(S. B. 1823)

(No. 164)

(Approved July 29, 2011)

AN ACT

To create the “Reverse Mortgage Consumer Protection Act”; to establish protections and guarantees in addition to those provided under the Federal Law for reverse mortgage consumers; to set forth the duties of the financial institutions offering this type of mortgages to consumers; to empower the Office of the Commissioner of Financial Institutions to oversee and enforce the provisions of this Act; to establish sanctions, fines, and penalties; and for other purposes.

STATEMENT OF MOTIVES

It is common knowledge that, in Puerto Rico, the population of natural persons over the age of 62 is growing; for such reason, this Legislative Assembly is called upon to take action to set forth a public policy that is attuned to both the social and financial realities of this population. Since most of these people have a fixed limited income to bear the high cost of living and satisfy their basic needs, it is necessary to provide them with financial alternatives, while protecting them from financial fraud and abuse.

Every day more seniors resort to reverse mortgage loans in order to generate income from what in most cases constitutes their most valuable asset: their homes. Consequently, the number of mortgage banks and financial institutions that have launched themselves out into the market to promote and offer this kind of product has increased.
Reverse mortgages offered through the Department of Housing and Urban Development (HUD) are also known as “home equity conversion mortgages” or HECMs. All mortgage loans that are offered in Puerto Rico are insured by the Federal Government. This kind of product has the following characteristics: it is costly; it requires the consumer to participate in an information session given by an independent counselor as part of the application process; and it is only available for persons of 62 years of age or older.

Sometimes, the HECMs interest rates are lower than those of traditional mortgage loans. However, the closing costs and monthly payments of reverse mortgage loans are higher for consumers. For instance, a 74-year-old woman who owns a home with an appraised value of $255,000, until the age of 86 (her average life expectancy) shall pay a total of $25,000, without interest, for a reverse mortgage loan on the property. For younger borrowers or whose home has a higher value, these costs would be substantially higher. Reverse mortgage loans origination fees are two to four times higher than those of traditional mortgage loans. In this sense, this financial product would be financially favorable for the consumer, insofar as there are no other less costly alternatives, and that the immediate material benefit of receiving cash for taking on a reverse mortgage is of a higher worth than the additional costs entailed by the product and the total cost of drawing up such lien on the property.

All of the above means that a reverse mortgage applicant shall be well informed and advised by an independent entity as to how this kind of mortgage loan works, its financial implications, and the availability of less costly alternatives. The Federal law so requires. However, the existing counseling services many times fail to make up for insufficiencies in financial knowledge of
the applicants regarding these products, which leads many elderly persons to assume these liabilities without having truly considered the alternatives or without fully understanding the consequences of taking on a loan of this kind.

Consumers of this kind of financial product must be given special consideration. Elderly persons, while they are as fully capable as people in other age groups and their years have endowed them with more experience, at times encounter that their capabilities may start to become affected as they enter more advanced stages within the aging process, which should be a factor to consider. Just as this demographic is more vulnerable to financial fraud and other abuse, it may also fall easier prey to undue influence or even to coercion from third parties, relatives or friends to take on a reverse mortgage without considering the extent of all possible consequences as to their estate. This situation worsens due to the advertising bombardment launched by the media—most particularly, radio and television—and sponsored by financial entities about this kind of product, so as to make it more attractive to elderly persons who have limited income and whose home is their only asset.

The United States Government Accountability Office (GAO) issued a report in 2009 on reverse mortgage consumer protection, entitled Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls over Counseling for Borrowers, GAO-09-606. This report emphasizes on the need to improve controls on the information and counseling made available to consumers applying for these products. Prior to this report, several jurisdictions throughout the United States, such as California, Minnesota, North Carolina, and Rhode Island, had already approved statewide legislation to address the concerns brought forth by the GAO and to provide reverse mortgage consumers with protections in addition to those set forth in Federal Law.
The GAO report also stresses the existence of potentially deceptive practices in the marketing of reverse mortgages. The following are among the most common:

— Claims purporting that the amount to be owed shall never be greater than the value of the property: This claim is potentially deceptive, since the borrower’s heirs would owe the full balance of the loan, even if such balance is greater than the value of the property, should they decide to keep the property upon expiration of the reverse mortgage term.

— Claims purporting that reverse mortgages are a Federal Government benefit and that they are not mortgage loans: Even though HECMs are insured by the Federal Government, they are loans that bind debtors and their heirs. The fact that there are no monthly installments does not mean that this kind of obligation is any less of a mortgage loan.

— Claims purporting that persons shall receive “lifetime” revenues: Even though the borrower may choose to receive monthly payments, payments may cease before the death of the borrower if any of the terms of this obligation are breached or if the debtor no longer resides in such property even under this option. Claiming that borrowers will receive payments until their demise is deceptive, because there are also cases in which the borrower’s life expectancy could exceed his/her line of credit under this loan, which would be depleted before the borrower dies.

— Claims purporting that persons are never at risk of losing their homes: This claim could be deceptive, since mortgage lenders could foreclose a reverse mortgage if the debtor fails to pay property taxes or insurance on the property known as “hazard insurance.” According to the study, HUD officials stated that this often happens when borrowers undertake this commitment without fully understanding the obligations that ensue.
— Claims unduly purporting affiliation to the Federal Government: In some cases, advertisements of reverse mortgage providers represent that they are affiliated to the Federal Government by because of their format or presentation or claim that they offer such product “under a Federal Government program.”

The use of reverse mortgages is a growing trend. And, even though there is no doubt that this financial instrument is greatly beneficial in terms of providing additional income for seniors over the age of 62, there are three aspects of these programs that require oversight, to wit: the quality of information and counseling received by consumers who apply for such loans, the possible unscrupulous influence or coercion from third parties over older seniors who are potential consumers of these financial products, and the contents of the promotional announcements used as part of the marketing efforts for this kind of instrument.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:**

**Section 1.—Title.—**

This Act shall be known as the “Reverse Mortgage Consumer Protection Act.”

**Section 2.—Definitions.—**

For purposes of this Act, the following terms shall have the meaning stated hereinbelow:

a) “Reverse Mortgage”.—A loan secured by the equity in a real property that serves as main residence, which does not require repayment of principal or interest until the borrower no longer uses such housing unit as his/her main residence or breaches any of the terms and conditions set forth in the contract.

b) “Lending Institution or Lender”.—Any bank or financial lending institution organized or operating under the laws of Puerto Rico, the United States or any state or territory of the United States or a foreign country, which offers and
originates reverse mortgage loans. It shall also include savings and credit unions that operate under the pertinent laws, and which offer and originate reverse mortgage loans.

c) “Applicant or Borrower”—Any natural person over the age of 62 who has an interest as an individual or as part of a community property over the property that secures the reverse mortgage loan.

d) “Counselor”—Any entity duly authorized by the U. S. Department of Housing and Urban Development (HUD) or any individual counselor duly accredited by HUD to provide information sessions as required for reverse mortgage applicants. Counselors shall be independent from financial institutions and be free from conflicts of interest.

Section 3.—Financial Institution; Duty to Act in Good Faith; Notice to Applicant; Materials Available in Spanish Language.—

Persons or entities that recommend, process or sell reverse mortgages for direct or indirect financial gain have the legal obligation toward applicants to be honest, act in good faith, and provide fair treatment, for which reason, they shall refrain from engaging in the following practices:

a) To give or to cause there to be given any false or deceptive representation or to omit information when processing a reverse mortgage.

b) To originate a reverse mortgage for a wrongful purpose. A person or entity shall be deemed to have engaged in the origination of reverse mortgages for a wrongful purpose if the business transaction was closed even when there was reason to believe that such transaction would be harmful to the applicant.
c) To carry out a reverse mortgage transaction or charge fees to a consumer when such person or entity was aware or should have been aware of the fact that such consumer did not have the legal capacity to conduct such business or when it was evident that such consumer did not have a clear understanding of the consequences of his/her decision to assume such obligation.

d) To carry out a reverse mortgage transaction when the person or entity was aware or should have been aware of the fact that such reverse mortgage would be a means to financially exploit an elderly person, pursuant to the definition provided in the Bill of Rights for Aged Persons, Act No. 121 of July 12, 1986, as amended.

e) To offer, recommend or provide a reverse mortgage product in violation of any of the provisions set forth in this Act.

Before processing any reverse mortgage loan application, the financial institution must give notice to the potential applicant to apprise him/her of the importance of being well informed before taking on a reverse mortgage loan. Such notice must be set in large type (at least 14 points) and stated in a wording equal or equivalent to the following text:

DEAR REVERSE MORTGAGE LOAN APPLICANT,

A MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION. AS WITH ANY MORTGAGE LOAN, IF YOU SHOULD DECIDE TO TAKE ON A REVERSE MORTGAGE, YOU SHALL SIGN LEGAL DOCUMENTS WHEREBY YOU SHALL ASSUME RESPONSIBILITIES WITH IMPLICATIONS ON YOUR FINANCES AND PROPERTY. THEREFORE, IT IS OF THE UTMOST IMPORTANCE THAT YOU UNDERSTAND THE TERMS OF THE REVERSE MORTGAGE AND ITS EFFECTS. BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE REQUIRED TO RECEIVE AN INFORMATION SESSION FROM
AN INDEPENDENT COUNSELOR CERTIFIED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. THE FINANCIAL INSTITUTION SHALL PROVIDE YOU WITH A LIST OF CERTIFIED COUNSELORS.

BE SURE TO EVALUATE ALL THE ALTERNATIVES AVAILABLE TO YOU IN ORDER TO ENSURE THAT A REVERSE MORTGAGE LOAN IS THE BEST OPTION TO ADEQUATELY MEET YOUR FINANCIAL NEEDS.

All informational material and documents on reverse mortgage loans shall be made available to applicants, both in the Spanish and the English languages. The choice of language for the documents to be handed to the borrower shall be his/her sole and exclusive prerogative, and the lending institution shall guarantee the availability of such documents, so that the borrower is able to make his/her choice.

Section 4.—Financial Institution; Must Refer to Counselor for Information Session.—

Before accepting a completed application for a reverse mortgage or charging any fees, the financial institution shall:

a) Refer the applicant to a counselor, for which it shall furnish a list of at least three (3) available counselors available to the borrower.

b) Hand the applicant a check list with the ten (10) topics that must be covered in the information session, listed below in Section 5.

c) Receive a certification from the applicant or his/her authorized representative attesting that he/she has attended an information session provided by a counselor. Such certification must state that all topics appearing in the check list were covered and shall be signed by the applicant and the counselor, and also state the date on which such information session was held, as well as the name, address,
and telephone number of the counselor and the applicant. The institution shall keep a true and exact copy accessible and in a format that can be reproduced during the term of the mortgage.

Section 5.—Information Session; Requirements.—

The following topics must be covered in the information session:

a) An evaluation of the loan’s advantages and disadvantages specific to the applicant.

b) An inventory of the finances, assets, liabilities, necessary expenses and income, and of all other options available to the applicant in terms of housing, social services, healthcare, and financial options.

c) Information about all other financial alternatives available to take advantage of the property’s value, such as selling or taking on a second mortgage or a personal loan.

d) An explanation of the implications of taking on a reverse mortgage, including loan-related expenses and costs.

e) Information about consequences in terms of taxes that the reverse mortgage could have, the way in which it could affect the borrower’s eligibility for assistance under Commonwealth and Federal Government programs, and the impact on the rights of heirs.

f) A special warning stating all the circumstances that could prompt mortgage foreclosure, such as abandonment of property by the borrower due to a medical condition or other unforeseen event or failure to comply with the duty to keep the property in good condition, among others.

g) An explanation of the process.

h) An opportunity for the applicant to ask questions and address any doubts.
i) A notice to the applicant stating that, after receiving a copy of the signed reverse mortgage contract and before the seven (7)-day cooling-off period set forth in Section 7 elapses, the applicant is entitled to obtain further information and analysis from the counselor.

j) A warning stating that under no circumstances may any third party, whether a relative or friend of the applicant, coerce such applicant to take on a reverse mortgage loan, and that any person acting thus is committing the crime of fraud.

k) Any other matter covered under the regulations of the United States Department of Housing and Urban Development or which may be included from time to time in any applicable Commonwealth or Federal laws or regulations.

Section 6.—Counselor; Qualifications.—

a) All counselors must be duly certified by the United States Department of Housing and Urban Development (HUD) after having passed the corresponding tests administered under the HUD-HECM National Counselors Network.

b) Financial institutions shall annually request HUD to provide them with an updated list of certified counselors so as to be able to have them available for the applicants.

Section 7.—Cooling-off Period; Right to Terminate.—

a) The applicant, upon having agreed in writing to the offer made by the financial institution in connection with a reverse mortgage loan, shall have a cooling-off period of seven (7) days, during which period he/she may not be forced to move forth the loan or be demanded to close the transaction. The financial institution shall furnish to the applicant a written notice to inform him/her of such cooling-off period, which notice must be attached to a separate document in legible type (at least 12 points). The applicant may not waiver the provisions of this Section.
A borrower shall have the right to terminate a reverse mortgage loan within a three (3)-day term as of the date of closing, as established in the Code of Federal Regulations, Rule Z, adopted under the Truth in Lending Act.

Section 8.—Financial Institution; Annual Information Required.—

a) When closing a reverse mortgage, the lender shall provide the borrower with the name of the lender’s employee or agent designated for the specific purpose of addressing any questions or doubts of the borrower in connection with the reverse mortgage. The lender shall update this information annually or whenever any change takes place regarding the employee or agent designated by the lender to address questions or doubts.

b) At the end of each calendar year and upon expiration of the loan’s term, the lender shall issue to the borrower, free of charge, an account statement, which shall be available in Spanish and English, on the mortgage’s activity corresponding to the preceding twelve (12) months or to the period elapsed since the last account statement was issued. The statement shall include the following:

1. The total outstanding balance at the beginning of the account statement period.

2. Fund disbursements made to the borrower.

3. The total amount of interest added to the loan’s outstanding balance.

4. The amount of property taxes, insurance premiums, and other fees paid by the lender.

5. Payments made to the lender.

6. The total outstanding balance of the mortgage as of the date of the statement.

7. The amount of the remainder available to the borrower in cases of reverse mortgages in which disbursements have been withheld to be paid in one or two lump sum amounts.
c) In the event that the financial institution which originated the loan sells such loan to another institution, it shall be the duty of the originating institution to ensure that the new institution is able to provide annual information and customer service resources to the borrower in the Spanish language.

**Section 9.—Potentially False or Deceptive Representations About Reverse Mortgages.—**

Persons or entities which recommend, process or sell reverse mortgage loans for direct or indirect financial gain, shall, during the process of informing the public about the product they offer, refrain from making the following false or deceptive representations:

a) That the debtor of a reverse mortgage loan shall never owe an amount greater than the property’s value.

b) That the reverse mortgage is a Federal Government benefit and not a mortgage loan.

c) That the borrower shall receive “lifetime” income.

d) That the borrower shall never be at risk of losing his/her home.

e) That the financial institution is somehow affiliated to the Federal Government or that it is offering the product “under a Federal Government program.”

f) That the borrower may avail him/herself of the reverse mortgage loan funds to procure goods or services whose acquisition is incompatible with the specific objective set forth in the Federal law as to the use of reverse mortgages to address financial hardship caused by the high cost of healthcare services, housing, and living.

g) Any other representation which implies a benefit or creates an expectation inconsistent with the cost, nature, and complexity of reverse mortgage loans.
Section 10.—Duties of the Office of the Commissioner of Financial Institutions.—

Without any prejudice to the immediate effectiveness of all the provisions of this Act, the Office of the Commissioner of Financial Institutions (OCIF, Spanish acronym) and the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico (COSSEC, Spanish acronym) are hereby empowered to establish any other regulations necessary for the implementation thereof, with the purpose of assuring that the implementation of the same is of utmost priority. Such Regulations shall include:

a) Rules on holding liable for noncompliance as provided in Section 11. 

b) Procedures to be followed to settle complaints for noncompliance with this Act, for which any remedies shall be granted pursuant to the provisions of Section 11.

Furthermore, the OCIF and the COSSEC shall be in charge of conducting a public education campaign addressed to the senior population about the aspects pertaining to reverse mortgages. The campaign shall have a duration of at least one (1) year, after which such campaign shall be launched as these agencies may deem pertinent.

Section 11.—Violations of the Law; Liability; Penalties; Fines.—

Any financial institution found to be in violation of this Act shall be exposed to:

a) Special and expeditious civil compensation action if in violation of its legal obligation of being honest, acting in good faith, and providing fair treatment to applicants for and borrowers of reverse mortgage loans. Sanctions may include:
a. Release from mortgage lien.

b. Release from interest.

c. Triple indemnification for damages.

b) Administrative fines of up to fifty thousand dollars ($50,000) and of up to the sum total of the reverse mortgage for which a complaint has been filed, in the case of recidivism.

c) Suspension of the license issued by the Commissioner of Financial Institutions or the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico.

d) Charges for committing fraud, as set forth in Article 210 of the Penal Code.

Section 12.—Choice of Law.—

This Act shall apply prospectively to all reverse mortgages executed in Puerto Rico.

Section 13.—Severability Clause.—

If any clause, paragraph, article, section, subsection or part of this Act were to be declared unconstitutional by a competent court, the ruling pronounced to such effect shall not affect, impair or invalidate its remaining provisions. The effect of such ruling shall be limited to the clause, paragraph, article, section, subsection or part thereof thus ruled to be unconstitutional.

Section 14.—Effectiveness.—

This Act shall take effect sixty (60) days after its approval.
CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 164 (S. B. 1823) of the 5th Session of the 16th Legislature of Puerto Rico:

AN ACT to create the “Reverse Mortgage Consumer Protection Act”; to establish protections and guarantees in addition to those provided under the Federal Law for reverse mortgage consumers; to set forth the duties of the financial institutions offering this type of mortgages to consumers; to empower the Office of the Commissioner of Financial Institutions to oversee and enforce the provisions of this Act; to establish sanctions, fines, and penalties; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 30th day of September, 2011.

María del Mar Ortiz Rivera, Esq.
Director