

Knowing the Rules of the Game

Reverse Mortgage Legal and Regulatory Compliance Issues

Knowing the Rules of the Game

- Licensing and Approvals
- Real Estate Settlement Procedures Act (RESPA)
- Disclosure Obligations
- Predatory Lending/Unfair Trade Practices
- Anti-Discrimination Laws
- Home Mortgage Disclosure Act (HMDA)
- State and Federal Legislation

Licensing and Approvals

- Do you have authority to make reverse mortgage loans?
- How are you soliciting loans, and does the person or entity soliciting have the authority to do so?
 - Retail offices
 - Brokers
 - Other financial advisors, such as insurance agents

Licensing and Approvals

- HUD Approval
 - Required approvals for originating HECMs are essentially the same as for other FHA loans.
 - Testing Requirements for Unconditional Direct Endorsement Approval
 - HECM Advisors

Licensing and Approvals

- State Licensing and Approval Requirements
 - Traditional residential mortgage brokering and lending license requirements generally apply.
 - Reverse mortgage-specific licensing requirements:
 - Examples: New York, Hawaii, Iowa, Massachusetts, North Carolina, Tennessee.
 - State licensing obligations to purchase and service reverse mortgages.

RESPA Compliance

- Traditional brokers, insurance companies, and financial advisors may be good conduits for reverse mortgages, but HOW WILL THEY BE PAID?
 - RESPA Section 8(a) prohibits the payment or acceptance of any “fee, kickback or other thing of value” for the referral of settlement service business.
 - RESPA Section 8(b) prohibits splitting fees or unearned fees for a real estate settlement service.

Disclosure Obligations

- Truth in Lending Act (TILA)
 - Standard TILA disclosures required for any open- or closed-end mortgage loan apply to reverse mortgages.
 - Non-purchase money reverse mortgages are subject to the borrower's right to rescind the loan up to three days after the transaction closes.
 - Total Annual Loan Costs Disclosure (TALC)

Disclosure Obligations

- State Reverse Mortgage Disclosure Requirements
 - Standard “forward” disclosures will apply – consider standard state requirements for:
 - Open- or closed-end mortgage loans
 - The license under which the reverse mortgage is made
 - Specific state reverse mortgage disclosure requirements: For example, California, Colorado, Illinois, North Carolina
 - Preemption

Predatory Lending/Unfair Trade Practices

- Clear Communication
 - Vulnerable population
 - Complex product
- Counseling
 - HUD Requirements
 - Fannie Mae Requirements
 - Federal Legislation

Predatory Lending/Unfair Trade Practices

- Unnecessary and Overpriced Annuities
 - Prohibitions on tying annuities to reverse mortgages:
 - California
 - Federal Legislation

Predatory Lending/Unfair Trade Practices

- State and Local High-Cost Loan Laws
 - Several states and localities include reverses in the definition of “high cost” loan (e.g., Arkansas, Illinois (including Cook County & Chicago) and Utah).
 - In these jurisdictions, APR and points and fees testing is required for reverse mortgage loans.

Anti-Discrimination Laws

- The Equal Credit Opportunity Act (ECOA) prohibits discrimination on the basis of age and sex.
 - ECOA carves out an exception that allows lenders to “consider the age of an elderly applicant when the lender will use that information to grant credit in favor of the applicant.”

Anti-Discrimination Laws

- The Fair Housing Act prohibits discrimination on the basis of sex, but not age.
 - No need for a statutory carve-out for products benefiting seniors.

Anti-Discrimination Laws

- Issue: Discrimination Based on Gender
 - Product development may involve shifting underwriting criteria and calculations for loan limits or periodic payments.
 - From a business perspective, it may be desirable to account for gender, but this typically disfavors women, who on average live longer than men.

HMDA Compliance

- Reverse mortgage originations are reportable under HMDA.
- For reverse mortgages that are HELOCs, HMDA reporting is optional.
- Rate spread for reverse mortgages must be reported, unless the reverse mortgage is a HELOC.
- HOEPA Status Reporting: Reverse mortgages are expressly not subject to HOEPA.

State and Federal Legislation

- FHA Modernization Act (S. 2338/H.R. 1852) – Reverse Mortgage Provisions
- Reverse Mortgage Proceeds Protection Act (S. 2490/H.R. 5758)
- State Legislation
 - Examples: Arizona, Illinois, New Hampshire, New Jersey, New York, Rhode Island.

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