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Office of Thrift Supervision
Department of the Treasury

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This rescission applies to the transmitting document only and not the attached interagency guidance. Refer to (OCC 2010-30) for the status of the attached interagency guidance.

August 16, 2010

MEMORANDUM FOR: **CHIEF EXECUTIVE OFFICERS**

FROM: Thomas A. Barnes, Deputy Director
Examinations, Supervision, and Consumer Protection

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SUBJECT: Reverse Mortgage Products: Guidance for Managing Compliance and Reputation

The OTS, in conjunction with the federal banking agencies and Federal Financial Institutions Examination Council has issued the attached guidance entitled, "Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks" (Guidance). The Guidance addresses reverse mortgages, complex loan products typically offered to elderly consumers. Institutions are expected to use the Guidance to manage the risks associated with reverse mortgages, including consumer protection concerns such as counseling requirements and conflicts of interest. The Guidance also addresses related policies, procedures, internal controls, and third party risk management.

I. Key Policy Issues Raised by the Reverse Mortgage Guidance

Reverse mortgages provide a valuable source of funds for some borrowers. However, they are complex home-secured loans offered to borrowers who typically have limited income and few assets other than the home securing the loan. Consequently, 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 Department of Housing and Urban Development's Home Equity Conversion Mortgage (HECM) program.

A. Consumer Information and Understanding

Borrowers do not consistently understand the terms, features, and risks of their loans. For example, consumers are not always adequately informed that reverse mortgages are loans that must be repaid. In addition, consumers may not be provided sufficient information about alternatives to reverse mortgages that may be more appropriate for their circumstances. Consumers may not be aware that the fees for both HECMs and proprietary reverse mortgages may be higher than those for other types of mortgages.

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To address these concerns, the Guidance explains that institutions should:

- Provide consumers with clear and balanced information about the relative benefits and risks of reverse mortgage products, at a time that will help them make informed decisions.

- Review advertisements and other marketing materials to ensure that important information is disclosed clearly and prominently.

- Ensure 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.

- Develop promotional materials and other product descriptions that provide information about the costs, terms, features, and risks of reverse mortgage products.

B. Existence and Effectiveness of Consumer Counseling

Another risk is that consumer counseling may not be effective. Also, while counseling is mandatory for HECM transactions, it may not be required for proprietary products. Counseling conducted over the telephone, in particular, may not be adequate in all cases.

To address these issues, the Guidance explains that institutions offering proprietary products should:

- Require that consumers obtain counseling from a qualified independent counselor.

- Adopt policies that prohibit steering a consumer to any one particular counseling agency and that prohibit contacting a counselor on the consumer's behalf.

- Strongly encourage the consumer to obtain counseling in person, whenever possible, and to attend counseling sessions with family members.

C. 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 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 Guidance explains that institutions should avoid any appearance of a conflict of interest by ensuring that:

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- Borrowers are not required to purchase any other financial or other product from the lender or broker in order to obtain the reverse mortgage.
- Originators do not have an inappropriate incentive to sell other products that may appear to be linked to the granting of a reverse mortgage.
- Compensation policies guard against other inappropriate incentives for loan officers and third parties, such as mortgage brokers and correspondents, to make a loan.

D. Third-Party Risk Management

When making, purchasing, or servicing reverse mortgages through a third party, such as a mortgage broker or correspondent, the Guidance emphasizes that institutions should take steps to manage the compliance and reputation risks presented by such relationships.

II. Legal Considerations

The Guidance discusses consumer protection laws and regulations applicable to both HECMs and proprietary reverse mortgage products. These include the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices, the Truth in Lending Act, and a number of others. HECM reverse mortgages also are subject to the consumer protections and other special provisions set forth in HUD regulations.

III. Conclusion

Institutions should use the Guidance to manage the risks associated with reverse mortgages. It becomes effective 60 days after the date of publication in the *Federal Register*.

For more information, please contact David Adkins at (202) 906-6716 or David.Adkins@ots.treas.gov.

Link to final rule: http://www.ffiec.gov/press/pr081610.htm