The collections of information in part 16 are as follows:

Form for Registration. A national bank offering or selling its own securities to the public is required to make such offer or sale through the use of a prospectus that has been filed with the OCC as part of a registration statement.

Abbreviated Form for Registration. A national bank that is a subsidiary of a company that has securities registered under the Securities Exchange Act of 1934 (Exchange Act) may offer and sell securities (nonconvertible debt) only to accredited investors upon meeting conditions in 12 CFR 16.6 and by providing an abbreviated information statement in a form for registration.

Small Issues. A national bank may offer and sell securities publicly in a limited dollar amount by using an Offering Statement meeting the requirements of SEC's Regulation A (17 CFR 230.251 *et seq.*).

Regulation D. A national bank may offer or sell its own securities in a private placement to accredited or sophisticated investors in compliance with 12 CFR 16.7.

Form 144. A national bank must file Form 144, which contains information on resales of securities originally sold through the private placement exemption, only in certain circumstances.

These information collection requirements ensure bank compliance with applicable Federal law, promote bank safety and soundness, provide protections for banks, and further public policy interests.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 48.

Estimated Number of Responses: 48.

Estimated Annual Burden: 450 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–20236 Filed 8–16–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2010–0015]

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2010–24]

NATIONAL CREDIT UNION ADMINISTRATION

Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Final Guidance.

SUMMARY: The OCC, FRB, FDIC, OTS, and NCUA (the Agencies) are issuing this final guidance entitled, "Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks" (guidance). The Agencies developed this guidance, in conjunction with the State Liaison Committee of the Federal Financial Institutions Examination Council (FFIEC), to address compliance and reputation risks associated with reverse mortgages, which are complex loan products typically offered to elderly consumers. Institutions are expected to use the guidance in their efforts to ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending.

DATES: This final guidance is effective on October 18, 2010. Comments on the Paperwork Reduction Act burden estimates only may be submitted on or before September 16, 2010.

FOR FURTHER INFORMATION CONTACT: *OCC:* Karen Tucker, National Bank Examiner and Senior Compliance Specialist, or Jesse Butler, Bank Examiner and Compliance Specialist, Compliance Policy, (202) 874- 4428; Stephen Van Meter, Assistant Director, or Nancy Worth, Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

FRB: Kathleen Conley, Senior Supervisory Consumer Financial Services Analyst, (202) 452–2389; Brent Lattin, Senior Attorney, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Michael R. Evans, Fair Lending Specialist, Compliance Policy Section, Division of Supervision and Consumer Protection, (202) 898–6611; or Richard M. Schwartz, Counsel, (202) 898–7424, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DNC 20429.

OTS: David Adkins, Fair Lending Specialist, (202) 906–6716, or Richard Bennett, Senior Compliance Counsel, (202) 906–7409, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

NCUA: Robert C. Leonard, Program Officer, 703–518–6396, Office of Examination & Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background Information

Institutions under the Agencies' supervision currently provide two basic types of reverse mortgage products: lenders' own proprietary reverse mortgage products and reverse mortgages offered under the Home Equity Conversion Mortgage (HECM) program.[1] Both HECMs and proprietary products are subject to various laws governing mortgage lending including

[1] A HECM is a reverse mortgage product insured by the Federal Housing Administration (FHA), which is part of the U.S. Department of Housing and Urban Development (HUD), and subject to a range of federal consumer protection and other requirements. *See* 12 U.S.C. 1715z–20; 24 CFR Part 206.

the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), the Federal Trade Commission Act (FTC Act), and the fair lending laws. HECMs are also subject to an extensive regulatory regime established by HUD, including provisions for FHA insurance of HECM loans that protect both lenders and reverse mortgage borrowers.

Reverse mortgages enable eligible borrowers to remain in their homes while accessing their home equity in order to meet emergency needs, supplement their incomes, or, in some cases, purchase a new home—without subjecting borrowers to ongoing repayment obligations during the life of the loan. The use of reverse mortgages could expand significantly in coming years as the U.S. population ages and more homeowners become eligible for reverse mortgage products. If prudently underwritten and used appropriately, these products have the potential to become an increasingly important credit product for addressing certain credit needs of an aging population.

However, reverse mortgages can be highly complex loan products, and it is particularly important to provide adequate information and other consumer protections. Typically, elderly borrowers are securing a reverse mortgage with their primary asset—their home. Thus, borrowers may depend on the reverse mortgage proceeds for the cash flow needed to pay for health care and other living expenses.

For these reasons, it is critical that institutions and other entities subject to the Agencies' supervision (hereafter "institutions") manage the compliance and reputation risks associated with reverse mortgages. To assist institutions in their efforts to manage these risks, the Agencies published for comment Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks (proposed guidance), 74 FR 66652 (December 16, 2009). The proposed guidance discussed the general features of, certain legal provisions applicable to, and consumer protection concerns raised by reverse mortgage products. In addition, it focused on the need to provide adequate information to consumers about reverse mortgage products; to provide qualified independent counseling to consumers considering these products; and to avoid potential conflicts of interest. The proposed guidance also addressed related policies, procedures, and internal controls and third party risk management.

The Agencies received 18 comments on the proposed guidance. Comments were received from financial institutions (institutions); industry-related trade associations (industry groups); counselors, consumer and community organizations (consumer organizations); government officials; and members of the public.

II. Overview of Public Comments

The commenters were generally supportive of the proposed guidance. In general, institutions and industry groups sought additional clarity and flexibility in implementing the guidance, while consumer organizations and government commenters sought to adopt stronger standards, particularly with respect to policies designed to avoid conflicts of interest.

A majority of institutions and industry groups sought more clarity on the extent to which HUD rules (such as those relating to fees) should be applied to proprietary reverse mortgages. They also sought additional clarity or flexibility regarding particular recommendations in the proposed guidance, including with respect to the information that should be provided to reverse mortgage borrowers in promotional materials, the conduct of counseling by telephone, and the restrictions on cross-selling. Institution and industry group commenters generally sought clarification that implementation of the guidance would be consistent with forthcoming changes to the HECM counseling protocols and the FRB's Regulation Z, the regulation that implements TILA.

Consumer organizations and a government commenter generally supported the provision of balanced information about reverse mortgage alternatives, and avoidance of deceptive marketing by loan originators or brokers. Among the recommendations made by these commenters were to establish a suitability standard, engage in consumer testing of any new disclosures, strengthen the requirement for in-person counseling, and adopt stronger policies to avoid conflicts of interests. Several commenters made suggestions for additional topics that were not included in the proposed guidance; these related to data collection on the volume of reverse mortgages, anti-fraud provisions, test design for the HECM counseling roster, and other HECM program rules.

III. Revisions To Address Public Comments on the Guidance

The Agencies made a number of changes to the proposal to respond to commenters' concerns and to provide additional clarity. Significant comments on the specific provisions of the proposed guidance, the Agencies' responses, and changes to the guidance are discussed below.

Communications With Consumers

Commenters generally asked for a number of clarifications with respect to the proposed guidance on communications between institutions and potential reverse mortgage borrowers. Consumer organizations and a government commenter generally supported the provision of balanced information about reverse mortgages and alternatives, and avoidance of deceptive marketing by loan originators and brokers. One government commenter suggested consumer testing of new disclosures, if any, to improve communications.

Some consumer organization and government commenters urged a strong role for lenders in determining the suitability of the loan for the borrower. In particular, these commenters suggested that it should be the duty of any lender or broker to articulate and match the consumer's needs, objectives, and circumstances to the terms of the loan and to reveal any interest that the lender or broker has in arranging the loan.

This reverse mortgage guidance does not, and is not intended to, impose suitability obligations on lenders. The Agencies believe, however, that the provision of clear and balanced information and qualified independent counseling in accordance with the guidance will help to ensure that reverse mortgage borrowers do not enter into transactions that are not appropriate for their financial circumstances and needs.

With regard to the commenter's recommendations for consumer testing, as noted in the preamble to the proposed guidance, the Agencies are considering whether to issue illustrations of consumer information for reverse mortgages. The Agencies will consider the commenter's consumer testing recommendations in connection with these illustrations. Before adopting any illustrations, the Agencies will issue them for notice and comment.

Institution and industry group commenters generally sought clarification that implementation of the guidance would be consistent with changes to the HECM counseling protocols and the FRB's Regulation Z. One industry commenter asked that the Agencies clarify whether Regulation Z or FTC Act standards for proper disclosures would be applied to advertisements and promotional materials for reverse mortgages. These commenters also sought clarification of specific points regarding the list of the information items that should be provided to reverse mortgage borrowers in promotional materials.

As a general matter, the Agencies believe that the guidance is consistent with the HECM protocols and Regulation Z, as now in effect. The current HECM counseling protocols require that counselors provide to borrowers the same information that is listed in the proposed guidance. The Agencies are not aware of any proposed changes to the HECM requirement that counselors provide this information.

While the FRB is reviewing Regulation Z disclosures for reverse mortgages, this project is not final. In light of this review, the Agencies are not addressing technical requirements that may be addressed in Regulation Z, and do not anticipate that the general recommendations in the guidance will conflict with any specific disclosure requirements for reverse mortgages adopted by the FRB.

In response to a commenter's inquiry concerning whether Regulation Z standards would be applied to all marketing materials, the Agencies did not intend to incorporate—in stating that information should be provided clearly and conspicuously—Regulation Z's standard for "clear and conspicuous" disclosures. Rather, the Agencies sought to convey simply that important information should be presented in a clear and prominent manner. The final guidance has been clarified accordingly. Advertisements and other marketing materials, of course, will continue to be subject to any relevant requirements under Regulation Z, the FTC Act, and other applicable laws and regulations.

In regard to the more specific issues raised by commenters, the Agencies have clarified the guidance by acknowledging that institutions may not be able to provide all of the information recommended in this guidance when advertising reverse mortgages through certain forms of media, such as radio, television, or billboards. In these circumstances, however, institutions should provide clear and balanced information about the risks of these products.[2] The Agencies also clarified the meaning of "clear and balanced information" in the final guidance; in particular, information is balanced when it fairly presents risks and costs as well as potential benefits. The Agencies clarified in the final guidance when more comprehensive information should be provided, and that promotional materials should address how disbursements from the reverse mortgage may affect the borrower's ability to obtain public benefits. Information provided in promotional materials may cross-reference other materials, and may refer borrowers to tax or financial advisors.

Qualified Independent Counseling

Commenters supported the recommendation in the guidance that consumers seeking any reverse mortgage should consult a qualified independent counselor. Commenters disagreed on the extent to which the guidance should encourage in-person counseling (as opposed to telephonic counseling). They also disagreed on certain procedures related to counseling—for example, how to inform borrowers about counselors and whether lenders should contact counselors directly.

A majority of institutions and industry groups noted the disadvantages of requiring in-person counseling, including the shortage of qualified counselors and the logistical and other challenges that may make it difficult to bring the borrower(s) and their advisors to an in-person counseling session. One counseling agency also supported telephonic counseling, and noted that telephonic counseling may be more feasible, in particular, when a multilingual counselor is needed to provide counseling in the borrower's own language. Consumer group and government commenters, however, strongly supported in-person counseling, and advocated that it be used in all but rare cases. These commenters stated that in-person counseling sessions are longer, foster greater understanding, and give counselors a better opportunity to assess the borrower's needs and understanding of the transaction.

In order for institutions to best promote consumer comprehension and manage compliance risks, the Agencies intend that the guidance reflect and be consistent with HUD's stated preference for in-person counseling whenever possible, and have modified the guidance to clarify that intention.

Industry groups and financial institutions also requested greater clarification with respect to how institutions should refer borrowers to counselors and ensure that counselors have appropriate knowledge of proprietary products. Commenters also asked whether the Agencies expected institutions to ensure that counseling covered all of the topics noted in the guidance. Several commenters also referred to the fact that HUD is expected to release new protocols for HECM counseling and that these protocols would likely cover many of the topics discussed in the guidance.

The Agencies have modified the guidance to address some of these specific concerns. In particular the guidance now indicates that lenders may provide borrowers with a list of reverse mortgage counselors, consistent with HUD guidelines for HECM counseling, and may provide borrowers with a substantial array of materials—including information about proprietary products—before the borrower meets with a reverse mortgage counselor. The guidance also has been modified to clarify that institutions are not expected to supervise or monitor the activities of qualified independent counselors. The Agencies expect that counselors' activities would conform to new HUD protocols when they are released.

Avoidance of Potential Conflicts

Generally, consumer organizations and one regulatory agency supported the guidance's view that institutions should take all reasonably necessary steps to avoid any appearance of a conflict of interest, though some consumer organizations urged the adoption of stricter standards than proposed. Institution and industry groups sought additional clarifications to this portion of the proposed guidance.

The proposed guidance recommended that policies prohibit the reverse mortgage from being conditioned on the purchase of "any other financial or other product" from the lender ("anti-tying provision"). Consumer organizations urged stricter standards, including the adoption of further restrictions prohibiting yield spread premiums (YSPs) and limiting sales of other products by lenders or their affiliates. Industry commenters noted that this provision, as stated, was broader than applicable federal anti-tying rules, and would prohibit, for example, restricting the availability of reverse mortgages to consumers having a deposit relationship with the institution.

In response to these comments, the Agencies are clarifying the anti-tying and conflict avoidance provisions so that they more clearly address applicable federal rules, including the anti-tying rules contained in the Bank Holding Company Act Amendments of 1970 and the Home Owners' Loan Act; the rules relating to insurance sales adopted by the OCC, FRB, FDIC, and OTS; and the provisions applicable to HECMs. The Agencies provide, as an example, that an institution may risk violations, depending on the specific law that applies, if it requires consumers to obtain annuity products—

[2] These clarifications are consistent with other interagency guidance relating to nontraditional mortgages. Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609, 58617 n.19 (Oct. 4, 2006).

or any other product that is not a traditional banking product—in order to obtain a reverse mortgage or varies the price of the reverse mortgage based on a condition that the borrower purchase such other product from the institution or affiliate. The Agencies believe that this example will help prevent violations of rules, as applicable.

The guidance also clarifies the Agencies' expectation that institutions' policies and procedures will be designed to ensure that brokers with whom they do business as agents also will not condition or vary the price of the loan on the consumer's obtaining some additional product or service (other than a traditional banking product). The Agencies also have added a related recommendation that institutions' policies and procedures will be designed to ensure that neither lenders nor brokers require the borrower to obtain any insurance, annuity, or similar product (other than appropriate title, flood, or hazard insurance as permitted or required by applicable law). This recommendation reflects insurance sales restrictions currently applicable to HECMs.

The proposed guidance also contained recommendations to guard against inappropriate incentives for the origination of reverse mortgages or the sale of other products. Several commenters sought clarification on the extent to which they could offer or refer consumers to other products, particularly where those products are provided by third parties or are typically required in connection with mortgage settlements.

The Agencies believe that the clarifications described above help to address these commenters' concerns. The final guidance stresses that institutions must comply with relevant anti-tying rules, and, further, should consider other appropriate measures necessary to guard against improper incentives or potential conflicts of interest. The Agencies also removed an example included in the proposed guidance to address commenters' concerns that it exceeded the scope of the anti-tying rules by implying that the Agencies wished to ban the offering of any other products or any referral to providers of other products in connection with a reverse mortgage. In addition, the Agencies emphasized in the final guidance that policies relating to cross-selling—offering or referring consumers to other products—should be designed to ensure that the activities are clearly consistent with FTC Act standards.

Other Issues

Fees. An industry commenter requested clarification on what limitations the Agencies intended by recommending in the proposed guidance that institutions adopt relevant HECM requirements for proprietary mortgages, including requirements with respect to "affordable origination fees." The Agencies note that HECM origination fees are expressly limited by statute. In response to this comment, the Agencies have deleted the specific reference to affordable origination fees. The Agencies do not intend to set fee limits in this guidance. However, the Agencies expect institutions offering proprietary reverse mortgages to reasonably price such products, including with respect to origination fees, consistent with safe and sound banking practices, and with appropriate consideration of costs, risks, and returns. Consistent with safe and sound banking practices in setting interest rates, fees, and other charges, an institution should consider, among other factors, the costs incurred in originating the loan and the risks associated with the loan. While HECM origination fees are expressly limited by statute, the costs and risks of proprietary loans may be different from those of HECMs. For example, the lack of FHA insurance on proprietary loans will mean that the institution (and not HUD) bears the risk that the borrower lives longer than expected, that the interest rates are higher than expected, or that the collateral value does not increase as rapidly as projected. The Agencies also note that HECMs may carry substantial other costs—principally insurance premiums—that proprietary reverse mortgages may lack. In addition to considering safe and sound banking practices in setting fees, institutions should comply with any applicable law or regulation, and follow guidance governing fees.

Taxes and Insurance. Financial institutions and industry group commenters requested clarification regarding the Agencies' expressed concern about ensuring borrowers' ability to pay taxes and insurance. These commenters were concerned that this requirement would require them to set traditional credit underwriting standards for reverse mortgages and deny loans to consumers if these standards were not met. The Agencies are not imposing a credit underwriting standard in this guidance. There are a number of other ways that institutions can take appropriate steps to determine or ensure that a consumer has the ability to pay taxes and insurance. These include escrows, in compliance with applicable laws,[3] and set-aside arrangements.

Third Party Risk Management. One consumer organization commenter urged that loan originators should ensure that brokers do not advertise reverse mortgages as "government benefits." In this regard, the Agencies note that lender due diligence and monitoring activities should include a review of promotional materials used by third parties to ensure compliance with TILA, the FTC Act, and other laws, as applicable. The guidance has been modified to clarify this position.

Other. One consumer organization recommended that the Agencies collect data on reverse mortgages. Later in 2010, the Agencies will begin collecting data on reverse mortgages on the Call Report and Thrift Financial Report.[4] Several commenters requested that HUD change certain requirements relating to the HECM counseling roster or the origination or termination of HECMs. These matters relate to HUD's operation of the HECM program and it would not be appropriate for the Agencies to address these issues in the guidance.

IV. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. To implement this information collection contained in this guidance, the OCC, FDIC, OTS, and NCUA will seek OMB approval. The FRB has approved this information collection under its delegated authority from OMB.

On December 16, 2009,[5] the agencies sought comment on the burden estimates for this information collection. No comments were received regarding the burden estimates.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

[3] *See* 24 CFR 206.205(e)(1) and 24 CFR 3500.17.

[4] *See* 74 FR 68314 (Dec. 23, 2009) and 74 FR 68326 (Dec. 23, 2009).

[5] 74 FR 66652.

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on these questions should be directed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FRB: You may submit comments, identified by Docket No. OP–1362, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the FRB's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP–500 of the FRB's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Interested parties are invited to submit written comments. All comments should refer to the name of the collection, "Reverse Mortgage Products Guidance." Comments may be submitted by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/propose.html.*

• *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202) 898.3719, Counsel, Federal Deposit Insurance Corporation, PA1730–3000, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

OTS: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *NCUA Web Site: http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx.* Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks," in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail @ncua.gov.*

You should send a copy of your comments to the OMB Desk Officer for the agencies, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

Title of Information Collection: Reverse Mortgage Products.

OMB Control Numbers: New collection; to be assigned by OMB.

Abstract: The Agencies previously determined that certain provisions of the guidance contain information collections. However, a number of the guidance provisions are currently standard business practice for proprietary and HECM reverse mortgages and, therefore, under the "usual and customary" standard, PRA clearance is not warranted. There are also requirements currently covered under approved TILA-related information collections for proprietary and HECM reverse mortgages, and an approved HUD information collection for HECM reverse mortgages.

Proprietary reverse mortgage products, however, are not subject to the consumer protection provisions of the HECM program, so these guidance provisions would normally be submitted for approval under PRA. However, recent research has shown that, despite the significant growth in reverse mortgages since inception of the HECM program in 1989, currently the market for proprietary reverse mortgages has dissipated to the point that, industry-wide, there are fewer than 10 lenders offering such products.[6] This is likely due to the recent decline in

[6] *See* the FRB's Divisions of Research & Statistics and Monetary Affairs Finance and Economics Discussion Series paper "Reversing the Trend: The Recent Expansion of the Reverse Mortgage Market," *http://www.federalreserve.gov/pubs/feds/2009/200942/200942pap.pdf.*

housing values, resulting in decreased equity in homes.

Given the minimal number of lenders currently offering proprietary reverse mortgages, the agencies are not now seeking OMB approval for the consumer protection provisions in the guidance applicable to proprietary reverse mortgages. The agencies will, however, seek PRA approval once this sector of the market recovers.

Lastly, there are provisions in the guidance that apply to both proprietary and HECM reverse mortgages that do not meet the "usual and customary" standard, are not covered by already approved information collections and, therefore, require PRA clearance.

Proprietary Reverse Mortgages

Institutions offering proprietary reverse mortgages are encouraged under the guidance to follow or adopt relevant HECM requirements for mandatory counseling, disclosures, restrictions on cross-selling of ancillary products, and reliable appraisals.

Proprietary and HECM Reverse Mortgages

Institutions offering either HECMs or proprietary reverse mortgages are encouraged to develop clear and balanced product descriptions and make them available to consumers shopping for a mortgage. They should set forth a description of how disbursements can be received and include timely information to supplement the TILA and other disclosures. Promotional materials and product descriptions should include information about the costs, terms, features, and risks of reverse mortgage products.

Institutions should adopt policies and procedures that prohibit directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf. They should adopt clear written policies and establish internal controls specifying that neither the lender nor any broker will require the borrower to purchase any other product from the lender in order to obtain the mortgage. Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage. Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.

Institutions making, purchasing, or servicing reverse mortgages through a third party should conduct due diligence and establish criteria for third party relationships and compensation. They should set requirements for agreements and establish systems to monitor compliance with the agreement and applicable laws and regulations. They should also take corrective action if a third party fails to comply. Third party relationships should be structured in a way that does not conflict with RESPA.

Affected Public:

OCC: National banks, their subsidiaries, and federal branches or agencies of foreign banks.

FRB: Bank holding companies, state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

FDIC: Insured state nonmember banks.

OTS: Savings associations and savings and loan holding companies.

NCUA: Federally-insured credit unions.

Type of Review: Regular.

Estimated Burden:

OCC:

Number of respondents: 77.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 3,696 hours.

FRB:

Number of respondents: 18.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 864 hours.

FDIC:

Number of respondents: 48.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 2,304 hours.

OTS:

Number of respondents: 20.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 960.

NCUA:

Number of respondents: 85.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 4,080 hours.

The text of the final guidance follows:

V. Guidance

Reverse Mortgage Products:

Guidance for Managing Compliance and Reputation Risks

Introduction

The Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA) (the Agencies) are issuing this guidance to assist their regulated financial institutions [1] in managing risks presented by reverse mortgage products. Reverse mortgages are home-secured loans, typically offered to elderly consumers, which present consumer protection issues that raise compliance and reputation risks for the institutions offering them.

Expected increases in the elderly population of the United States and other factors suggest that the use of reverse mortgages could expand significantly in coming years as more homeowners become eligible for reverse mortgage products. These loan products enable eligible borrowers to access the equity in their homes in order to meet emergency needs, to supplement their incomes, or to purchase a new home.[2] Reverse mortgages can meet these objectives without subjecting borrowers to ongoing repayment obligations during the life of the loan, while enabling borrowers to remain in their homes. As a result, the Agencies believe that reverse mortgages, offered appropriately, could become an increasingly important mechanism for institutions to address credit needs of an aging population.

Nevertheless, reverse mortgages are complex loan products that present a wide range of complicated options to borrowers. Moreover, the need to provide adequate information about reverse mortgages and to ensure appropriate consumer protections is

[1] This guidance applies to all banks and their subsidiaries, bank holding companies (other than foreign banks) and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, credit unions, U.S. branches and agencies of foreign banks engaged in reverse mortgage transactions, and any other entity supervised by those adopting the guidance. The guidance refers to all of those covered as "institutions."

[2] The Federal Housing Administration (FHA) has a program that enables eligible borrowers to use the proceeds of a federally-insured reverse mortgage for the purchase of a new principal residence. *See* U.S. Department of Housing and Urban Development (HUD) Mortgagee Letter 2008–23 (October 20, 2008) and HUD Mortgagee Letter 2009–11 (March 27, 2009).

particularly high. This is because reverse mortgages are typically secured by the borrower's primary asset—his or her home. Consequently, a reverse mortgage may provide the only funds available to a consumer to pay for health care needs and other living expenses.[3]

For these and other reasons, reverse mortgages present substantial risks both to institutions and to consumers, and, as with any type of loan that is secured by a consumer's home, it is crucial that consumers understand the terms of the product and the nature of their obligations. While this guidance addresses consumer protection concerns that raise compliance and reputation risks, the Agencies recognize that reverse mortgage products may present other risks to lenders, too, such as credit, interest rate, and liquidity risks,[4] especially for proprietary reverse mortgage products lacking the insurance offered under the federal Home Equity Conversion Mortgage (HECM) program.[5]

As explained in further detail below, the complex nature of reverse mortgages presents the risk that consumers will not understand the costs, terms, and consequences of the products. Consumers also may be harmed by any conflicts of interest or abusive or fraudulent practices related to the sale of ancillary products or services. In contrast to HECM reverse mortgages, proprietary reverse mortgages also present the risk that lenders will be unable to meet their obligations to make payments due to consumers.[6]

As with other lending products, institutions should manage the compliance and reputation risks associated with reverse mortgages. This guidance is intended to assist institutions in their efforts to manage these risks. This guidance focuses on ways an institution may provide adequate information about reverse mortgage products and qualified independent counseling to consumers and on ways to avoid potential conflicts of interest. The guidance also addresses related policies, procedures, internal controls, and third party risk management for institutions.

This guidance may be particularly useful for institutions that offer proprietary reverse mortgage products that are not subject to the regulatory requirements applicable to reverse mortgages offered under the HECM program. Depending on how they are structured, proprietary reverse mortgage products may contain a higher degree of risk than HECMs. Therefore, to address these risks effectively, proprietary products may warrant careful scrutiny under the principles, considerations, and risks discussed in this guidance.

The Agencies expect institutions to use this guidance to ensure that risk management practices adequately address compliance and reputation risks associated with reverse mortgages. Failure to address the risks discussed in this guidance could significantly affect the overall effectiveness of an institution's compliance and risk management efforts with respect to reverse mortgages. The Agencies will review risk management processes in this area during examinations of regulated institutions and will request remedial actions if institutions do not adequately manage these risks.

Background

The reverse mortgage market currently consists of two basic types of reverse mortgage products: proprietary products offered by an individual institution and FHA-insured reverse mortgages offered under the HECM program. HECM reverse mortgages have accounted for approximately 90% of all reverse mortgages.[7]

Reverse mortgages generally are non-recourse, home-secured loans that provide one or more cash advances to borrowers and require no repayments until a future time. Both HECMs and proprietary reverse mortgages generally must be repaid only when the last surviving borrower dies, all borrowers permanently move to a new principal residence, or the loan is in default. For example, repayment would be required when the borrower sells the home or has not resided in the home for a year. A borrower may be in default on a reverse mortgage when the borrower fails to pay property taxes, fails to maintain hazard insurance, or lets the property fall into unreasonable disrepair. When a reverse mortgage becomes due, the home must be sold or the borrower (or surviving heirs) must repay the full amount of the loan (including accrued interest), even if the balance is greater than the property value. If the home is sold, the borrower or estate generally would not be liable to the lender for any amounts in excess of the value of the home.[8]

To obtain a reverse mortgage, the borrower must occupy the home as a principal residence and generally be at least 62 years of age. Reverse mortgages are typically structured as first lien mortgages, and generally require that any prior mortgage be paid off either before obtaining the reverse mortgage or with the funds from the reverse mortgage.[9]

The funds from a reverse mortgage may be disbursed in several different ways:

- A single lump sum[10] that distributes up to the full amount of the principal limit[11] in one payment;
- A credit line that permits the borrower to decide the timing and amount of the loan advances;
- A monthly cash advance, either for a fixed number of years selected by the borrower or for as long as the borrower lives in the home; or
- Any combination of the above selected by the borrower.

Generally, the size of the loan will be larger when the borrower is older, the home is more valuable, or interest rates are lower. Interest rates on a reverse mortgage may be fixed or variable.

Legal Considerations

Both HECMs and proprietary reverse mortgage products are subject to laws and regulations governing mortgage lending. The following are particularly

[3] In 2007, the typical reverse mortgage borrower was 73 years old, had a home valued at $261,500, and had financial assets of less than $33,000. AARP, *Reverse Mortgage: Niche Product or Mainstream Solution,* Dec. 2007 (available at *http://assets.aarp.org/rgcenter/consume/2007_22_revmortgage.pdf*).

[4] Institutions also should manage these other risks appropriately. In this regard, institutions are advised to conform their reverse mortgage lending activities to any applicable guidance from their respective supervisory agencies, and to consult with those agencies with respect to any such safety and soundness issues.

[5] A HECM is a reverse mortgage product insured by the FHA, part of HUD, and is subject to a range of consumer protection and other requirements. *See* 12 U.S.C. 1715z–20; 24 CFR 206. A lender making a HECM loan may assign it to HUD when the outstanding balance reaches 98% of the maximum claim amount. *See* 24 CFR 206.107(a)(1).

[6] Under the FHA insurance program for HECM loans, HUD will make payments to a consumer if a HECM lender fails to make a payment due to the consumer. *See* 24 CFR 206.117 and 206.121.

[7] AARP, *Reverse Mortgage: Niche Product or Mainstream Solution,* Dec. 2007, at 1 (available at *http://assets.aarp.org/rgcenter/consume/2007_22_revmortgage.pdf*).

[8] For a further explanation of the non-recourse features of a HECM, *see* HUD Mortgagee Letter 2008–38.

[9] HECMs must be first lien mortgages. 12 U.S.C. 1715z–20(b)(3). Only certain subordinate liens are permissible in connection with HECM loans. *See* HUD Mortgagee Letter 2009–49.

[10] While HECM payment plans do not include a separate "lump sum" option, HECMs provide an effective substitute for such an option through a line of credit that can be fully drawn at consummation.

[11] The principal limit is the maximum payment that can be made to the borrower. The principal limit depends on the age of the youngest borrower, the expected interest rate, and the "maximum claim amount." The maximum claim amount is either (1) the lower of the actual value or FHA loan limit (for HECMs) or (2) the loan-to-value ratio established by the lender (for proprietary mortgages). The maximum claim amount includes the principal limit (cash available to the borrower), accrued interest, and any set-asides for repairs or servicing fees required by the loan terms.

relevant to the issues addressed in this guidance:

- *Federal Trade Commission Act (FTC Act).* Section 5 of the FTC Act prohibits unfair or deceptive acts or practices.[12] The OCC, the FRB, the FDIC, and the OTS enforce this provision of the FTC Act and any applicable regulations under authority granted in the FTC Act and section 8 of the Federal Deposit Insurance Act. The NCUA enforces this provision of the FTC Act and any applicable regulations under authority granted in the FTC Act and sections 120 and 206 of the Federal Credit Union Act.[13] Practices may be found to be *deceptive* and thereby unlawful under section 5 of the FTC Act if: (1) There is a representation, omission, act, or practice that is likely to mislead the consumer; (2) the act or practice would be deceptive from the perspective of a reasonable consumer; and (3) the representation, omission, act, or practice is material.[14] A practice may be found to be unfair and thereby unlawful under section 5 of the FTC Act if (1) the practice causes or is likely to cause substantial consumer injury; (2) the injury is not outweighed by benefits to the consumer or to competition; and (3) the injury caused by the practice is one that consumers could not reasonably have avoided.[15]

- *Truth in Lending Act (TILA).* TILA and the FRB's implementing Regulation Z contain rules governing disclosures that institutions must provide for mortgages in advertisements, with an application, before loan consummation, and when interest rates change. Reverse mortgage borrowers must receive all disclosures that are required under TILA,[16] including notice of their right to rescind the loan, where applicable.[17]

Reverse mortgages may be structured as open-end credit or as closed-end credit within the meaning of Regulation Z. Disclosures required by TILA relating to open-end or closed-end mortgages must be provided, as appropriate.[18] For closed-end, variable rate loans, lenders must provide the variable rate program disclosures,[19] as well as required notices of interest rate adjustments.[20]

In addition, TILA requires that a loan cost disclosure form be provided to reverse mortgage borrowers.[21] The total annual loan cost shown on the form includes the upfront costs (*e.g.*, origination fee, third-party closing fee, and any upfront mortgage insurance premium), interest, and ongoing charges (*e.g.*, monthly service fee and any annual mortgage insurance premium).

- *Real Estate Settlement Procedures Act (RESPA).* RESPA and HUD's implementing Regulation X contain rules that, among other things, require disclosure of early estimated and final settlement costs and prohibit referral fees and other charges that are not for services actually performed. As a general matter, an institution may neither pay nor accept any fee or other thing of value in exchange for the referral of business related to a reverse mortgage transaction.

Institutions that offer reverse mortgage products must ensure that they do so in a manner that complies with the foregoing and all other applicable laws and regulations, including the following Federal laws:

- Equal Credit Opportunity Act;
- Fair Housing Act; and
- National Flood Insurance Act.

State laws, including laws regarding unfair or deceptive acts or practices, also may apply to reverse mortgage transactions. Currently, more than twenty states have laws or regulations governing various aspects of reverse mortgages. In addition, all state financial institution regulators have the authority to supervise the mortgage-related activities of entities subject to their respective jurisdictions, including activities related to reverse mortgages.[22]

HECM reverse mortgages also are subject to the consumer protections and other special provisions set forth in HUD regulations.[23] HECM consumer protections include information provided to consumers through qualified independent counselors. Before obtaining a HECM reverse mortgage, the borrower must receive counseling from a HUD-approved housing counseling agency.[24] The counseling agency is required to discuss with the borrower: (1) Alternatives to HECMs, (2) the financial implications of entering into a HECM (including tax consequences), (3) the effect on eligibility for assistance under Federal and State programs, and (4) the impact on the estate and heirs of the homeowner.[25] HUD encourages, but does not require, that HECM counseling be conducted in person.[26] HECMs also carry particular disclosure requirements under HUD rules, including a requirement that the lender provide copies of the mortgage, note, and loan agreement to the borrower at the time that the borrower's application is completed.

Recent statutory changes to the HECM program established additional consumer protections.[27] For example, Congress adopted consumer protections to guard against potential conflicts of interest, including: (1) Special requirements for HECM lenders that are associated with any other "financial or insurance activity," (2) a prohibition on lenders' conditioning the availability of the HECM on the purchase of other financial or insurance products (with limited exceptions), and (3) a requirement that the HECM borrower receive adequate counseling from an independent third party who is not compensated by or associated with a party connected to the transaction.

[12] Supervisory guidance to financial institutions has been issued concerning unfair or deceptive acts or practices. *See* OCC Advisory Letter 2002–3—*Guidance on Unfair or Deceptive Acts or Practices,* March 22, 2002; Joint FRB and FDIC Guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks, March 11, 2004; and OTS CEO Mem. # 347, "Unfair or Deceptive Acts or Practices: Examination Procedures," May 7, 2010. Federally insured credit unions are prohibited from using any advertising or promotional material that is inaccurate, misleading, or deceptive in any way concerning its products, services, or financial condition. 12 CFR 740.2. The OTS also has a regulation that prohibits savings associations from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered. 12 CFR 563.27. This regulation supplements its authority under the FTC Act.

[13] 12 U.S.C. 1766 and 1786.

[14] These principles are derived from the *Policy Statement on Deception,* issued by the Federal Trade Commission on October 14, 1983.

[15] 15 U.S.C. 45(n). *See also* the *Policy Statement on Unfairness,* issued by the Federal Trade Commission on December 17, 1980.

[16] *See* 12 CFR 226.33(b), 226.5b(d), 226.18, and 226.19

[17] 12 CFR 226.15 and 226.23. Requirements related to rescission rights and notices are not applicable, however, for home purchase transactions.

[18] *See* 12 CFR 226.33(b), 226.5b(d), 226.18, and 226.19.

[19] 12 CFR 226.19(b)(1).

[20] 12 CFR 226.20(c).

[21] *See* 15 U.S.C. 1648; 12 CFR 226.33(b)(2) and 226.33(c)(1) and related commentary in Supplement I to 12 CFR 226; and 12 CFR 226, Appendix K.

[22] Federal financial institution regulators also have the authority to supervise entities subject to their respective jurisdictions.

[23] HUD also provides model forms for HECMs. *See Home Equity Conversion Mortgage Handbook 4235.1* (available at *http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4235.1/index.cfm*).

[24] Counselors are required to pass an examination to be included on a HUD roster before they can provide counseling on HECMs. *See* 24 CFR 206.300 *et seq.*

[25] *See* 12 U.S.C. 1715z–20.

[26] Applicable state laws, however, may have other requirements pertaining to counseling for reverse mortgages, including requirements that counseling be conducted in person.

[27] Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, § 2122(a)(9) (July 30, 2008).

Compliance and Reputation Risks

While reverse mortgages may provide a valuable source of funds for some borrowers, they are complex home-secured loans offered to borrowers who typically have limited income and few assets other than the home securing the loan.[28] Thus, lenders must institute controls to protect consumers and to minimize the compliance and reputation risks for the institutions themselves. These concerns and risks are especially pronounced with respect to proprietary products that are not subject to the core consumer protection provisions of the HECM program.

The Agencies are concerned that:

(1) Consumers may enter into reverse mortgage loans without understanding the costs,[29] terms, risks, and other consequences of these products, or may be misled by marketing and advertisements promoting reverse mortgage products;

(2) Counseling may not be provided to borrowers or may not be adequate to remedy any misunderstandings;

(3) Appropriate steps may not be taken to determine and to assure that consumers will be able to pay required taxes and 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 investment and insurance products.

Consumer Information and Understanding—Litigation, consumer complaints, and testimony before Congress about reverse mortgage products have provided both anecdotal evidence of misrepresentations to consumers and clear indications that borrowers do not consistently understand the terms, features, and risks of their loans.[30]

For example, consumers are not always adequately informed that reverse mortgages are loans that must be repaid (and not merely ways to access home equity). In fact, some marketing material has prominently stated that the consumer is not incurring a mortgage, even though the fine print states otherwise. Consumer misunderstanding about these matters also may be the result of advertisements declaring that reverse mortgage borrowers have no risk of losing their homes or are guaranteed to retain ownership of their homes for life. These advertisements do not clearly indicate the circumstances in which the reverse mortgage becomes immediately due and payable or in which borrowers may lose their homes. For example, advertisements that are potentially misleading include "income for life," "you'll never owe more than the value of your home," "no payments ever," and "no risk." Consumer misunderstanding also may be the result of misrepresentations that reverse mortgages constitute "government benefits" or a "government program," with no explanation that the products are loans made by private entities and that the only government program for reverse mortgages is the federally-insured HECM program.[31]

In addition, consumers may not be provided sufficient information about alternatives to reverse mortgages that may be more appropriate for their circumstances. Such alternative products include home equity lines of credit, sale-leaseback financing (under which the consumer sells the home and then leases it from the purchaser), and deferred payment loans. Consumers may not be aware that the fees for both HECMs and proprietary reverse mortgages—particularly up-front costs—may be higher than those for other types of mortgages, such as home equity lines of credit, that can be used to access a consumer's home equity.[32] Borrowers also may not receive sufficient information about other potential alternatives to reverse mortgages that may meet their financial needs, including state property tax relief programs, other public benefits, and community service programs.

The complex structure of reverse mortgages may prevent a borrower from fully understanding the products. For example, the ability to access the loan proceeds in a variety of ways may provide flexibility for a borrower. However, some payment options may adversely affect a borrower's ability to qualify for needs-based public benefits, such as Supplemental Security Income.

In addition, reverse mortgages are not typically structured with a requirement to escrow for taxes and hazard insurance (or for the lender to pay these amounts and add them to the loan balance). If the borrower does not pay taxes and insurance, the reverse mortgage itself may become due, which could result in the borrower losing the home. Without adequate analysis of the borrower's ability to make these required payments through available assets or loan proceeds, or the establishment of a set-aside or an escrow, in compliance with applicable laws,[33] both the borrower and the lender can face substantial risks. To ensure consumer understanding, institutions offering reverse mortgages should clearly advise consumers about their obligation to make direct payments for taxes and insurance if there is no provision for an escrow or set aside to pay these obligations.

Existence and Effectiveness of Consumer Counseling—Another risk to the consumer is that consumer counseling may not be effective. Further, while counseling is considered an integral part of the reverse mortgage process and is mandatory for HECM transactions, it may not be required for proprietary products, depending on applicable state law. Even when provided, consumer counseling may not be fully effective in helping borrowers make informed decisions about reverse mortgage products. Counseling conducted over the telephone, in particular, may not be adequate in all cases, in part because it may be more difficult for counselors to assess a borrower's understanding of the product over the telephone. More generally, counseling may not always provide all the relevant information or answer all questions and concerns raised by homeowners. For example, at least one study has suggested that a significant proportion of HECM borrowers who received counseling did not understand the costs and other features of their loans.[34]

Conflicts of Interest and Abusive Practices—The potential for inappropriate sales tactics and other abusive practices in connection with reverse mortgages is greater where the lender or another party involved in the transaction has conflicts of interest, or

[28] *See* note 3, *supra.*

[29] If a HECM borrower finances his or her closing costs, the closing costs are included in the outstanding balance of the loan. Costs of a HECM loan include an origination fee, third-party closing costs, a monthly servicing fee, and mortgage insurance premiums determined by an FHA formula.

[30] *See* Testimony presented at Hearings of the U.S. Senate Special Committee on Aging conducted on December 12, 2007, available on the internet at *http://aging.senate.gov/hearing_detail.cfm?id=296507. See also* AARP report reference in note 7, above.

[31] Regulation Z prohibits misrepresentations about government endorsements in advertisements for closed-end credit secured by a dwelling. 12 CFR 226.24.

[32] For example, HECMs carry upfront origination and mortgage insurance fees that may total four percent of the loan amount (in addition to other closing costs and ongoing insurance and servicing fees). In HERA, Congress required the U.S. Government Accountability Office (GAO) to study ways of reducing borrower costs and insurance premiums. *See* GAO report entitled: "Reverse Mortgages: Policy Changes Have Had Mostly Positive Effects on Lenders and Borrowers, but These Changes and Market Developments have Increased HUD's Risk" (GAO–09–836).

[33] *See* 24 CFR 206.205(e)(1) and 24 CFR 3500.17.

[34] *See* AARP, *Reverse Mortgage: Niche Product or Mainstream Solution,* Dec. 2007, at 72, 98 (available at *http://assets.aarp.org/rgcenter/consume/2007_22_revmortgage.pdf*).

has an incentive to market other products and services. For example, when a consumer obtains funds through a reverse mortgage, the consumer could also be offered financial products, such as annuities, or non-financial products, such as home repair services. Such products and services may be inconsistent with consumers' needs, and, on occasion, have been known to be associated with fraud. The risk is especially strong where, for example: (1) The lender or its affiliate engages in cross-marketing of another financial product; (2) the other product is sold at the same time as the reverse mortgage product; (3) a significant portion of the proceeds of the reverse mortgage is used to purchase another product; or (4) in contrast to the reverse mortgage itself, the other product would not provide the consumer with funds to meet emergency needs or to pay ordinary living expenses.

Guidance

The consumer protection concerns discussed above raise compliance and reputation risks for institutions offering reverse mortgages. The Agencies have developed the guidance set forth below to assist institutions in managing these risks effectively. Institutions should manage the compliance and reputation risks raised by reverse mortgage lending through implementation of communication, disclosure, and counseling practices such as those discussed below and by taking actions to avoid potential conflicts of interest. The Agencies will assess whether institutions have taken adequate steps to address the risks discussed in this guidance.

Lenders offering proprietary products should be especially diligent regarding effective compliance risk management since proprietary reverse mortgages are not subject to the consumer protection requirements applicable to HECM reverse mortgages.[35] Institutions offering proprietary reverse mortgage products should follow or adopt as appropriate, relevant HECM requirements, as amended from time to time, in the general areas of mandatory counseling, disclosures, restrictions on cross-selling of other products, and reliable appraisals. In addition, the Agencies expect institutions offering proprietary reverse mortgages to reasonably price such products, including with respect to origination fees, consistent with safe and sound banking practices, and appropriate consideration of costs, risks, and returns. Taking these steps would help to ensure that institutions are addressing the full range of consumer protection concerns raised by reverse mortgages. Moreover, the Agencies expect institutions to take appropriate steps to determine or ensure that consumers will be able to pay required taxes and insurance.

Communications with Consumers—Many of the consumer protection concerns regarding reverse mortgages relate to the adequacy of information provided to consumers. Institutions offering reverse mortgage products should take steps to manage compliance and reputation risks by providing consumers with information designed to help them make informed decisions when selecting financial products, including reverse mortgages and the options for receiving loan advances from them.

To promote effective risk management, institutions should review advertisements and other marketing materials to ensure that important information is disclosed clearly and prominently. For example, institutions should review the prominence of marketing claims and any related clarifying statements to ensure that potential borrowers are not misled or deceived. Institutions also are responsible for ensuring that marketing materials do not provide misleading information about product features, loan terms, or product risks, or about the borrower's obligations with respect to taxes, insurance, and home maintenance. The Agencies will evaluate potentially misleading marketing materials and take appropriate action to address any marketing that violates the FTC Act prohibition on deception or any other applicable law.

Institutions also should be attentive to the timing, content, and clarity of all information presented to consumers, from the moment a consumer begins shopping for a loan to the time a loan is closed. For example, institutions should develop clear and balanced product descriptions and make them available when a consumer is shopping for a mortgage—such as when the consumer makes an inquiry to the institution about a reverse mortgage and receives information about reverse mortgages, or when marketing materials relating to reverse mortgage are provided by the institution to the consumer—not just upon the submission of an application or at consummation.[36] Information is balanced when it fairly presents the risks and costs as well as the potential benefits of the product. The provision of timely and descriptive information would serve as an important supplement to the disclosures required by specific laws and regulations. The Agencies will review any information provided to consumers and take appropriate action to address any marketing that violates the FTC Act prohibition on deception or any other applicable law.

Accordingly, in order to assist consumers in their product selection decisions, an institution should use promotional materials and other product descriptions that provide information about the costs, terms, features, and risks of reverse mortgage products. This information would normally include but need not be limited to:

- Borrower and property eligibility;
- When marketing proprietary products, the fact that these reverse mortgages are not government insured and the resulting risks to consumers;
- Determination of principal limits, or maximum loan limits, based on home value, borrower age, expected interest rates, and program limitations;
- Lump sum and other disbursement options and their possible implications for the borrower's ability to obtain public benefits;
- The circumstances under which the loan must be repaid;
- The actions the borrower must take to prevent the loan from becoming in default and therefore due and payable, including the need to continue to pay taxes and insurance on the property and to maintain the property as required;
- Fees and charges associated with reverse mortgages;
- The requirement to make direct payments for real estate taxes and insurance if there is no provision for an escrow or a set-aside to pay these obligations;
- Alternatives to reverse mortgage products that are offered by the institution and may address the homeowner's needs; and
- The importance of reverse mortgage counseling and information about how to find a qualified independent counselor so that the borrower is

[35] HECM lenders must comply with requirements of the HECM program. This guidance is intended to supplement, and not conflict with, existing guidance and rules for HECM lenders. It is also intended to provide HECM lenders guidance on managing compliance and reputation risks.

[36] When developing consumer information, institutions should: (1) Focus on information that is important to consumer decision making; (2) highlight key information so it will be noticed; (3) employ a user-friendly and readily navigable format for presenting the information; and (4) use plain language, with concrete and realistic examples. A consumer may benefit from comparative tables describing key features of reverse mortgages (including the different draw options).

informed about possible alternatives to a reverse mortgage, the potential consequences of entering into a reverse mortgage, and the potential effect on eligibility for needs-based public benefits.

The Agencies recognize that institutions may not be able to incorporate all of the practices recommended in this guidance when advertising reverse mortgages through certain forms of media, such as radio, television, or billboards. Nevertheless, institutions should seek to provide clear and balanced information about the risks and costs as well as the benefits of these products in all forms of advertising. An advertisement that says "We offer reverse mortgages to borrowers who are 62 or older. Call us for more information" is clear and balanced because it does not make any representations about the benefits or risks of the product, and is not deceptive or misleading.

Qualified Independent Counseling—To further promote consumer understanding and manage compliance risks, reverse mortgage lenders offering proprietary products should require that the consumer obtain counseling from qualified independent counselors before an institution processes an application for a reverse mortgage loan or charges an application fee. Before counseling, institutions may provide information to consumers that both consumers and counselors may find useful in evaluating proprietary and HECM reverse mortgages. For example, the institution may explain the difference between proprietary and HECM products; discuss whether the borrower is eligible; provide information on fees; and provide a copy of a sample mortgage, note, and loan agreement. In addition, if an institution does not charge a fee to the consumer, it may use an automated valuation model to perform a preliminary assessment of the value of the consumer's property.

To ensure the independence of counselors, institutions should adopt policies that prohibit steering a consumer to any one particular counseling agency and that prohibit contacting a counselor on the consumer's behalf. For example, institutions could provide a list of counseling agencies that provide reverse mortgage counseling.[37] Similarly, an institution's policies should prohibit the institution from contacting a counselor to discuss a particular consumer, a particular transaction, or the timing or content of a counseling session unless the consumer is involved. Institutions should also strongly encourage borrowers to obtain counseling in person, whenever possible, and to attend counseling sessions with family members. Family members or other trusted individuals may be able to help explain the transaction and its consequences to the consumer.

Institutions should be aware that the purpose of the counseling session is to provide adequate time to discuss these matters in detail and to address questions and concerns raised by homeowners, and to inform the consumer about the following and other relevant matters:

- The availability of other housing, social service, health, and financial options;
- Financing options other than reverse mortgages, including other mortgage products, sale-leaseback financing, and deferred payment loans;
- The differences between HECM loans and proprietary reverse mortgages;[38]
- The financial implications and tax consequences of entering into a reverse mortgage;
- The impact of a reverse mortgage on eligibility for federal and state needs-based assistance programs, including Supplemental Security Income; and
- The impact of the reverse mortgage on the estate and heirs.

The Agencies note that the provision of such information would be consistent with HUD guidance regarding consumer counseling in connection with HECM loans.

Avoidance of Potential Conflicts—To manage the compliance and reputation risks associated with reverse mortgages, institutions should take all reasonably necessary steps to avoid any appearance of a conflict of interest and violation of applicable laws and rules. For example, an institution should:

- Adopt clear written policies and internal controls designed to ensure that the institution does not violate any applicable anti-tying restrictions.[39] For example, an institution risks violations if it: (1) Requires the borrower to purchase any annuity, insurance or any product other than a traditional banking product in order to obtain the reverse mortgage from the institution or an affiliate, or (2) varies the price of the reverse mortgage based on a condition that the borrower purchase such other product. Further, the Agencies expect that institutions will not do either of these things indirectly through brokers acting as agents;
- Adopt clear written policies and internal controls designed to ensure that the institution complies with restrictions designed to avoid conflicts of interest.[40] For example, an institution risks violations if it requires the borrower to purchase any annuity, insurance (other than appropriate title, flood or hazard insurance), or similar financial product from the institution or third party in order to obtain the reverse mortgage from the institution or broker;
- Adopt clear policies designed to ensure that loan originators and brokers acting on behalf of an institution do not have an inappropriate incentive to sell other products that may appear to be linked to the granting of a reverse mortgage or to engage in inappropriate cross-marketing of other products. Such policies should ensure that any such cross-selling is clearly consistent with the FTC Act standards; and
- Adopt clear compensation policies to guard against other inappropriate incentives for loan officers and third parties, such as mortgage brokers and correspondents, to make a loan.

In addition, conflicts are less likely to be a concern if the borrower has received information and access to independent counseling as described above.

Policies, Procedures, and Internal Controls—Institutions should have policies and procedures to address the concerns expressed in this guidance, including those involving conflicts of interest and the provision of consumer information. In addition, institutions

[37] HECM lenders must provide a list of 10 counselors for reverse mortgages. HUD Mortgagee Letter 2009–10.

[38] Because counselors may not be knowledgeable on all proprietary products, an institution may provide relevant information about its proprietary products to a consumer before the counseling session in order to facilitate the counseling session.

[39] The anti-tying provisions of Section 106(b) of the Bank Holding Company Act of 1970 for banks and their subsidiaries, as applicable, and comparable anti-tying provisions for savings associations, savings and loan holding companies, and their affiliates prohibit these institutions from, among other things, requiring a customer to purchase certain nonbanking products or services, including insurance and annuity products, from the institution or an affiliate as a condition to obtaining or varying the price of credit. Exceptions from these anti-tying prohibitions are permitted if the required products are loans, discounts, deposits, or trust services (*i.e.,* traditional banking products). *See* 12 U.S.C. 1464(q), 1467a(n), and 1972. 12 CFR 225.7. In addition, banks and savings associations that offer insurance and annuities are specifically prohibited from engaging in practices that would cause a consumer to believe that an extension of credit is conditioned on the purchase of insurance or an annuity from the creditor. *See* 12 U.S.C. 1831x and Consumer Protection in Sales of Insurance Rules, 12 CFR 14.30, 208.83, 343.30, and 536.30. The Agencies examine institutions for compliance with these legal requirements and will take appropriate action to address any violations. Tying arrangements also remain subject to the general antitrust laws.

[40] *See* 12 U.S.C. 1715z–20(n)–(o) for anti-tying provisions related to HECMs.

should have effective internal controls to monitor whether actual practices are consistent with their policies and operating procedures relating to reverse mortgages. To achieve these objectives, training should be designed so that relevant lending personnel are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner. Furthermore, institutions' independent monitoring should assess how well lending personnel are following internal policies and procedures and evaluate the nature and extent of policy exceptions. Findings should be reported to relevant management. In addition, institutions' legal and compliance reviews should include oversight of compensation programs to ensure that lending personnel are not improperly encouraged to direct consumers to particular products. Finally, institutions should also review consumer complaints to identify potential compliance and reputation risks.

Third Party Risk Management—When making, purchasing, or servicing reverse mortgages through a third party, such as a mortgage broker or correspondent, institutions should take steps to manage the compliance and reputation risks presented by such relationships. These steps would include: (1) Conducting due diligence and establishing criteria for entering into and maintaining relationships with such third parties; (2) establishing criteria for third-party compensation that are designed to avoid providing incentives for originations inconsistent with the institution's policies and procedures; (3) setting requirements for agreements with such third parties; (4) establishing internal procedures and systems to monitor ongoing compliance with applicable agreements, institution policies, and laws and regulations; and (5) implementing appropriate corrective actions in the event that the third party fails to comply with such agreements, policies, or laws and regulations. Due diligence and monitoring activities should include a review of promotional materials used by third parties to ensure compliance with the TILA, the FTC Act, and other laws, as applicable.

In addition, institutions should structure third party relationships so as not to contravene RESPA's general prohibition against paying or receiving any fee or other thing of value in exchange for the referral of business related to a reverse mortgage transaction. Fees must be paid only for the permissible services provided by the third party, consistent with the provisions of Section 8 of RESPA. Moreover, institutions should not accept fees from any third party without providing appropriate services to warrant any such fee.

Dated: July 26, 2010.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, August 3, 2010.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Federal Deposit Insurance Corporation.

Dated: July 21, 2010.

Valerie J. Best,

Assistant Executive Secretary.

Dated: August 11, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

Dated: July 27, 2010.

By the National Credit Union Administration.

Debbie Matz,

Chairman.

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