

Date of Hearing: April 30, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

AB 2010 (Bonilla) – As Amended: April 23, 2012

SUBJECT: Reverse mortgages: counseling

SUMMARY: Prohibits a reverse mortgage lender from accepting a complete and final application for a reverse mortgage unless the applicant has completed in person counseling, or the counseling certification specifies that the applicant elected to receive counseling in a manner other than in-person.

EXISTING STATE LAW

- 1) Defines "reverse mortgage" as a non-recourse loan secured by real property that meets all of the following criteria:
  - a) The loan provides cash advances to a borrower based on the equity or value in a borrower's owner-occupied principal residence;
  - b) The loan requires no payment of principal or interest until the entire loan becomes due and payable; and,
  - c) The loan is made by a lender licensed or chartered pursuant to the laws of this state or the United States. (Civil Code, Section 1923)
- 2) Requires a reverse mortgage to comply with the following requirements (Civil Code, Section 1923.2):
  - a) Prepayment, without penalty, must be allowed at any time;
  - b) The reverse mortgage may become payable and due under certain circumstances;
  - c) The lender must prominently disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due;
  - d) A lender or any other person that participates in the origination of the mortgage shall not require the applicant to also purchase an annuity;
  - e) Prohibits the lender from participating in, or be associated with any other financial or insurance activity, unless the lender maintains procedural safeguards that ensure that the originator of the reverse mortgage has no involvement, or incentive to provide the borrower with any other financial or insurance product;
  - f) Prohibits the lender from referring the borrower to anyone for purchase of annuity or other financial product;

- g) The lender must provide a prospective borrower with a list of not fewer than 10 United States Department of Housing and Urban Development (HUD) certified counseling agencies; and,
  - h) Provides that the lender shall not accept a final and complete application for a reverse mortgage from the prospective applicant unless they first receive from the applicant certification that they have received counseling from a HUD certified counseling agency.
- 3) Provides penalties for "Financial Abuse" of an elder or dependent adult, which is defined as occurring when a person or entity does any of the following:
- a) Taking, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both;
  - b) Assisting in taking, obtaining or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both;
  - c) Taking, obtaining , or retaining, or assisting in taking, obtaining, or retaining real or personal property of an elder or dependent adult by undue influence; or,
  - d) Undue influence is defined as the use, by one in whom a confidence is reposed by another, of such confidence for the purpose of taking an unfair advantage of another's weakness of mind and it is deemed to have been taken, obtained, or retained for a wrongful use if, among other things, the person or entity knew or should have known that their conduct is likely to be harmful to the elder or dependent adult. (Welfare and Institutions Code Section 15610.30)

EXISTING FEDERAL LAW:

1. Establishes, within the HUD, the Home Equity Conversion Mortgage (HECM) program to provide federal insurance for reverse mortgages that meet HUD requirements. Make the HECM loan available to persons 62 years of age and older and provides that the loans, made against home equity, shall not come due until the borrower(s) dies, moves out of the home permanently, or sells the home. Provides, however, that the loan may become due earlier if the borrower(s) fails to pay property taxes or to maintain the home, as specified in the loan agreement. Provides that at the time the loan comes due, the property shall be sold to retire the loan amount with any residue returning to the estate or heirs of the borrower. Require any prospective heir to satisfy the lender's lien before taking title to the property (12 USC Section 1715z-20 et seq.; 12 CFR Section 226.33)
2. Requires that all applicants for an insured HECM loan receive adequate counseling from an independent third party that is not, either directly or indirectly, associated with or compensated by the lender, loan originator, or loan servicer, or by any party associated with the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product. Requires the lender, at the time of initial contact, to provide the borrower with a list of approved HUD counseling agencies (12 USC Section 1715z-20; 24 CFR 206.41)
3. Requires all HECM loan counselors to be approved by HUD and meet HUD standards, as specified. Counselors must discuss, generally, financial options other than a reverse mortgage,

the financial implications of reverse mortgages, including any tax consequences, or the effect of the loan on eligibility for government assistance programs (12 USC 1715z-20; 24 CFR Section 214.103)

4. Prohibits the lender or any person involved in the origination of the HECM from participating in, being associated with, or employing any party that participates in the sale of other financial or insurance products, unless the lender or originator maintains firewalls and other safeguards designed to ensure that individuals participating in the origination of the HECM loan shall have no involvement with, or incentive to provide the borrower with, any other financial or insurance product. Specifies that a prospective borrower shall never be required to purchase any other financial or insurance product as a condition of obtaining a reverse mortgage (12 USC 1715z-20).

FISCAL EFFECT: None

COMMENTS:

A reverse mortgage allows a borrower, age 62 or older, to convert equity in their home into cash and is not paid back until the borrower leaves the home. Amounts available under a reverse mortgage depend on amount of equity in the home, as well as, the age of the borrower. An older borrower would receive more cash proceeds than a younger borrower in the same circumstances, as loan proceeds reflect the remaining life expectancy of the borrower.

At least 95% of all reverse mortgages are insured by the Federal Housing Administration (FHA) under the HECM program, which is sponsored by HUD. This program began in 1990 but has undergone changes in the last few years related to types of loans, underwriting guidelines, and counseling requirements. Federal law requires that borrowers receive "independent counseling" from a HUD-approved counseling agency and prohibits a lender from making the purchase of an annuity a condition of obtaining the loan. The counseling requirement for HECM mortgages make them unique compared to private label reverse mortgages. Existing federal law also gives the borrower the right to rescind the mortgage agreement within 3 days after closing.

Non-HECM reverse mortgages only make up approximately 5% of the reverse mortgage market. Like regular residential mortgages, reverse mortgages are sold into the secondary market, and in the case of HECM mortgages they are insured by FHA. The secondary market for reverse mortgages has suffered from the same credit downgrades and risk associated with the forward mortgage market of the last 5 years. On March 8, 2012, Moody's announced the downgrade of \$5 billion in private label reverse mortgage securities. This means that market pressures have contributed to the reduction in non-HECM products.

HUD introduced new counseling protocols in August of 2010. These new standards update the guidance handbook for HECM counselors, require counselors to provide the National Council on Aging (NCOA) 28-page consumer booklet on reverse mortgages, and require counselors to use NCOA Financial Interview Tool (FIT). The revised counseling directives are contained in HUD Handbook #7610.1, 2010. In regards to telephone versus face to face counseling, the revised handbook on pages 30-31 provides:

HUD recommends potential reverse mortgage borrowers, particularly HECM borrowers, meet face-to-face with a counselor and lender to discuss their unique financial circumstances and decide what options are best for them. Face-to-face counseling enables

the counselor to assess whether the client understands the alternative features and reverse mortgage options and the financial implications of a reverse mortgage on his/her household.

HUD believes that face-to-face counseling is the preferred method of reverse mortgage counseling, however the handbook goes on to acknowledge that face-to-face counseling may not always be necessary or productive.

Reverse Mortgage Telephone Counseling. HUD recognizes that many seniors prefer telephone counseling to face-to-face counseling for a variety of reasons, including limited mobility and health conditions. HUD allows participating agencies to provide telephone reverse mortgage counseling only if the agency has indicated that it will provide this as a service option within its HUD approved housing counseling work plan.

In addition to the methods of counseling outlined in the revised handbook, it continues by providing a detailed list of issues and concerns that counselors must discuss with the potential reverse mortgage borrower, and other specific standards that must be met by HECM counselors. HUD contemplated a detailed and specific regime for counseling and acknowledges the importance of face-to-face counseling, yet they did not mandate it for every borrower. HUD identifies that "limited mobility and health conditions" may make in person counseling less than ideal for all borrowers.

Finally, whether the counseling is over the phone or in person, the borrower must undergo a financial analysis that helps the borrower consider the immediate financial needs and long-term challenges related to the reverse mortgage product.

At this time it is unclear that current counseling requirements are not adequate. This bill provides for face-to-face counseling unless the applicant chooses another method to receive counseling and that the counseling certification notes the borrower chose not to do face-to-face counseling. Currently an applicant must receive counseling, but the form of that counseling is the prerogative of the applicant. AB 2010 would continue to allow the applicant to have that choice. Does this bill simply restate current law and practice? Finally, with only 27 HECM counselors in the state, does a sufficient level of counseling infrastructure exist to support in-person counseling even if the applicant chooses it?

#### Related Legislation.

AB 329 (Feuer), Chapter 236, Statutes of 2009, enhanced previously existing counseling and cross-selling provisions and requires lenders to provide the borrower with a checklist prior to counseling that highlights the risks and alternatives to reverse mortgages.

SB 660 (Wolk), of 2009, imposed on any person or recommending a reverse mortgage a "duty of honesty, good faith, and fair dealing." The bill also set out "suitability standards" to determine if there had been a breach of fiduciary duty and provides a cause of action for breach. Failed passage in Assembly Banking & Finance.

SB 1609 (Simitan), Chapter 202, Stats. of 2006, amended counseling provisions of existing law to require the lender to provide a list of at least five lenders; prohibited a lender from making the purchase of an annuity a pre-condition of obtaining a reverse mortgage; and required that reverse

mortgage contract comply with existing state law requiring contracts to translated into a covered language if the contract was primarily negotiated in that language.

AB 456 (Ducheny), Chapter 797, Stats. of 1997, established the statutory scheme regulating reverse mortgages.

REGISTERED SUPPORT / OPPOSITION:

Support

Contra Costa County Advisory Council  
AARP  
California Advocates for Nursing Home Reform (CANHR)

Opposition

None on file.

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