



REVERSE MORTGAGE COUNSELING REQUIREMENTS

By: Michelle Kirby, Associate Analyst

REVERSE MORTGAGE COUNSELING

Federal regulations require the Department of Housing and Urban Development (HUD) to maintain a roster of reverse mortgage counselors who must meet prescribed qualifications and follow specific protocol.

The federal counseling requirements apply to HUD-insured reverse mortgages in all states. However, some states include specific counseling requirements in their statutes. Connecticut may wish to consider some of these.

ISSUE

Summarize federal and state reverse mortgage counseling requirements. Based on federal and state laws, what requirements may Connecticut consider?

SUMMARY

The U.S. Department of Housing and Urban Development (HUD) maintains a roster of qualified counselors to provide counseling to prospective mortgagors (borrowers or applicants) of HUD-insured reverse mortgages.

Federal regulations require counselors to meet specified qualification standards that include (1) passing a standardized exam administered by HUD and (2) receiving related continued education. Reverse Mortgage counselors also must follow uniform counseling protocol, such as (1) discussing with prospective mortgagors the financial implications of entering into a reverse mortgage and (2) certifying

that counseling occurred. Effective August 4, 2014, counselors must also discuss the implications of a mortgagor's marital status.

Connecticut is one of nine states that do not specify reverse mortgage counseling requirements in statutes. In the other 41 states, reverse mortgage statutes specify counseling requirements that address issues related to qualifications, compensation, borrowers' choice, time-frames, method, certification, waivers, and penalties. Connecticut may wish to consider some of these.

FEDERAL COUNSELING REQUIREMENTS

General Requirements

Federal regulation requires HUD to establish and maintain a list of reverse mortgage counselors (24 CFR § 206.300, et. seq.). The counselors must meet specified qualification standards and follow uniform counseling protocol. These laws apply to all HUD-insured reverse mortgages in all states.

Counselor Roster

Only counselors listed on the roster are approved to provide counseling to a homeowner applying for a HUD-insured reverse mortgage. Inclusion of a counselor on the roster means that a listed counselor is approved to provide reverse mortgage counseling by telephone or face-to-face (24 CFR § 206.302).

Counselor Qualifications and Conditions

Eligibility. A reverse mortgage counselor must apply to HUD for placement on the roster. HUD will approve an application if the applicant:

1. is employed by a HUD-approved housing counseling agency or an affiliate of a HUD-approved intermediary or state housing finance agency;
2. successfully passed a standardized reverse mortgage counseling exam administered by HUD, or a party selected by HUD, within the previous three years;
3. received training and education related to reverse mortgages within the prior two years;
4. has access to and is supported by technology that enables HUD to track the results of the counseling; and
5. is not listed as suspended, denied, or otherwise restricted on certain HUD-maintained lists (24 CFR § 206.304).

Removal. HUD may remove a reverse mortgage counselor from the roster for misrepresentation, fraudulent statements, unsatisfactory performance, or the promotion, representation, or recommendation of a specific lender.

Other causes for removal include failure to:

1. comply with the education, training, fair housing, and civil rights requirements;
2. respond within a reasonable time to HUD inquiries or requests for documentation;

3. comply with applicable statutes and regulations; or
4. maintain any required state or local registration, license, or certification (24 CFR § 206.306).

Continuing Education. A counselor listed on the roster must receive training, education, and technical assistance related to reverse mortgages at least once every two years. The counselor must (1) maintain evidence of the successful completion of this continuing education and (2) make the evidence available to HUD upon request (24 CFR § 206.308).

Counseling Protocol

At the time of the initial contact, the mortgagee (lender) must give the prospective mortgagor a list of the names, addresses, and telephone numbers of HUD-approved reverse mortgage counselors (24 CFR § 206.41).

General Requirements. Qualified counselors must discuss certain information with prospective mortgagors, including:

1. other options, other than a reverse mortgage, that are available to the homeowner, such as other housing, social service, health, and financial options;
2. other reverse mortgage options that are or may become available to the homeowner, such as deferred payment loans and property tax deferral;
3. the financial implications of entering into a reverse mortgage; and
4. disclosure that a reverse mortgage may have tax consequences, affect eligibility for assistance under federal and state programs, and have an impact on the estate and heirs of the homeowner (12 USC § 1715z-20(f)).

Implications of Marital Status. Effective August 4, 2014, reverse mortgage counselors must inform prospective mortgagors and non-borrowing spouses about the requirement that a non-borrowing spouse obtain ownership of the property or other legal right to remain in the house after the death of the last surviving mortgagor. Counselors must also discuss the implications of marital status in states that recognize common law marriage as they do for any spouse who is not also a mortgagor (HUD [Mortgagee Letter 2014-07](#)).

OLR Report [2014-R-0270](#) summarizes other recent changes to federal reverse mortgage regulations that relate to marital status.

Certification. The counselor must (1) give the mortgagor a certificate stating that he or she has received counseling and (2) make the certificate available to HUD upon request. The mortgagor must give the mortgagee a copy of the certificate as evidence that the required counseling occurred (24 C.F.R. §§ 206.41 & 206.308).

Waiver. Under federal law, a mortgagor may waive the counseling requirements when he or she is refinancing if (1) no more than five years have passed since the closing of the original reverse mortgage, (2) certain disclosures have been made by the mortgagee, and (3) the increase in the principal limit exceeds the cost of refinancing by an amount specified by HUD (12 USC § 1715z-20(k)).

COUNSELING REQUIREMENTS CONNECTICUT MAY CONSIDER

The federal reverse mortgage counseling requirements apply to HUD-insured reverse mortgages in all states. However, some states also include counseling requirements in their statutes.

Connecticut is one of nine states that do not specify reverse mortgage counseling requirements in statute. In the other 41 states, statutory provisions related to reverse mortgage counseling address various measures which Connecticut may consider, such as:

1. counselor qualifications and compensation;
2. borrowers' choice of counselors;
3. counseling time-frame, method, certification, and waiver; and
4. penalties for noncompliance.

Examples of such measures in other states are discussed below.

Counselor Qualifications

Most states specify that qualified reverse mortgage counselors are those listed on the HUD-maintained roster. Some states specify additional state agencies or independent third-parties that are also qualified counselors. Some state statutes expressly require that there be no affiliation between the counselor and lender.

Under Arizona law, a housing counseling agency that is an independent third-party is a qualified reverse mortgage counselor (ARIZ. REV. STAT. § 6-1702).

Delaware considers any independent housing counselor qualified, but requires the counselor to follow federal counseling protocols (DEL. CODE. tit. 5 § 2118).

In Massachusetts, a third-party counselor is qualified if approved by the Executive Office of Elder Affairs (MASS. GEN. LAWS. ch. 167E §§ 7(e) & 7A(b) and ch. 171 §§ 65C(f) & 65C1/2(b)).

Minnesota allows only HUD-approved counselors domiciled in Minnesota to provide reverse mortgage counseling (MINN. STAT. § 47.58).

North Carolina law establishes standards for counselor training and the banking commissioner maintains a state list of all persons who satisfy the counselor training requirements (N.C. GEN. STAT. § 53-269).

Under West Virginia law, the banking commissioner must refer consumers to independent counseling services (W. VA. CODE § 47-24-7).

Counselor Compensation

At least three states (Arizona, California, and Louisiana) statutorily address reverse mortgage counselors' compensation.

Under Arizona and California laws, a reverse mortgage counselor may not be compensated, directly or indirectly, by a party (1) involved in originating or servicing the reverse mortgage or (2) selling financial or insurance products such as annuities, investments, or long-term care insurance (Ariz. Rev. Stat. § 6-1702 and CAL. CIVIL CODE § 1923.2(j)).

Louisiana law prohibits a lender from paying a counseling service fee without first informing a prospective borrower, in writing, that there may be a conflict of interest (LA. REV. STAT. § 6:1102(A)(2)).

Borrower Choice

A few states specify a minimum number of reverse mortgage counselors that a lender must provide a prospective borrower for him or her to choose from, namely:

1. Arizona - at least five counseling agencies, including at least two that are authorized to provide counseling by telephone (Ariz. Rev. Stat. § 6-1703(A)(1),
2. Louisiana - at least five nonprofit counseling agencies (LA. REV. STAT. § 6:1102(A)(1)),
3. California - at least 10 HUD-approved counseling agencies (CAL. CIVIL CODE § 1923.2(j)),
4. Minnesota - at least three independent housing counseling agencies (MINN. STAT. § 47.58), and

5. Rhode Island – at least three independent authorized counseling agencies in the state (R.I. GEN. LAWS § 34-25.1-9(c)).

Timing and Method of Counseling

Many states expressly prohibit a lender from executing a reverse mortgage without first receiving certification that the applicant received the required counseling. A few states specify a required time frame for counseling and whether it should occur in-person or on the telephone.

Under Arizona law, reverse mortgage counseling must occur within six months before the final and complete application (Ariz. Rev. Stat. § 6-1703(A)(2)).

In California, before a lender may accept a final and complete reverse mortgage application, a prospective borrower must receive counseling in-person, unless the borrower certifies that he or she elected to receive counseling in a different manner (Cal. Civil Code § 1923.2(k)).

Under Rhode Island law, at least three business days before the closing of the loan, the lender must receive an original counseling certificate, signed and dated by both the borrower and counselor. The loan must close within 180 days after the prospective borrower signs the counseling certificate. The law requires in-person counseling unless the prospective borrower cannot or chooses not to travel to a counseling agency or cannot be visited at home. In such a case, telephone counseling is allowed but only by agencies authorized by the Department of Elderly Affairs to conduct telephone counseling (R.I. GEN. LAWS § 34-25.1-9).

Vermont law requires the lender, before accepting a reverse mortgage application, to obtain certification, from the counselor, that the borrower received in-person face-to-face counseling. If the borrower chooses not to travel to a counseling agency or cannot be visited at home, the law allows telephone counseling by agencies authorized by the Department of Banking, Insurance, Securities, and Health Care Administration (VT. STAT. tit. 8 § 10702).

Counseling Certification and Waiver

Most states expressly require a (1) written attestation by the reverse mortgage applicant that the lender provided information regarding the advisability and availability of independent information and counseling services or (2) certification by the counseling agency that the prospective borrower received the required counseling.

Hawaii and Vermont specify the information that must be included in the counseling certificate (e.g., the date counseling occurred and the borrower's and counselor's names, addresses, and signatures). Both states require the holder of the reverse mortgage to keep the certificate throughout the term of the reverse mortgage loan (HAWAII REV. STAT. § 506-10(a) and VT. STAT. tit. 8 § 10702).

We found two states (Colorado and New York) that allow a prospective borrower to waive counseling, in writing.

Colorado law prohibits a lender from making a reverse mortgage loan unless the applicant attests, in writing, that counseling was either received or waived (COLO. REV. STAT. § 11-38-111).

Under New York law, in order to waive counseling, a reverse mortgage applicant must sign an affidavit indicating that although aware of the importance and availability of counseling, he or she chooses not to utilize the available services (N.Y. REAL PROP. LAW §§ 280(g) & 280-a(j)).

Penalties and Enforcement

At least one state, Minnesota, imposes a \$1,000 civil penalty payable to the borrower if a lender fails to comply with the counseling requirements (MINN. STAT. § 47.58).

Massachusetts law specifies that a reverse mortgage executed without the borrower receiving the requisite counseling is unenforceable (MASS. GEN. LAWS. ch. 167E § 7A(c) and ch. 171 § 65C1/2(c)).

MK:tjo