

BEFORE THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**In the Matter of
Request for Comment on Proposed Guidance Regarding Reverse Mortgage Products**

Docket No. FFIEC-2009-0001

**Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics,
and the Office of Policy Planning of the Federal Trade Commission**

February 16, 2010*

***These comments represent the views of the staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner. The Commission has, however, voted to authorize the staff to submit these comments.**

I. Introduction

Reverse mortgages have become an increasingly important credit product in the mortgage marketplace. The number of consumers taking out reverse mortgages—and FHA-insured Home Equity Conversion Mortgages (“HECMs”) in particular—has increased in recent years.¹ Reverse mortgages are typically only available to borrowers who are age 62 years or older, and they require a lien on what is often the consumer’s most valuable asset—the home. Although reverse mortgages have assisted many elderly consumers in drawing on the equity in their homes, their growing prevalence also has raised concerns that elderly consumers may not understand these complex products or may be deceived by marketing claims made about them.²

On December 16, 2009, the Federal Financial Institutions Examination Council (“FFIEC”) published a proposed guidance document (“Proposed Guidance”) on how the financial institutions its member agencies regulate should manage the compliance and reputation risks reverse mortgages present.³ Staff of the Federal Trade Commission’s Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning (“FTC staff”) appreciates the opportunity to share its views on the Proposed Guidance. In general, FTC staff supports the FFIEC’s efforts to prevent deception and assist consumers in making better-informed decisions relating to reverse mortgages. FTC staff specifically supports the FFIEC’s advice regarding the importance of not making deceptive claims about reverse mortgages and its concrete guidance as to the circumstances under which claims may be deceptive in violation of Section 5 of the FTC Act.

¹See Federal Reserve Board Divisions of Research & Statistics and Monetary Affairs Finance and Economics, “Reversing the Trend: The Recent Expansion of the Reverse Mortgage Market” (2009) (Discussion Series Paper), *available at* <http://www.federalreserve.gov/pubs/feds/2009/200942/200942pap.pdf>.

²See United States Government Accountability Office, “Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls over Counseling for Borrowers” at 48 (June 2009) (recommending that federal agencies, including the Commission, take steps “[t]o enhance consumer protection from potentially misleading marketing” concerning reverse mortgages), *available at* <http://www.gao.gov/new.items/d09606.pdf>.

³FFIEC, “Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks,” 74 Fed. Reg. 66,652 (Dec. 16, 2009).

II. FTC Reverse Mortgage Activities

As the primary federal agency that enforces consumer credit laws with respect to non-depository institutions,⁴ the FTC has wide-ranging responsibilities in the mortgage market. The Commission enforces Section 5 of the FTC Act, which broadly prohibits “unfair or deceptive acts or practices in or affecting commerce.”⁵ The agency also enforces numerous laws relating to financial practices, including the Truth in Lending Act (“TILA”).⁶ Although primarily a law enforcement agency, the FTC also fulfills its core consumer protecting mission by issuing rules,⁷ developing consumer and business education materials, and engaging in research and policy development.

The FTC has an active law enforcement program to assess and respond to problematic conduct in the reverse mortgage market. In addition to regularly monitoring complaints relating to reverse mortgages in its Consumer Sentinel database, in the fall of 2008 FTC staff organized the Federal-State Reverse Mortgage Law Enforcement Working Group. The purpose of the Working Group is to bring together federal and state law enforcement agencies to discuss issues and developments related to reverse mortgages.⁸ It is intended to enhance coordination and cooperation among enforcement officials to enable them to respond quickly and effectively to unlawful activity related to reverse mortgages. The Working Group has met and continues to meet on a regular basis.

⁴Banks, savings and loan institutions, and federal credit unions are exempt from the Commission’s jurisdiction under the FTC Act. 15 U.S.C. § 45(a)(2).

⁵15 U.S.C. § 45(a).

⁶15 U.S.C. §§ 1601-1666j. Other statutes enforced by the FTC that address consumer credit practices include the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639; the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x; the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f; and the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j.

⁷Under the Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 511, 123 Stat. 1734 (May 22, 2009), the Commission has the authority to promulgate rules that “relate to unfair or deceptive acts or practices regarding mortgage loans,” including reverse mortgage loans.

⁸Over one hundred participants from 40 states, the District of Columbia, and Puerto Rico have joined the Working Group, including representatives of state attorneys general, state bank regulators, the U.S. Department of Housing and Urban Development, the Federal Bureau of Investigation, and the U.S. Department of Justice.

In addition, to help educate consumers about the costs and benefits of reverse mortgages, the Commission recently published an updated consumer education brochure. Titled “Reverse Mortgages: Get the Facts Before Cashing in on Your Home’s Equity,” the brochure includes important information on what consumers should be aware of when considering a reverse mortgage and where to report possible deception.⁹ The FTC also developed a new pamphlet¹⁰ for reverse mortgage housing counselors on how to spot and report potentially deceptive claims or other unlawful conduct. The FTC distributed the pamphlet throughout the HUD network of housing counselors. FTC staff has also made presentations to reverse mortgage industry groups, including the National Reverse Mortgage Lenders Association, on deceptive advertising and related issues.

III. The Proposed Guidance

The Proposed Guidance identifies four primary concerns of the FFIEC’s member agencies regarding reverse mortgages, namely that: (1) consumers may enter into reverse mortgages without a full understanding of the loan’s consequences and may be misled by marketing materials; (2) counseling may not be provided or may not be adequate to remedy any misunderstandings; (3) appropriate steps may not be taken to determine and assure that borrowers will be able to pay property taxes and homeowners insurance; and (4) potential conflicts of interest and abusive practices may arise in connection with reverse mortgage transactions, including with the use of loan proceeds and the sale of ancillary products.¹¹ The FFIEC emphasizes that these concerns are “especially pronounced” with respect to proprietary reverse mortgage products, which are not subject to certain consumer protection provisions that are statutorily mandated under the HECM program.¹²

The Proposed Guidance discusses several practices that institutions offering reverse mortgages should implement to address these concerns. With respect to communications with consumers, the Proposed Guidance states that lenders should review advertising and marketing materials for deceptive claims. In analyzing claims, lenders should consider whether they are deceptive under Section 5 of the FTC Act. The types of claims that warrant close scrutiny include claims related to product features, loan terms, risks, and borrower obligations for property taxes, insurance, and maintenance.¹³ The Proposed Guidance provides examples of

⁹See FTC, “Reverse Mortgages: Get the Facts Before Cashing in on Your Home’s Equity,” *available at* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea13.shtm>.

¹⁰FTC, “Housing Counselors: How to Help People Avoid Reverse Mortgage Missteps,” *available at* <http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt158.shtm>.

¹¹74 Fed. Reg. at 66,657-58.

¹²*Id.*

¹³*Id.* at 66,659.

potentially deceptive advertising claims, including claims of “income for life,” “no payments ever,” and “no risk.”¹⁴ It also notes that FFIEC member agencies “will evaluate potentially misleading marketing materials and take appropriate action to address any marketing that violates the FTC Act prohibition on deception.”¹⁵

In addition to recommending that lenders carefully evaluate advertising and marketing materials to identify and eliminate deceptive claims, the Proposed Guidance presents other measures to help consumers make better-informed decisions about reverse mortgages. The Proposed Guidance advises lenders to consider the timing, content, and clarity of the information they present to consumers, and to provide clear and balanced product descriptions when a consumer is shopping for a loan.¹⁶ The Proposed Guidance also states that lenders should require consumers to obtain qualified, independent counseling before applying for a reverse mortgage loan. In particular, it states that the information provided to consumers during these counseling sessions should include, among other things, the financial implications of entering into a reverse mortgage and the availability of other financing options. The Proposed Guidance notes that counseling for proprietary products would be consistent with the HUD requirement for consumer counseling under the HECM program.¹⁷

The Proposed Guidance further encourages lenders to take a number of other steps related to reverse mortgages. It generally advises lenders offering proprietary products to follow the requirements of the HECM program. The Proposed Guidance also provides that lenders should take steps to ensure consumers can pay required taxes and insurance¹⁸ and to avoid any

¹⁴*Id.* at 66,658.

¹⁵*Id.* at 66,659. FTC staff does not take a position on whether the Commission would conclude that any particular act or practice discussed in the Proposed Guidance is an unfair or deceptive act or practice under Section 5 of the FTC Act. Such a determination would require an assessment of the facts and circumstances of each particular act or practice, including the applicable legal standard. *See* 15 U.S.C. §§ 45(a) and (n); FTC Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-84 (1984); Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), *appended to In re Int’l Harvester Co.*, 104 F.T.C. 949, 1070 (1984).

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.* at 66,658-59.

appearance of a conflict of interest.¹⁹ Finally, the Proposed Guidance includes advice for institutions on implementing effective policies, procedures, and internal controls and managing third-party risks.²⁰

IV. FTC Staff Views

FTC staff believes that the Proposed Guidance addresses important issues related to reverse mortgages and does so at a critical juncture. Reverse mortgage products have become more prevalent in recent years, and during an economic downturn even more elderly consumers may seek to use such products to obtain funds they sorely need. Although reverse mortgages may be useful for some consumers, it is important that consumers understand the costs and benefits of such products, which will result in a reduction in the equity in the most important asset many consumers have—their homes. FTC staff thus generally supports measures like those included in the Proposed Guidance that are intended to assist consumers in making better-informed decisions about reverse mortgages.

FTC staff specifically supports the FFIEC's efforts to advise lenders under the jurisdiction of its member agencies of the importance of not making deceptive claims for reverse mortgages and to provide them with concrete guidance as to the circumstances under which claims may be deceptive in violation of Section 5 of the FTC Act. FTC staff encourages reverse mortgage lenders and brokers under the FTC's jurisdiction to review and consider the Proposed Guidance's advice and examples relating to deceptive claims.

As noted above, the Proposed Guidance also states that lenders offering proprietary products should provide consumers with the disclosures and counseling required for HECM products. FTC staff supports the FFIEC's goal of providing consumers with information to assist them in making better-informed decisions about reverse mortgages. FTC staff's experience and research²¹ demonstrates the value of testing disclosures and other measures in certain circumstances to confirm that they are clear and useful and do not create unintended consequences.

¹⁹*Id.* at 66,659-70.

²⁰*Id.* at 66,660.

²¹See James M. Lacko and Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* (June 2007) (FTC Bureau of Economics Staff Report), available at <http://www.ftc.gov/os/2007/06/P025505mortgagedisclosurereport.pdf>. FTC staff is not aware of any research regarding the effectiveness of the specific measures proposed by the FFIEC in the context of HECM or proprietary products.

V. Conclusion

FTC staff supports the FFIEC's efforts to address consumer protection concerns raised by reverse mortgages. Specifically, FTC staff endorses the Proposed Guidance's direction to reverse mortgages lenders to avoid deceptive practices, and supports the FFIEC's efforts to advise lenders on how to accomplish this. FTC staff also notes the value of consumer testing to ensure that disclosures and other measures to provide consumers with information about reverse mortgages are effective.

Respectfully submitted,

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