



1400 16th Street, NW
Suite 420
Washington, DC 20036
Tel. 202.939.1760
Fax. 202.265.4435
www.nrmlaonline.org

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dob.comments@state.ma.us

Massachusetts Division of Banks
1000 Washington St., 10th Floor
Boston, MA 02118-6400

Re: Division of Banks Regulatory Review - Executive Order 562

The National Reverse Mortgage Lenders Association ("NRMLA") is the national voice of the reverse mortgage industry. With over 300 member companies and over 2,000 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 industry. Our mission is to educate consumers about the pros and cons of reverse mortgages, to train lenders to be sensitive to clients' needs, to enforce our Code of Ethics and Professional Responsibility,¹ and to promote reverse mortgages in the news media.

Introduction

On August 13, 2015, the Massachusetts Division of Banks (Division) issued a reminder notice that it is considering whether to retain, repeal or make changes to the regulations listed below. The review of the regulations is in compliance with, and will be conducted in connection with, Executive Order 562 issued by Governor Baker on March 31, 2015. The purpose of Executive Order 562 is to reduce unnecessary regulatory burden where possible.

In advance of considering changes and implementing the formal regulatory amendment process, the Division welcomed and invited interested members of the public to attend an informational meeting. In addition, written comments may be submitted to the Massachusetts Division of Banks, by or before close of business August 21, 2015.

The following is a list of the Division's regulations to be reviewed:

209 C.M.R. § 18.00: Conduct of the Business of Debt Collectors and Loan Servicers
209 C.M.R. § 20.00: Small Loans, Sales Finance Companies and Insurance Premium Finance Companies
209 C.M.R. § 26.00: Loans Regulatory Board
209 C.M.R. § 31.00: Establishment and Operation of Electronic Branches of Financial Institutions and for the Protection of Consumers in Electronic Fund Transfers
209 C.M.R. § 32.00: Truth in Lending
209 C.M.R. § 33.00: Conversion by Co-Operative Banks and Savings Banks from Mutual to Stock Form
209 C.M.R. § 40.00: Unfair and Deceptive Practices in Consumer Transactions
209 C.M.R. § 41.00: The Licensing of Mortgage Loan Originators
209 C.M.R. § 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers
209 C.M.R. § 43.00: Audit Requirements for Credit Unions
209 C.M.R. § 44.00: Licensing Of Foreign Transmittal Agencies
209 C.M.R. § 45.00: The Licensing and Regulation of Check Cashers

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

209 C.M.R. § 46.00: Community Reinvestment
209 C.M.R. § 48.00: Licensee Record Keeping
209 C.M.R. § 49.00: Insurance Sales by Banks and Credit Unions
209 C.M.R. § 50.00: Parity with Federal Credit Unions
209 C.M.R. § 52.00: Credit Insurance Disclosure Requirements
209 C.M.R. § 53.00: Determination and Documentation of Borrower's Interest
209 C.M.R. § 54.00: Mortgage Lender Community Investment
209 C.M.R. § 55.00: Reverse Mortgage Loans
209 C.M.R. § 56.00: Foreclosure Prevention Options

Specific input is requested on the following questions and other relevant testimony and comments are invited:

- What could improve the clarity of the regulations?
- Do any of the regulations impose unnecessary burdensome reporting, recordkeeping, or disclosure requirements?
- Have there been changes in the financial services industry, consumer behavior, or other circumstances that cause any regulations to be outdated, unnecessary, or unduly burdensome?
- Do you believe the scope of each regulation is consistent with the intent of the underlying statute?

In addition, the Division asked for comments for potential amendments to reduce regulatory burden while remaining faithful to the statutory intent. Additional comments, including specific recommendations, were welcomed.

Initial Comments

NRMLA appreciates the opportunity to comment on regulatory reform in the Commonwealth of Massachusetts. Our comments focus on four areas impacting reverse mortgages, as follows. First, we respectfully request that the Division streamline the process to approve reverse mortgage programs that lenders propose to offer to seniors in the Commonwealth. Second, we request that the Division provide additional guidance to reverse mortgage lenders on what constitutes “median income” for purposes of the definition of a “mortgagor” under 209 C.M.R. § 55.02. Third, we request that the Division revise a reverse mortgage disclosure to make it more accurate and less misleading to consumers. And finally, more generally, we request that Division work with the reverse mortgage industry to address the issue of face-to-face counseling and the lack of available trained counselors within the Commonwealth to meet this need. While we recognize this is a legislative issue, we request that Division work with and support the reverse mortgage industry in its legislative efforts to have this issue permanently addressed in the Commonwealth in a manner that recognizes consumer choice without sacrificing consumer protections.

Detailed Comments***Division of Banks Reverse Mortgage Program Approval Process***

Massachusetts banking statutes provide that a bank may make or acquire a reverse mortgage loan, pursuant to a program for reverse mortgage loans which has been submitted to and approved by the Commissioner of Banks.²

The Commissioner shall not approve a program for reverse mortgage loans which does not include the following:

- (1) the type of loan, whether open-end or closed and whether a recourse or non-recourse loan;
- (2) an applicant for the loan shall not be bound for 7 days after his acceptance, in writing, of the lender's written commitment to make the loan;
- (3) the bank shall obtain a written statement signed by the borrower acknowledging receipt of disclosure of all contractual contingencies which could force a sale of the mortgaged real estate;
- (4) a provision permitting prepayment of the loan without penalty at any time before the loan becomes due and payable;
- (5) the interest rate, which may be fixed or variable, and the method of calculation thereof shall be established at loan origination; quote and, at the option of the borrower, may be contingent on the value of the mortgaged real estate at closing or at maturity or on changes in the value during the period between closing and maturity;
- (6) the method of disbursement of the proceeds of the loan to the borrower; but, at the request of the borrower, disbursement may be made to a third party pursuant to the terms of the loan agreement;
- (7) a copy of the form of the note and mortgage deed that will be utilized for the loans;
- (8) a detailed description of how the plan will function; and
- (9) other information the commissioner may require.³

The Commissioner may promulgate regulations necessary to carry out section 7 of chapter 167, however, the Commissioner has not promulgated regulations on the process of reverse mortgage program approvals.⁴ Instead, the Commissioner has posted informal guidance on its website on the manner in

² Mass. Gen. Laws Ann. ch. 167E, § 7(a). Mass. Gen. Laws Ann. ch. 171, §65C provides the same authorization and requirement for credit unions, and Mass. Gen. Laws Ann. ch. 183, § 67 provides that no mortgagee shall make a reverse mortgage loan on residential property except in accordance with sections 7 and 7A of chapter 167E.

³ Mass. Gen. Laws Ann. ch. 167E, § 7(d).

⁴ Division regulations merely refer back to the statute, without specifying procedures for approval in such regulations. See 209 C.M.R. § 55.05(1).

which lenders should go about having reverse mortgage programs approved.⁵ Neither these guidelines nor the approval process are contained in regulations. The Division updated this guidance informally to add that mortgagees must submit amended loan documentation to the Division, along with any updated policies and procedures, via compact disk (CD) or flash drive.⁶

As you know, the prevalent reverse mortgage program on the market today is the FHA-insured home equity conversion (or HECM) loan. HUD published model documents and mortgagee letters providing requirements and guidelines for that program, including underwriting guidelines. Those guidelines and requirements are the same for all lenders offering HECM loans.

In our experience, the current process of individual lenders submitting documents is burdensome and creates inefficiencies at the Division level and in the operations of lenders. We respectfully request that the Division change this approval process to provide that, when a HECM program is approved for one lender, it is approved for all wishing to offer that same HECM loans. Unless and until HUD changes or introduces new HECM programs, if any, this process should include the three prevalent HECM programs today, and no more; namely, the fixed rate full draw HECM, the adjustable rate HECM, and the HECM for Purchase program.

The same process should apply for non-FHA-insured proprietary products and, the Division should establish a reasonable time line to review and approve any reverse mortgage program submitted (FHA-insured or not), not to exceed 60 days from a complete submission of the items outlined by the Division as necessary for its review.

As it stands today, neither Massachusetts banking statutes nor Division regulations outline or mandate reverse mortgage program approval processes. While Massachusetts banking statutes contain the substantive requirements regarding the provisions a reverse mortgage program must contain, the Division's reverse mortgage approval process are not regulations. In any event, we note that such streamlining the reverse mortgage program approval process would be in the spirit with Executive Order 562 notwithstanding that the Division's reverse mortgage approval process are not regulations.

We believe the above suggested changes would reduce administrative burdens in the spirit of Executive Order 562.

Definition of "Mortgagor"

Division regulations provide that no mortgagee shall make a reverse mortgage loan to a mortgagor unless the mortgagor affirmatively opts in writing for the reverse mortgage in accordance with the following requirements:

⁵ See <http://www.mass.gov/ocabr/banking-and-finance/banking-services/industry-guidance-on-reverse-mortgage-loans.html>

⁶ See <http://www.mass.gov/ocabr/banking-and-finance/loans-and-mortgages/education/reverse-mortgage-loans/industryletter09112013.html>

- (a) The mortgagee shall provide the mortgagor with a form of written notice “Opt in Form”, segregated from all other information, setting forth important information about reverse mortgage loans, to be completed by the mortgagor to affirmatively consent, or opt in, to the reverse mortgage loan transaction.
- (b) The mortgagee shall provide the Opt in Form to the mortgagor after the mortgagor has completed the required reverse mortgage counseling through a Counselor and a written certification of completion has been provided to the mortgagee.
- (c) The content of the Opt in Form shall strictly conform to the form as set forth in 209 C.M.R. § 55.06.
- (d) A mortgagor must sign the Opt in Form and return it to the mortgagee prior to the mortgagee’s issuance of a written commitment to make the reverse mortgage loan.⁷

“Mortgagor” for these purposes is defined as an applicant for a reverse mortgage who at the time of application: (1) has a gross income of less than 50 percent of **the area median income**, as periodically determined by the United States Department of Housing and Urban Development; and (2) possesses assets, excluding a primary residence, valued at less than \$120,000 (emphasis added).⁸

The Division should make clear that these requirements only apply to “mortgagors” and should provide tables or other guidance to industry to be used to determine the area median income so that the industry can consistently administer and comply with these reverse mortgage counseling and origination requirements. Such guidance could include establishing or stating that an area includes the whole of the Commonwealth, a county or even a metropolitan statistical area.

We also request that the Division provide more specificity and identify a list of assets that can and should be used by lenders in making the assessment of which consumers meet the definition of “mortgagor” under this regulation.

We believe the above suggested changes would provide clarity and reduce regulatory burdens in compliance with Executive Order 562.

Revise Reverse Mortgage Disclosures

Division regulations provide a mandated “Opt In” form. The use of that verbatim is required by lenders. However, this form has some inaccuracies and is misleading. For this reason, we believe the form should be revised.

The Opt In form provides, among other things that: “A reverse mortgage loan lets you use the equity you have built up in your home”; “I understand that a reverse mortgage is a loan that I or my beneficiaries will have to repay”; “I understand that there may be less expensive alternatives to a reverse mortgage, such as a home equity loan, that meet my needs”; “I understand that I should also ask my own attorney, estate planner, financial advisor, and/or trusted family members whether a reverse mortgage is right for me”; “I understand that I will continue to own my home and therefore will be required to pay real estate taxes and homeowners insurance premiums. If I do not pay these costs I will be in default of the terms of the

⁷ 209 C.M.R. § 55.06.

⁸ 209 C.M.R. § 55.02.

reverse mortgage loan. If this happens, the lender may require me to immediately pay back the entire amount of the loan, plus interest and fees”; “I understand that with a reverse mortgage I am required to maintain the property. If I do not properly maintain the property, I will be in default of the terms of the reverse mortgage loan. If this happens, the lender may require me to immediately pay back the entire amount of the loan, plus interest and fees.”

The above statements provide in multiple places that a borrower may have to “pay back the entire amount of the loan”. However, this is not entirely true in all cases. Massachusetts’ very own reverse mortgage statutes provide that, “For the purposes of section 7 of Chp. 167, the term “non-recourse reverse mortgage loan” means a reverse mortgage loan which limits the lender’s recovery solely to the value of the property at the time the loan becomes due and payable.”⁹ Thus, the lender’s recovery is limited solely to the value of the property, and a senior would not have to repay “the entire amount of the loan.”

This Opt In form should be revised and clarified to reduce the burden of requiring lenders to provide a misleading disclosure.


Division Support of Reverse Mortgage Counseling

As the reverse mortgage industry continues to work with the Governor’s office, the Massachusetts legislature and other Massachusetts agencies, NRMLA would appreciate any support the Division could provide to the industry in coordinating with these other Massachusetts governmental bodies in fashioning counseling rules that provide realistic access of this important tool to Massachusetts seniors while continuing to provide consumer protections.

Conclusion

NRMLA appreciates the opportunity to comment upon regulatory reform in the Commonwealth. We trust that the Division will take our comments into account in its further deliberations on regulatory reform, and will find our comments herein both helpful and informative. We look forward to your response and favorable action upon them.

Very truly yours,



Steve Irwin, Executive Vice President, NRMLA
140016th Street NW
Suite 420
Washington, DC 20036
sirwin@dworbell.com
202-939-1776

Cc: Peter Bell, President & CEO, NRMLA
James A. Brodsky, Weiner Brodsky Kider PC, Outside General Counsel, NRMLA
Jim Milano, Weiner Brodsky Kider PC

⁹ Mass. Gen. Laws Ann. ch. 167E, § 7(h).