

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.

See Federal Reserve Board Divisions of Research & Statistics and Monetary

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.

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

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 Homeownership 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. §§ 1681-1681t; 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 (Mar. 23, 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 through 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 advising 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 maybe misled by marketing materials; (2) counseling may not be provided or may not be adequate to remedy any misunderstanding; (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

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/dt158.shtm>.

¹¹74 Fed. Reg at 66,657-58.

¹²*Id.*

¹³*Id.* at 66,659.

¹⁴*Id.* at 66,658.

Id. at 66,659. FTC staff does not take a position on whether the

V. Conclusion

FTC staff supports the HEC'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 t