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Subject: Docket No. FFIEC-2009-0001, Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks

To Whom It May Concern:

I am writing on behalf of the Office of Consumer Affairs and Business Regulation of the Commonwealth of Massachusetts (OCABR). My office represents the interests of consumers in the Commonwealth and oversees the regulation of various industries to ensure fair business practices and to provide a level playing field for those doing business in the state. As an umbrella agency, OCABR works with several regulatory agencies, including the Massachusetts Division of Banks (Division) which has supervisory responsibility for state-chartered banks and credit unions, and non-bank licensees including mortgage lenders and mortgage brokers.

OCABR is pleased to have the opportunity to comment on the Federal Financial Institution Examination Council's (FFIEC) proposed issuance of supervisory guidance titled "Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks" (Guidance). When finalized, financial institutions will be 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.

OCABR concurs with the Guidance's expectation of significant anticipated growth in the reverse mortgage market. An aging baby boomer population, a past rise in home equity, compounded with distressed economic times have made reverse mortgage loans more appealing to many eligible borrowers. Additionally, as the conventional mortgage market began to falter, more institutions were eager to offer alternative products to consumers.

During the recent upheaval and credit squeeze in the mortgage market, one product received increased activity – reverse mortgages. That activity included renewed media advertisements narrated by well-known actors as well as an increase in the number of reverse mortgage lenders and brokers engaged in reverse mortgage activity in the Commonwealth of Massachusetts.

In response to this increased activity, OCABR and the Division, in conjunction with the Commonwealth's Office of Elder Affairs have published numerous educational materials on the subject including an informational website at www.mass.gov/reversemortgage. In addition, the Division has actively participated in both state and federal working groups examining reverse mortgage loans since 2008. Massachusetts state law contains enhanced consumer protection provisions pertaining to reverse mortgage loans including the existence of a seven day "cooling off" period; review and approval of counseling programs by the Office of Elder Affairs; and specific disclosure requirements.

The complex nature of this loan product and the fact that it is a loan exclusively marketed and available to a senior population serves to heighten the significance that potential borrowers fully understand the costs, terms, and risks associated with a reverse mortgage loan prior to entering into the transaction. It is equally important that banks, credit unions and lenders understand the complexities of the product and take appropriate steps to ensure borrowers are not misled in any way and fully understand the features of the loan product. OCABR concurs with the principal elements emphasized in the Guidance including the need to provide adequate information to borrowers about the product; to provide qualified independent counseling on a face to face in-person basis; and to avoid potential conflicts of interest and abusive practices. The following comments are focused on specific aspects of the Guidance and include suggestions of additional areas of concern which should be addressed by the Guidance.

One component set forth in the Guidance urges lenders to take steps to ensure that borrowers understand they have an obligation to pay taxes and insurance and, in addition, the lender should also take steps to make sure consumers will be able to pay the required taxes and insurance. OCABR concurs with this approach and acknowledges the importance of a lender's participation and responsibility in this area. In addition, OCABR supports the recommendation that consumers be provided clear and balanced information about the relative benefits and risks of reverse mortgage products, at a time that will help consumers' decision making process. The Guidance also suggests that institutions inform borrowers about reverse mortgage alternatives that they already offer. These provisions reflect the overriding concern that a reverse mortgage product may not be the most suitable product for every borrower's circumstances and that lenders play a significant role in measuring the suitability of a reverse mortgage loan for its senior borrowers.

OCABR is particularly concerned that lenders understand their obligations to manage the compliance and reputation risks associated with utilizing third parties to assist in making, advertising or servicing reverse mortgage loans. In Massachusetts, the Division of Banks has taken regulatory enforcement action against a mortgage broker and a third party marketer for the use of unfair and deceptive direct mail advertising of reverse mortgage loans including misleading references to a reverse mortgage loan as a "government benefit". Lenders must ensure that policies are in place and implemented to consistently review and monitor all Reverse promotional materials and product descriptions employed by third parties retained by the lender for activities or services related to reverse mortgage loans.

The avoidance of inappropriate or abusive sales tactics to promote the sale of other financial or insurance products in conjunction with the making of a reverse mortgage loan is of significant importance to OCABR. Concerns exist that consumers will be pressured or steered to purchasing inappropriate investment or insurance products with all or some of the proceeds of a reverse mortgage loan. OCABR strongly supports the Guidance provisions in this area including requiring the adoption of clear policies so that originators do not have an inappropriate incentive to sell other investment or insurance products that may appear to be linked to a reverse mortgage loan. To strengthen this provision, OCABR suggests institutions be encouraged to adopt a broad policy to prohibit reverse mortgage loan originators from participating in, or being associated with, the sale or marketing of any other financial or insurance product.

OCABR strongly supports a requirement that lenders develop policies which encourage borrowers to have face to face in-person counseling rather than a telephone-based counseling session. Borrowers should also be encouraged to take family members with them to the counseling session. In addition, lenders 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.

Based on industry observations and experiences in the Commonwealth, OCABR suggests FFIEC consider addressing the following areas of concern in its Guidance:

Fraud Detection and Prevention. Lenders should adopt procedures which aid in the detection and prevention of fraudulent activity in the origination of reverse mortgage loans. Procedures should identify red flags or warning signals potentially signifying the presence of a material misrepresentation in a transaction. For example, a transaction involving the use of a power of attorney should be scrutinized carefully. Another warning sign which may signify a fraudulent flipping scheme involves the presence of recent or multiple property transfers to senior borrowers. Lenders should exercise care to detect potential fraudulent activity before the loan transaction is consummated.

Title Transfers To Qualify for Loan. Lenders should implement policies and procedures to ensure that borrowers understand the potential consequences of transferring title to property to another person or from a couple to one spouse in order to qualify for a reverse mortgage loan. It is important that consumers receive appropriate legal and financial advice and be wary of third party or broker suggestions or pressure to transfer title. Lenders should ensure that borrowers seek appropriate professional guidance so that they understand the legal implications of a title transfer. In many instances, seniors have made property transfers for estate planning purposes and are being encouraged to transfer title to qualify them for a reverse mortgage loan.

Lender Abuse of Loan Acceleration Provision. Lenders should develop policies and procedures to ensure they do not accelerate the loan and require full repayment under paragraph 9(f) of the HECM first mortgage note in a manner which is abusive or unfair to borrowers. This acceleration provision requires that a borrower agree that should the security instrument be deemed not eligible for insurance for any of the reasons set forth in the National Housing Act within a period of 60 days to eight months from the date of the mortgage loan, the lender has the option to require immediate payment in full of all sums due under the mortgage note.

Lenders should note that the acceleration clause is optional and is not required to be used in a HECM FHA-insured reverse mortgage transaction. Lenders should consider adopting a policy to either remove or not utilize paragraph 9(f) in its reverse mortgage first mortgage documents.

OCABR has serious concerns that innocent borrowers in a reverse mortgage transaction would be put in a position of having to repay potentially large sums of money either through a forced sale of their property or may be forced into foreclosure should a lender exercise its options under this provision. This is particularly egregious if the cause of insurance ineligibility were to involve elements of wrongdoing, including fraudulent activities on the part of lenders, mortgage brokers, or any of their agents or representatives. This acceleration clause provides lenders with an unfair and unwarranted advantage over borrowers, who through no fault of their own, may be subject to a full prepayment requirement of their reverse mortgage loan. Circumstances are further complicated in the event a borrower were to elect to receive an initial large sum distribution of loan proceeds and shortly thereafter be subject to an immediate repayment requirement for which funds may not be readily available.

OCABR appreciates the opportunity to comment on the proposed FFIEC Guidance. Thank you for your consideration.

Sincerely,

Barbara Anthony