



National Reverse Mortgage Lenders Association
1400 16th Street, N.W.
Washington, DC 20036

August 23, 2012

Chuck Cross, Senior VP -Consumer Protection
Conference of State Bank Supervisors
1129 20th St. NW, 9th Floor
Washington, DC 20036
202-728-5745

Re: Conference of State Bank Supervisors; Reverse Mortgage Examination Guidelines

Dear Chuck:

The National Reverse Mortgage Lenders Association (NRMLA) is the national voice of the reverse mortgage industry. With over 300 member companies and over 1300 member delegates, NRMLA serves as an educational resource, policy advocate and public affairs center for lenders and related professionals. NRMLA was established in 1997 to enhance the professionalism of the reverse mortgage business. Our mission is to educate consumers about the pros and cons of reverse mortgages, to train lenders to be sensitive to consumer's needs, to enforce our Code of Ethics and Professional Responsibility¹, and to promote reverse mortgages in the news media.

Introduction

In December of 2008, the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators (or AARMR) issued the Reverse Mortgage Examination Guidelines (or RMEGs). We understand that the RMEGs were updated for format in 2009. While the RMEGs are not required standards, they do provide a uniform set of examination guidelines that regulators can use to determine whether entities in the reverse mortgage loan industry are operating in an appropriate manner. The RMEGs also can be used by lenders in their internal review of their reverse mortgage operations.

During our meeting with you in December 2011, you indicated that several years have passed since the RMEGs have been updated, and that you would welcome our in-put and comments on the RMEGs as your organization looks to review and perhaps update and revise those guidelines. We are pleased to do so, and herein, NRMLA provides its comments on the RMEGs version dated March 4, 2009.

Comments

Definitions

Page 2

¹ <http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx>

We note that the definition of a “Broker” as used in the RMEGs potentially could be broader than the definition of a mortgage broker under some states mortgage banking and brokerage laws, thus it is possible that an examiner might apply the term “Broker” as used under the RMEGs more broadly than authorized under state law. The RMEGs should direct an examiner to refer to the definition of “mortgage broker” under his or her respective state mortgage broker statute.

We note that the definition of “Loan Originator” as specified in the RMEGs may differ from state to state, thus it is possible that an examiner might apply the term “Loan Originator” as used under the RMEGs more broadly than authorized under state law. The RMEGs should direct an examiner to refer to the definition of “Loan Originator” under his or her respective state mortgage broker statute.

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The definition of “Reverse Mortgage Loan” differs from the definition of reverse mortgage as provided under Regulation Z. The different definition of “Reverse Mortgage Loan” under the RMEGs potentially could lead examiners to review loans under the RMEGs that are in fact not reverse mortgages as defined under federal law.

Further, the definition of “Tenure Reverse Mortgage Loan” is more akin to a “term” reverse mortgage loan than a “tenure” based loan. For instance, under an FHA-insured Home Equity Conversion Mortgage (HECM) term payment option, equal monthly payments are made by the mortgagee to the mortgagor for a fixed term of months chosen by the mortgagor, unless the mortgage is prepaid-in-full or becomes due and payable earlier due to default or a maturity event.² However, under the HECM with a tenure payment option, equal monthly payments are made by the mortgagee to the mortgagor as long as the property is the principal residence of the mortgagor, unless the mortgage is prepaid-in-full or becomes due and payable.³

Module 2 – Examiner Checklist To Be Used For All Institutions

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With regard to item A.4, we understand that some states’ examination reports are confidential, thus we believe this item should be qualified with such an indication.

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Under item A.7e, we believe additional guidance could be provided regarding to which monitoring and reports this item refers.

Regarding item A.7k, it is not clear as to the nature or extent of the activities of a licensee that the guidelines reference regarding homeowner responsibilities. For instance, it is not clear if this item includes sales staff training, and marketing.

With respect to item A.7t, it is not clear which types of referrals the guidelines are referencing. For instance, it is not clear whether this item is directed towards RESPA section 8 referrals.

We suggest that the word “possessions” in item A.7u be changed to “Home occupancy verification.”

² See 24 C.F.R. § 206.19(a).

³ See 24 C.F.R. § 206.19(b).

Under item A.8, we would suggest that this item be clarified so as not to inadvertently and unfairly implicate companies that only originate reverse mortgages.

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Under item B.2 regarding product descriptions being “clear and balanced”, we respectfully submit that this standard is not clearly defined in law and could be construed broadly. An amendment could be considered to cross reference applicable provisions of Regulation Z (i.e., “clear and conspicuous”), FTC pronouncements and perhaps applicable state laws, if any.

With reference to item B.8, regarding referral of a consumer to a lender’s proprietary product or a government-insured product, we note that in some instances, a consumer may apply for one program, but move to another program depending upon various factors (such as the property value and the available principal limit (or loan proceeds)). This item, however, suggests that a lender is required to determine the most appropriate program for the consumer. We note, nonetheless, that proprietary programs are not prevalent at this time, and further that some lenders may have limited product offerings even within the FHA-insured HECM offerings.

Regarding item B.9, we note that HECM lenders, as a best practice, provide consumers with a “Comparison Worksheet” that reflects sample terms and amortization schedules for various HECM loans. While the use of a Comparison Worksheet may meet the expectations as outlined in item B.9, we note, however, to the best of our knowledge, the use of a Comparison Worksheet is not required by HUD HECM regulations or other applicable requirements.

Item B.9a should be clarified to indicate the focus of this inquiry. For instance, all HECMs come with FHA insurance, however, we are not certain what the term “guarantees” is meant to reference.

Under item B.9b, the term “escrow accounts” should be changed to “property charge set aside accounts.”

With regard to item B.13, we find this item to be rather open ended and are not clear on how an examiner could determine the sufficiency of a counseling session simply by reviewing the counseling certificate.

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Under item B.23d, as stated above, to the best of our knowledge, the use of a Comparison Worksheet is not required by HUD HECM regulations or other applicable requirements.

Regarding item B.27b, we note that Regulation Z allows creditors to combine the initial open-end TIL disclosures with the loan credit agreement. While this is not the practice with FHA-insured HECM loans, we understand that, in connection with open-end proprietary plans originated in the past, most creditors offering open-end proprietary reverse mortgage plans did combine the initial open-end TIL disclosures with the loan credit agreement.

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With respect to item B.27d, as stated above, to the best of our knowledge, the use of a Comparison Worksheet is not required by HUD HECM regulations or other applicable requirements.

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Regarding item B.32d, under Regulation X, as revised by HUD effective January 1, 2010, mortgage broker fees are not separately itemized, but are included in the “Origination charge” and also shown as a credit to the borrower.

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In connection with item C.7, we are not aware of any private mortgage insurance for proprietary, conventional reverse mortgages, and feel this item should be clarified to reflect such understanding.

Regarding item C.9, we note this is perhaps a “best practice” for lenders, but we are not aware that a regulatory requirement exists that lenders verify that reverse mortgage applicants have discussed obtaining a reverse mortgage with his or her family members. We would hope and trust, that if an examiner found such information lacking with any given lender, the examiner would not indicate administrative action for failure to adopt what are at most “best practices” that the regulator would like to see the lender follow.

Under item C.13, the word “tenure” should be changed to “term.” Further, while this requirement does not appear to us to be clearly based upon statutory law or regulatory requirements, it is nonetheless not clear to us how an examiner would review and document that such inquiry has been made by the lender.

With respect to item C.14, it is not clear to us how a lender would document the senior’s intended use of reverse mortgage proceeds, or what documentation an examiner would review or expect to see in a lender’s files. [Note that HECM regulations state that: “ If the mortgagor requests that at least 25% of the principal limit amount (after deducting amounts excluded in the following sentence) be disbursed at closing to the mortgagor (or as otherwise permitted by §206.29), the mortgagee must make sufficient inquiry at closing to confirm that the mortgagor 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 §206.32 as necessary or appropriate.”]

HECM regulations further provide that: “In order for a mortgage to be eligible under this part, a mortgagor must establish to the satisfaction of the mortgagee that:

...

(b) The initial payment will not be used for any payment to or on behalf of an estate planning service firm.”

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Regarding item C.18b, it is not clear to us which party on whose behalf an examiner would expect a lender to provide a preference: the reverse mortgage borrower, or a non-owner occupant of the collateral property. Further, it is not clear that this item is clearly based on an established statutory or regulatory requirement. We further note that many lenders have adopted, as a best practice, the provision of an application or pre-closing disclosure to consumers regarding non-borrowing spouses.

Regarding item C.18c, it is not clear to us that this item is clearly based upon a current, established statutory or regulatory requirement. Further, we suggest additional information with respect to what type of documentation an examiner would expect to see to demonstrate compliance with this item – a disclosure, other? In this regard, we note that it is our understanding that most, if not all, participants in the reverse mortgage industry adopted, as a best practice in the early 2000’s annuity disclosures and

questionnaires designed to elicit information from reverse mortgage applicants whether such applicants intend to use reverse mortgage proceeds to purchase an annuity. These disclosures are not required by law, but it is our understanding that such disclosures are now standard in most, if not all, reverse mortgage application disclosure packages.

With respect to item C.18e, it is not clear to us that this item is clearly based upon a current, established statutory or regulatory requirement. Further, we suggest additional information with respect to what type of documentation an examiner would expect to see to demonstrate compliance with this item, including more detail on which financial information or trigger thresholds might be used to assess compliance with this item. We also note that HUD is in the process of proposing limited “financial assessment” underwriting requirements for HECM borrowers, and when implemented, such requirements might address some of the policy goals of this RMEG item.

Under item C.18f, it is not clear to us that this item is clearly based upon a current, established statutory or regulatory requirement. Further, we suggest that this item be revised to recognize that loan officers typically are not qualified financial planners, and reverse mortgage counselors are required to review with interested seniors options other than reverse mortgages, such as home equity loans or sale-leaseback transactions.

With regard to item D.1, the MU 3 form utilized in the NMLS system for licensed loan originators has been revised to inquire whether MLOs engage in other financial services activities. See question 5 of the MU 3 at <http://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%20Individual%20Form.pdf>

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Regarding item D.12, please note that due to required counseling independence requirements, among other things, the approval and monitoring of HECM reverse mortgage counselors is conducted by HUD and not lenders. We respectfully request that this item be amended to reflect the counseling independence requirements.

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As noted above under item B.9b, we also note under item E.2 that the concept of an “escrow” account should be changed to refer to a “property charge set aside account.”

Regarding item E.4, if an examiner is reviewing the operations of a servicer or sub-servicer, it should be clear on the responsibility for funding loan advances and other items and that such responsibility often falls upon the loan owner or an investor.

Regarding item E.9, this is the lender’s responsibility and not that of the servicer.

Under items E.14 and E.14b, an examiner should be clear whether, for any particular loan, the responsibility for taking possession of properties and handling REOs often falls upon the loan owner or an investor, and not the servicer or sub-servicer.

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With respect to item E.15, please note that HUD will grant extensions for resolution of HECM loans beyond 6 months after maturity.

With regard to item F.1, we respectfully request clarification concerning what threshold or criteria an examiner might consider “significant.” For instance, would such determination be based upon the size of the institution, the percentage of secondary market activity and/or the total loan portfolio?

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Items G.1a-f and G.2 appear to us to be repetitive.

Module 3 – Examiner Checklist To Be Used for FHA Approved Entities

Page 22

Under item A.1, we note that the FHA did away with the FHA-approved Loan Correspondent category in 2010. However, non-FHA-approved “third party originators” (or “TPOs”) may originate FHA-insured loans if sponsored by an FHA-approved mortgagee. See *Federal Housing Administration: Continuation of FHA Reform; Strengthening Risk Management Through Responsible FHA-Approved Lenders; Final Rule*; 75 Fed. Reg. 20718 (Apr. 20, 2010); and Mortgagee Letter 2010-20 (*Implementation of Final Rule FR 5356-F-02, “Federal Housing Administration: Continuation of FHA Reform—Strengthening Risk Management through Responsible FHA-Approved Lenders”, June 11, 1010*).

Page 23

Regarding item B.2a, see comment above to item A.1.

Item B.5 should be updated to indicate the counseling of non-borrowing spouses.

Page 24

With regard to item B.5c, AARP is no longer a HUD-approved housing counseling intermediary. See Mortgagee Letter 2009-47 (*Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster Final Rule*, Nov. 6, 2009).

The list of counseling agencies must include no fewer than nine HUD-approved counseling agencies. Until recently, the list must include at least five (5) agencies within the local area, state or both of the borrower, with one of the local agencies located within a reasonable driving distance for the purpose of face-to-face counseling. The list also must include the following four (4) national intermediaries: National Foundation for Credit Counseling (NFCC), Money Management International (MMI), National Council on the Aging (NCOA), and CredAbility. Mortgagee Letter 2010-37 (*Home Equity Conversion Mortgage (HECM) Program: Clarification of Policies Regarding the Requirement that HECM Lenders Provide Prospective HECM Borrowers a List of HECM Counseling Agencies*, Nov. 8, 2010).

In addition, the list of counseling agencies also must include the names of counseling intermediaries that have been awarded HECM counseling grant funds by HUD. Such intermediaries could change each year. This screen will be updated annually when the HECM counseling grant awards are made. For 2011, the following intermediaries have been added to the list: ClearPoint Financial Solutions, Neighborhood Reinvestment Corporation, HomeFree, Greenpath, and Springboard.

Mortgagee Letter 2011-26 (*Home Equity Conversion Mortgage (HECM) Counseling: Intermediaries Included on the HECM Counselor List*, Aug. 12, 2011).

HUD recently announced the addition of more counseling agencies, but has not yet issued a Mortgagee Letter.

Item B.7 should be updated to reflect Mortgagee Letter 2011-31 (*Home Equity Conversion Mortgage (HECM): Revised Form HUD 92902, Certificate of HECM Counseling and Clarification of Counseling Guidance*, Aug. 26, 2011).

Page 25

In connection with item B.16, we are not aware of an express requirement under the HUD HECM rules or guidance that directly requires lenders to provide the Principal Limit Rate Lock in connection with HECM loans.

Regarding item B.17 and the Initial Annuity Disclosure, we understand that in connection with FHA-insured HECM loans, this requirement may be addressed towards and met by providing the disclosure entitled “Consumer Protection against Excessive Fees.” This disclosure states that the initial disbursement may not be used to pay an “estate planning service firm.” See 24 C.F.R. § 206.43 and Mortgage Letter 99-02; see also 24 C.F.R. §§ 206.29, 206.32.

While we are not aware of an express requirement under the HUD HECM rules or guidance that directly requires lenders to provide the Initial Annuity Disclosure in connection with HECM loans, we do understand that some lenders as a best practice provide disclosures to consumers that the lender neither offers nor requires annuities in connection with the reverse mortgages they offer.

Page 26

In connection with item B.18, we note that HUD has provided updated guidance on HECM-to-HECM refinances through its issuance of Mortgagee Letter 2009-21 (*Home Equity Conversion Mortgage Refinancing of Existing Loans*, June 30, 2009).

With regard to item B.22, see comment to item B.16 above.

Regarding item B.23, see comment to item B.17 above.

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Section B.25 through B.34 should be revised to take into account that HUD no longer approves loan correspondents (see comment to item A.1, above).

In this regard, HUD regulations (and the RMEGs) with respect to loan correspondents and mortgage brokers may be outdated, particularly items such as B.31 and B.32.

Page 28

Item C.2 should indicate and take into account the permissibility of Principal-Agent relationships in FHA lending.

Item C.4 should be revised to replace the word “homeowner” with “borrower.”

Item C.7 should be revised to take into account that, under the HECM program, HUD is provided with a dormant second security instrument.

The Underwriting section should be updated to take into account Mortgagee Letters (MLs) that have been issued in the interim, on items such as HECM for Purchase (ML 09-11), the revised definition of non-recourse (ML 11-16), HUD-1 Settlement Statements (ML 10-39) and requirements for HECM fixed rate loans (ML 08-08).

Page 29

The Servicing section should be updated to take into account Mortgagee Letter 2011-01 (*Home Equity Conversion Mortgage Property Charge Loss Mitigation*, Jan. 3, 2011).

Regarding item E.1, we note that this primarily would be the responsibility of the loan holder or owner of record, and not the servicer or sub-servicer.

Item E.4 should be revised to read as follows:

“Does the institution monitor HECM loan balances to determine when the loan balance reaches 98% of the maximum claim amount to determine whether the HECM may be assigned to HUD?”

Page 30

With respect to item E.9, we note that some of the guidance in Handbook 4330.1 conflicts with HUD HECM regulations, particularly the time period within which a lender must commence foreclosure. The regulations provide for a longer foreclosure time line.

Module 4 – Reference And Glossary of Terms

Page 32

Under the FHA Approved Entities heading, as indicated above, the RMEGs should be revised to take into account that FHA no longer approves loan correspondents.

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Regarding Branch offices, HUD has expanded the single family origination lending area of each home office and registered branch office to include all HUD field office jurisdictions. See Mortgagee Letter 2011-34 (*FHA Approved Lenders and Applicants for FHA Lender Approval*, Sept. 23, 2011).

Regarding Principal-Agent relationships, HUD has made significant changes in this area also. Effective July 1, 2011, the Principal lender in a Principal-Authorized Agent relationship must have either type of unconditional direct endorsement (DE) approval (forward loans or reverse loans).

Originally, the Principal lender was required to have either type of unconditional DE approval (forward loans or reverse loans) by January 1, 2011, but a six month extension to July 1, 2011, was made to allow additional time to meet this requirement.

Further, a DE lender also may use the Principal-Authorized Agent Relationship or act in the capacity of a sponsored third-party originator (TPO). In this regard, we note that it is possible to close an FHA-insured

loan in the name of an FHA-approved mortgagee acting as a Sponsored Third-Party Originator (TPO). See Mortgagee Letter 2012-02 (*Closing a Loan in the Name of an FHA-Approved Mortgagee Acting as a Sponsored Third-Party Originator (TPO)*), Feb. 10, 2012).

Module 6 – Institution and Management Questionnaire

Page 37

Under section A.1t., we suggest changing the word “possessions” to “occupancy.”

Page 40

Under item 48, we suggest changing the word “tenure” to “term.”

Page 42

We note that item 91 primarily is the responsibility of the loan owner or record holder, and not the servicer or sub-servicer.

Page 43

We note that item 97 primarily is the responsibility of the loan owner or record holder, and not the servicer or sub-servicer.

Regarding item 98, as indicated above, HUD will in certain cases grant extensions of time to resolve matured loans beyond 6 months.

We note that with respect to item 100, prepayment penalties are not allowed on HECM loans, and to the best of our knowledge were not contracted for, nor were or are imposed in connection with proprietary reverse mortgage programs.

Page 45

We note that item 139 is the responsibility of the loan owner or record holder, and not the servicer or sub-servicer.

Item 141 should be revised to refer to “maximum claim amount” and not “maximum loan amount.”

Module 8- Reverse Mortgage Product Worksheet

Page 47

As noted above, prepayment penalties are not allowed on HECM loans, and to the best of our knowledge were not contracted for, nor were or are imposed in connection with proprietary reverse mortgage programs.

Further equity preservation is not part of the HECM loan program.

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Escrow accounts are not utilized with reverse mortgages. However, the use of property charge set aside accounts are permitted at the borrowers election under the HECM program.

A home maintenance schedule is not required by HUD in connection with HECM loans.

Module 9 – Reverse Mortgage Servicing Worksheet

Page 50

Escrow accounts are not permitted with HECM loans, and are not used with other reverse mortgage programs. However, the use of property charge set aside accounts are permitted at the borrower's election under the HECM program.

Regarding posting of payments, reverse mortgage borrowers do not often make regular installment re-payments on such loans.

Late fees may not be assessed to reverse mortgage borrowers.

While a HECM borrower may elect to have the lender make payments for property taxes and hazard insurance (i.e., "property charges"), typically most HECM borrowers have not currently made such election, and in any event, the borrower is ultimately responsible for property charges.

Conclusion

Overall, we commend the CSBS on very comprehensive and well organized regulatory examination guidelines that also provide an excellent tool for lenders' quality control and internal review. We trust that the CSBS will find our comments to the RMEGs both helpful and informative.

As noted above, some areas of the RMEGs appear to us to be suggested "best practices" for lenders that are not necessarily based upon statutory law or regulatory requirements. We hope and trust that if an examiner found such items lacking in a lender's policies and procedures, the examiner would not indicate the need for administrative action or penalties due to the lender's failure to have adopted or followed such "best practices." Please let us know if you have any questions or wish to discuss further.

Very truly yours,



Steve Irwin
Executive Vice President
NRMLA

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