspondent.
 - (1) Any broker fee must come out of the origination fee or the Lender can pay an additional fee, provided it does not exceed the market value for the services.
 - (2) Any fees paid to an advisor in a broker-advisor program (which I'll discuss later in my remarks), must also come out of the origination fee.
 - (ii) Initial and monthly mortgage insurance premiums

- (a) The mortgage insurance premiums on HECMs consist of two types of charges: a one-time premium at closing of 2 percent of the maximum claim amount and annual premiums of 1/2 percent per year on your mortgage loan balance.
 - (b) On refinancing of a HECM HUD only requires the borrower to pay the MIP on the difference in the maximum claim amount.
 - (c) Most proprietary products do not require PMI.
- (iii) Other closing costs
- (a) Other closing costs cover typical services and charges – such as title search and insurance, appraisals, surveys, required inspections, taxes, and recording fees – that are necessary to complete the transaction. Typically, Borrowers are permitted to finance 100 percent of their closing costs. If certain fees are charged up front such as appraisal fees, they can be reimbursed at closing.
 - (b) HUD’s Mortgagee Letter No. 2006-04 issued on January 27, 2006, which deregulated closing costs, does not apply to HECMs so limits in HUD Handbook 4235.1 still apply.
 - (c) On some new products the lender will waive closing costs if certain conditions are met.
- (iv) A monthly servicing fee
- (a) Unlike in forward mortgages where the servicing fee is built into the rate, reverse mortgage Borrowers are typically charged a servicing fee each month. The servicing fee is a flat fee charged to the Borrower’s loan balance each month that covers the costs of processing the Borrower’s loan advances and mortgage insurance premiums. For HECMs, if the Borrower selects the annually adjusting interest rate, the servicing fee can be no more than \$30 per month. The fee for the monthly adjusting HECM servicing fee and for the Home Keeper can be no more than \$35 per month. A sum that is sufficient to cover this fee over the life of the loan is set aside and deducted from the principal limit at closing. However, the service fee set aside is not added to the loan balance nor begins to accrue interest until the monthly fee is earned.
 - (b) I have heard talk of building the servicing fee in the interest rate as is the case in forward mortgages, but haven’t seen this on the market as yet.

- (v) Repair Set-Aside and Repair Administration Fee
 - (a) Repairs to bring the home up to HUD or FNMA standards that are estimated to cost 15% or less of the loan amount may be made after loan closing. 150% of the estimated cost of the repairs is set-aside from the loan proceeds and paid out as the work is completed. Repairs must be made within 12 months of loan closing
 - (b) Lenders may charge a Repair Administration Fee equal to the greater of 1.5% of the repairs or \$50.
 - (c) Most proprietary products are following this structure.
- (vi) Fee to change payment plan may also be charged each time the Borrower elects to change the manner in which he or she receives funds.

4. Acceleration Triggers

- a. Generally reverse mortgages become due and payable upon the occurrence of certain events or if the Borrower defaults on an obligation.
- b. The loan must be repaid when the Borrower sells or conveys all or part of the title to the property.
- c. Upon the Borrower's death or the death of the last surviving Borrower.
- d. If the last surviving Borrower does not occupy the property as his or her principal residence for 12 consecutive months.
- e. If the Borrower violates any term of the mortgage agreement, such as failure to maintain or repair the property, or to pay real estate taxes or hazard insurance premiums.

5. Equity Share or Equity Appreciation

- a. A feature that provides for a greater loan amount up front in exchange for a share of the equity or appreciation to the lender when the home is sold. Home Keepers offered this option (10% equity share), but FNMA stopped offering it.

6. Counseling Requirements

- a. Typically, Borrowers must receive counseling before the application is processed. Counseling will be provided by HUD-approved housing counseling agencies and will focus on the different types of home equity conversion mortgages available, the suitability of a reverse mortgage for the Borrower, and the possible

alternatives. Both HECM and Home Keeper require counseling before an application is taken.

- b. Proprietary products typically have some education component, but do not require counseling.
- c. Note that some states reverse mortgage statutes require counseling.
- d. Counseling has been a troublesome issue from time to time due to the lack of counselors in certain areas, particularly with the increased volume of reverse mortgages, but HUD has recently provided additional funding and grants to AARP and others to train counselors for this purpose. The FY 2008 proposed budget would further increase funding for counselors.
- e. In January, HUD published a proposed rule regarding new testing standards to approve HECM counselors and a national counseling roster comments until March 2007.

III. Reverse Mortgage Legal Considerations

A. OVERVIEW

- 1. Documentation, disclosures and certain federal and state law issues are the main legal considerations of a reverse mortgage program.
- 2. Relevant statutes include Truth-in Lending Act, Real Estate Settlement Procedures Act, and state reverse mortgage and related statutes.

B. RESPA

- 1. Prohibition against kickbacks and unearned fees under § 8 of RESPA equally applies to reverse mortgages.
 - a. No person may give or accept any fee, kickback or thing of value pursuant to an agreement or understanding, oral or otherwise, that business incident to or part of real estate settlement service shall be referred to any person. No fee or thing of value for referral of a settlement service. Making a loan is a settlement service so payment for referrals to lenders are prohibited.
 - b. Section 8 prohibits:
 - (i) Referral Fees;
 - (ii) Split of Charges, except for actual services performed;
 - (iii) Duplicative Fees and upcharges

-- this is a concern because greater marketing efforts are generally required for greater temptation to pay for loans.
 - c. RESPA always permits the payments for actual services rendered, provided the fee does not exceed market value of the services.

2. Reverse Mortgage Counselors
 - a. Counselors should not have any agreements or understandings that they will refer a percentage or dollar amount of loans to a lender or consortium of lenders which provide funds to the counseling organization. (No referral fees.)
 - b. HUD has maintained that HUD housing counselor grant funds cannot be used for counseling Borrowers when funds are used from another entity for the same service to the same Borrower. (No duplicative fees.)
3. Sale of Leads
 - a. As with other mortgage loans, payment for lists of names of potential Borrowers is permissible.
 - b. Payment must be a flat fee, not based on volume of loans actually produced, and in a minimal amount per name.
4. Mortgage Brokers
 - a. Same requirements apply regarding compensable activities. Fees must not exceed market value for the services rendered and advisor compensation.
 - b. Note that under HECM rules, broker compensation must come out of the 2% origination fee.

C. TRUTH-IN-LENDING

1. Reverse Mortgages defined under TiLA and Regulation Z
 - a. Reverse mortgage is defined as a non-recourse consumer credit obligation in which:
 - (i) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and
 - (ii) Any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after:
 - (a) The consumer dies;
 - (b) The dwelling is transferred; or
 - (c) The consumer ceases to occupy the dwelling as a principal dwelling.
 - (iii) Also allows maturity date if that date would never operate to cause maturity prior to any of the three events.

- b. If loan is not non-recourse, it would not be exempt from § 32 limitations and loan would not be permissible because it would likely qualify as a § 32 loan which contains a prohibition on negative amortization.
 - default is defined by contract or state law.
 - c. Regulation Z Commentary allows for certain assumptions and special rules for disclosing reverse mortgages, particularly in sections 5b (for open-end products) and 17 and 19b (for closed-end products Regulation Z Commentary).
2. Determine whether reverse mortgage product is open-end or closed-end credit.
- a. Revolving nature of loan is determinant, not line of credit feature.
 - b. HUD's HECM and Fannie Mae's Home Keeper Mortgage are deemed to be open-end credit – line of credit feature may be accessed at any time, to the extent the Borrower repays outstanding balance, the principal limit is increased and Borrower can re-borrow.
 - c. Appropriate TiLA disclosures need to be provided.
3. Rescission – normal rules apply – taking non-purchase money security interest in the Borrower's principal residence.
- rescission would not apply to a reverse mortgage used for home purchase.

D. STATE REGULATORY ISSUES

- 1. Since HECM and Home Keeper loans have been available, a number of states have made accommodations for reverse mortgages.
- 2. Approximately 25 states have specific reverse mortgage statutes.
 - a. Some only apply to certain types of lenders (e.g., banks or thrifts).
 - b. Other lenders can normally operate under general mortgage lending authority.
 - c. A few states require reverse mortgage approval in addition to the required mortgage lender licensing.
- 3. Can offer reverse mortgages in all states, although some states only accommodate the HECM or Home Keeper products (e.g., Wisconsin).
- 4. Texas

- a. Allowed reverse mortgages on homestead property in 1999 but would not permit lines of credit, which hampered the various products.
 - b. In November 2005, the constitution was amended to permit lines of credit and so all of HECM and Home Keeper payment plans and other LOC products are permissible.
5. Reverse mortgages are generally exempt from most state predatory lending laws (Arkansas does not exclude reverse mortgages, but excludes any loan sold to Fannie Mae within 60 days).
- inclusion under a predatory lending stature would serve to prohibit reverse mortgages since no negative amortization would be remitted.
6. State Law Issues
- a. Federal Preemption/Exemptions
 - (i) DIDMCA -- § 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980;
 - (ii) Parity Act – Alternative Mortgage Transaction Parity Act in Garn-St. Germain Depository Institutions Act of 1982;
 - (iii) FHA;
 - (iv) Preemption authority by OCC or OTS for federally regulated institutions;
 - (v) State Law Exemptions.
 - b. Interest Rate Restrictions/DIDMCA and AMTPA preemptions and overrides
 - (i) Compound Interest Restrictions;
 - (ii) Negative Amortization Restrictions; and
 - (iii) Adjustable Rate Mortgage Restrictions/Garn-St Germain Preemption Override.
 - c. Fee and Charge Restrictions
 - (i) Generally allow usual closing costs.
 - (ii) Prepayment penalties are generally prohibited.
 - d. Reverse Mortgage Statute Restrictions
 - (i) State Reverse Mortgage Statute – some are helpful, some create problems if your product does not fit within the parameters of the statute.

- (ii) Some state statutes contain harsh penalties for the lender's failure to make an advance to the borrower when due (e.g. forfeiture of all interest on the loan), but allow the lender to cure its default if the agreement provides for a cure).
- e. Mortgage/Deed of Trust Issues
 - (i) Future Advances/Lien Priority
 - Intervening lien issues if advances are not obligatory
 - Florida – 20-year advance limit
 - Borrower's right to limit future advances
 - (ii) Limitations on Maximum Amount Secured
 - (iii) Statute of Limitations for Mortgages, Maturity Date (a maturity date is permitted under TiLA to comply with any state requirements, provided the maturity date is such that one of the other triggering events will occur prior to the maturity date.)
- f. Additional State Disclosures, Modifications
 - (i) Plain Language Requirement
 - (ii) New foreign language requirement – California now requires that reverse mortgage documents be translated into one of 5 foreign languages if the loan is primarily negotiated in one of those languages. The languages are Chinese, Korean Spanish, Tagalog and Vietnamese.
 - (iii) Additional Disclosures Required
- g. Differences in permitted features based on type of lender
 - LTV restrictions for state chartered banks, etc.

IV. Reverse Mortgage Documentation

A. DOCUMENTS

1. Note, security instrument, and other documents are generally provided by the sponsoring entity such as FNMA or HUD. In HUD HECM program lenders are responsible for conforming standard documents to state law requirements; FNMA is no longer supporting Home Keeper documents – lenders must update them to comply with state law requirements. Some document preparation companies will provide state-specific HECM documents.
2. In connection with proprietary products, the proprietary entity will generally provide the documents to its brokers and correspondents.

3. Documents generally include:
 - a. Reverse Mortgage Application Form (FNMA Form 1009);
 - b. Adjustable Rate Note (2 in HECM);
 - c. Security Instrument (2 in HECM);
 - d. Loan Agreement;
 - e. Rider(s) to security Instrument (e.g., condo, PUD riders).
4. Newer open-end products are not using a Note, only an Agreement combined with the open-end credit disclosures.

V. Reverse Mortgage Disclosures

A. DISCLOSURE DOCUMENTS

The main disclosure documents include customary RESPA, TiLA and State Law disclosures with some additional requirements:

1. Pre-application Truth-in-Lending Disclosure [ARM (CE) or HELOC (OE) Disclosure];
2. Good Faith Estimate of Settlement Costs (CE and HECM only) – RESPA Special Information Booklet or When Your Home is on the Line Booklet are not required for reverse mortgages.
3. Good Faith Truth-in-Lending Disclosure (CE);
4. HUD-1 or HUD 1A Settlement Statement at closing;
5. Total Annual Loan Cost Disclosure (TALC);
6. Loan Closing Truth-in-Lending Disclosure;
7. Truth-in-Lending Rescission Notice;
8. Disclosures required under State Law.

B. RESPA DISCLOSURES

1. Good Faith Estimate of Settlement Costs (CE & HECM only):
 - a. Lender must provide a good faith estimate of settlement costs within 3 business days of providing an application to the Borrower.
 - b. Copy signed by Borrower must be submitted with application package for HUD review.
2. HUD-1 Settlement Statement (CE & HECM only)

- a. Lender must prepare the HUD-1 at least one business day before closing for Borrower's inspection.
 - b. HUD-1 must contain the Addendum with Borrower and settlement agent certifications.
 - c. HUD-1 must be provided to Borrower at closing.
3. Transfer of servicing Disclosures (closed-end loans only).
-- application and time of transfer.

C. TRUTH-IN-LENDING DISCLOSURES

1. Open-end credit Truth-in-Lending disclosures.
 - a. Home Equity Line of Credit ("HELOC") disclosure (also known as the Important Terms disclosure) is required because these products are open-end credit secured by Borrower's dwelling.
 - (i) HELOC disclosure rules require that a disclosure be provided twice in the loan process:
 - (a) Full disclosures and HELOC brochure provided when application is given to the consumer;
 - (b) Disclosures must also be provided before the first transaction, with current open-end credit disclosures. Only certain disclosures required if Borrower is given full disclosures in a form he could keep at application. Otherwise, a complete set of HELOC disclosures required.
 - (ii) See Commentary to 55b for reverse mortgage guidance and assumptions.
 - b. General Open-end credit disclosure under § 226.6 of Regulation Z also required before the first transaction.
2. Closed-End Credit Truth-in-Lending Disclosures
 - a. Adjustable rate disclosure under Regulation Z, § 226.19b required for variable rate plans because these plans are secured by borrower's principal dwelling with a term greater than one year.
 - (i) Must be provided at the time an application form is provided or before Borrower pays a nonrefundable fee, whichever is earlier;
 - (ii) Mail within three business days of receipt of application received on telephone or through intermediary agent or broker.

- (iii) See Commentary to sections 17 and 19b for closed end reverse mortgage guidance.
 - b. Good faith estimate Truth-in-Lending disclosures required within three business days of receiving Borrower's application.
 - c. Truth-in-Lending disclosure at closing if APR varies by more than 1/4 of 1%.
- 3. Reverse Mortgage Disclosures: Total Annual Loan Cost Disclosure ("TALC") (226.31, 226.33)
 - a. Scope
 - (i) Applies to reverse mortgage loans as defined above.
 - (ii) TALC disclosures are required in addition to other required disclosure under 226.18, and 226.19b or 226.5b and 6.
 - b. Timing of Disclosures/Form of Disclosures
 - (i) Creditors must furnish reverse mortgage disclosures at least three business days prior to:
 - (a) Consummation of a closed-end credit transaction; or
 - (b) The first transaction under an open-end credit plan or before consumer becomes obligated on the plan.
 - (ii) The creditor must make these disclosures clearly and conspicuously in writing, in a form that the consumer may keep.
 - (iii) In addition to textual disclosures required, in a reverse mortgage transaction the creditor must provide the disclosures in a form substantially similar to the model form found in paragraph (d) of Appendix K.
 - c. Content of Disclosures
 - (i) Notice. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosures required by this section or has signed an application for a reverse mortgage loan.
 - (ii) Total annual loan cost rates. A good-faith projection of the total cost of the credit expressed as a table of "total annual loan cost rates," using that term, in accordance with Appendix K. (9 box matrix illustrating total loan cost as a rate for each of 3 assumed maturities and assumed annual home appreciation rates).

- (iii) Itemization of pertinent information. An itemization of loan terms, charges, the age of the youngest Borrower and the appraised property value.
 - (iv) Explanation of table. An explanation of the table of total annual loan cost rates as provided in the model form found in paragraph (d) of Appendix K of Regulation Z.
- d. Projected Total Cost of Credit
- (i) The projected total cost of credit must reflect the following factors, if applicable:
 - (a) Costs to consumer. All costs and charges to the consumer, including the costs of any annuity the consumer purchases as part of the reverse mortgage transaction;
 - broad application.
 - all costs and charges connected with the reverse mortgage whether or not they are finance charges.
 - cost of annuity is included whether or not the purchase is made through the lender or a third party and whether or not the purchase is mandatory or voluntary.
 - property disposition costs not included.
 - (b) Payments to consumer. All advances to and for the benefit of the consumer, including annuity payments that the consumer will receive from an annuity that the consumer purchases as part of the reverse mortgage transaction;
 - should not include contingent payments (e.g., death benefit).
 - but CR can footnote to an explanation on a different rate that would apply if the contingent benefit were paid.
 - (c) Additional creditor compensation. Any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive.
 - (d) Limitations on consumer liability. Any limitation on the consumer's liability (such as non-recourse limits and equity conservation agreements).
 - limitation of liability to contain percentage of projected home value;

-- limit to net proceeds: use uniform assumptions about costs associated with sale of the home (if contract does not specify, use 7% assumption).

(e) Assumed annual appreciation rates. Each of the following assumed annual appreciation rates for the dwelling:

(1) 0 percent;

(2) 4 percent;

(3) 8 percent.

(f) Assumed loan period.

(1) Each of the following assumed loan periods, as provided in Appendix L of this part:

(i) Two years;

(ii) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of that consumer's most recent birthday). In the case of multiple consumers, the period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday);

(iii) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(2) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.

4. Rescission Notice

D. HUD HECM REQUIRED DISCLOSURES

1. Disbursement Notice

a. *Disclosure of costs of obtaining mortgage*. The lender must ensure that the borrower has received full disclosure of all costs of obtaining the mortgage. The lender must ask the borrower about any costs or other obligations that the borrower has incurred to obtain the mortgage, in addition to providing the Good Faith

Estimate required by RESPA. The lender must clearly state to the borrower which charges are required to obtain the mortgage and which are not required.

- b. *Lump sum disbursement.* If the borrower requests that at least 25% of the principal limit amount be disbursed at closing to the borrower, the lender must make sufficient inquiry at closing to confirm that the borrower will not use any part of the amount disbursed for payments to or on behalf of an estate planning service firm, with an explanation of the restrictions imposed by HUD on the use of the initial payment and the prohibition on borrower obligations after closing.

2. Addendum to HUD-1 Settlement Statement

- a. Although not required under RESPA for open-end credit, the HUD-1 Settlement Statement is required for HECMs and must be prepared at least one business day before closing. The borrower must be allowed to inspect the statement one business day before closing.
- b. HECM lenders are required to obtain certifications to the HUD-1 Settlement Statement from the borrower(s) and settlement agent.
- c. The borrower(s) and settlement agent in HECM transactions must sign the application certifications below, which must be printed at the bottom of the HUD-1, or attached to the HUD-1 as an addendum:

I have carefully reviewed the HUD-1 Settlement Statement, and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or received a copy of the HUD-1 Settlement Statement.

Borrower(s) Date

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received, and have been or will be disbursed, by the undersigned as part of the settlement of this transaction.

Settlement Agent Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S. Code Section 1001 and Section 1010.

3. Notice to Borrower regarding Lender's Late Payments
 - a. Lenders are required to pay a late charge to the borrower for any payment that is not made to the borrower in a timely payment.
 - (i) Lender must mail or electronically transfer a scheduled monthly payment to the borrower on the first business day of the month or make a line of credit payment within 5 business days of the date the lender receives the request.
 - (ii) Failure to meet these timing requirements will result in the lender paying the borrower a late charge equal to ten percent (10%) of the late payment (not to exceed \$500). In addition, the lender must pay the borrower interest on the amount of the late payment at the loan interest rate for each day the payment is late.
 - b. HUD requires a disclosure of these lender obligations to the borrower, as well as a disclosure of what the borrower should do in the case of a late payment or non-payment by the lender.
4. Anti-Churning Disclosure
 - a. In 2004, HUD promulgated regulations regarding the refinancing of HECMs, but required certain consumer protections in connection with such refinancings.
 - (i) HUD limited the up-front MIP premium to two percent (2%) of the increase in the maximum claim amount above the maximum claim amount on the loan being refinanced, and
 - (ii) HUD also imposed a new disclosure obligation, the anti-churning disclosure.
 - b. The anti-churning disclosure must contain the lender's "best estimate" of (1) the total cost of the refinancing to the borrower and (2) the increase in the borrower's principal limit (as determined by estimating the initial principal limit on the refinancing and subtracting the current principal limit on the existing HECM loan).
 - c. The anti-churning disclosure must be provided at the same time as the disclosure of costs.
5. Certification of receipt of closing documents: A certification signed by the borrower must be submitted stating that he or she received copies of the first mortgage, first note, the Loan Agreement, Loan Cost Disclosure Statement, and a Notice to the Borrower explaining the procedures to follow in case of non-payment or late payments by the lender (Appendix 14), and that the lender explained the principal provisions of the documents.

VI. Servicing Reverse Mortgages

A. Reverse Your Thinking

1. Disbursing rather than collecting payments.
2. More labor-intensive given nature of Borrower population – more hand holding and explanation needed.
3. Certifying residency.
4. Administering changes in payment plans.
5. Administering repair set-asides.

B. Penalties for failure to provide payments on time – very onerous in some states.

1. In HECM, lender must pay interest to borrowers on the late payment amount.
2. Some state laws require the forfeiture of all interest for failure to make a timely payment, offer an opportunity to cure.

C. Taxes and Insurance Payments

1. An area of on-going concern – closely monitor.
2. Set-asides can be established for lender to pay these amounts at Borrower's request.
3. State Tax-Deferral Programs.