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Paul Sanford  
Executive Secretary  
Federal Financial Institutions Examination Council  
L. William Seidman Center  
Mailstop: D 8073a  
3501 Fairfax Drive  
Arlington, Virginia 22226-3550

Re: [FFIEC; Docket Number FFIEC-2009-0001]; Reverse Mortgage Products:  
Guidance for Managing Compliance and Reputation Risks

Dear Mr. Sanford:

We are pleased to provide this letter which responds to the request of the Federal Financial Institutions Examination Council ("FFIEC") for comments on its proposed Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks ("Proposed Guidance"). This comment letter describes the views of the National Reverse Mortgage Lenders Association ("NRMLA") and its Members.

Most of NRMLA's largest Members, and many other Members, are regulated by either the Office of the Comptroller of the Currency (OCC) or the Office of Thrift Supervision (OTS). Further, all other Members are subject to oversight by one of the following regulatory agencies: the Board of Governors of the Federal Reserve System (the "Board"); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); or state agencies that supervise financial institutions (represented by the State Liaison Committee (SLC) of the FFIEC). Herein, we refer to such regulatory agencies collectively as the "Agencies."

NRMLA is the principal nationwide trade association for financial services companies that originate, service, and invest in reverse mortgages. NRMLA was founded to enhance the professionalism of those engaged in reverse mortgage lending, and NRMLA is dedicated to ensuring quality and integrity in reverse mortgage lending. Over 90% of the reverse mortgages in the United States today are originated or purchased by NRMLA Members. And, as your Supplementary Information to the Proposed Guidance recognizes, a substantial majority of the reverse mortgages originated in the United States at this time are home equity conversion mortgage ("HECM") loans insured by the Federal Housing Administration ("FHA").

NRMLA supports efforts to enhance further consumer protection provisions for seniors, and NRMLA continually strives to augment prudent and best business practices of its Members. In that regard, we note that upon becoming a NRMLA Member, an institution agrees to follow the NRMLA Code of Ethics and Professional Responsibility (“Code of Ethics”). The Code of Ethics contains Values shared and Rules applicable to all NRMLA Members and is supplemented from time to time by Ethics Advisory Opinions on such matters including, but not limited to, Ethical Advertising and Ethical Offers of Other Financial and Insurance Products and Services.

NRMLA Members agree to follow the Code of Ethics and maintain responsibility for the actions or failures to act of their employees, agents and representatives. NRMLA also has an Ethics and Standards Committee with policies and procedures to receive, review and act upon matters brought before it by its Members or consumers. As a trade organization, however, NRMLA is limited by law regarding the actions it can take against Members, but does take action in some instances, including probation, suspension or debarment from association membership. NRMLA does not have authority over non-members. In any event, the Code of Ethics augments a robust set of laws and regulations which already apply to NRMLA Members and non-members alike. Further, we are aware that most NRMLA Members have adopted robust internal policies, controls and procedures, many of which encompass and address the items outlined in the Proposed Guidance.

*Observations on Statements Contained in the Preamble and Supplementary Information to the Proposed Guidance*

Initially, we would like to make some observations on statements contained in the Preamble and Supplementary Information to the Proposed Guidance (herein referred to as the “Preamble” or “Supplementary Information” respectively).

Use of Loan Proceeds

In Section I of the Supplementary Information, *Background Information*, it provides that:

“Reverse mortgages enable eligible borrowers to remain in their home 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.”

While generally an accurate statement, this statement also is somewhat limited in the sense that not all seniors utilize reverse mortgage “to meet emergency needs” or supplement their incomes. Some seniors may utilize a reverse mortgage to access funds to allow a grandchild to further their education, or for other family related or estate planning purposes.

While NRMLA does not comment on the advisability of the use of home equity funds in this or any other manner, we do wish to point out that the funds are the senior’s funds, and a senior may utilize such funds in any manner they see fit. Further, although NRMLA believes in the prudent and appropriate use of home equity funds by seniors, NRMLA believes seniors ultimately should retain the right to determine what is

an appropriate use of their funds, and NRMLA does not consider it the duty of a lender or the purview of the government to dictate to a senior how he or she may utilize his or her home equity funds after a reverse mortgage is made. Notwithstanding, as referenced above, we are aware that institutions that service reverse mortgage loans have robust security and privacy policies and procedures in place to monitor unusual or extraordinary draw requests in connection with the reverse mortgages that they service.

#### FFIEC's Development of Sample Illustrations

In the Supplemental Information, it states the FFIEC "on behalf of its members, is developing sample illustrations to assist institutions in providing consumers with information about the relative benefits and risks of reverse mortgages, as outlined in the proposed reverse mortgage guidance." While NRMLA supports complete, accurate, timely and transparent disclosures, we note that requirements already exist for numerous disclosures from various sources of law for reverse mortgage transactions (including Truth-in-Lending disclosures, RESPA related disclosures, and for the HECM program, disclosures required under FHA rules). Further, we understand that one of the FFIEC's members, the Board, is reviewing current reverse mortgage disclosure rules under Regulation Z. NRMLA requests the Agencies consider the robust disclosures already in place for reverse mortgages, that any illustrations the Agencies produce be consistent with such disclosures, and that the FFIEC not attempt to create disclosures that require calculation and disclosure of such items as the cost of credit, a requirement which already exists under Regulation Z.

In that regard, please find attached, as Exhibit A, a sample package of application and closing disclosures provided to seniors in connection with a typical HECM reverse mortgage transaction. In this area, we draw particular attention to the Comparison Worksheet that is provided by HECM reverse mortgage lenders and that, as we understand, was utilized by most proprietary reverse mortgage originators when such products were offered in the market several years ago.

#### Risk of Lender Default

With regard to the statement in the Preamble that there is a risk that lenders will be unable to meet their obligations to make payments due to consumers under proprietary reverse mortgage loans, we note that the Interagency Real Estate Lending Policies provide that there are a number of lending situations in which other factors significantly outweigh the need to apply certain supervisory limits, such as instances in which loans will be sold promptly after origination, without recourse, to a financially responsible third party. The Agencies should consider these scenarios, and other circumstances either utilized in the past or developments that could be arise in the future, that could address such risks. Such items may include structured finance arrangements with pre-funded accounts from which to make future advances requested by seniors whose loans are so pooled, or mortgage or other financial guaranty

insurance.<sup>1</sup> Further, as in other areas of safety and soundness assessment, an institution's overall financial standing may be a factor taken into account in assessing this risk.

### Prior Liens

The Preamble states that reverse mortgages require that any prior mortgage be paid off either before obtaining the reverse mortgage or with the funds from the reverse mortgage. We wish to point out that the Department of Housing and Urban Development ("HUD") has recently clarified in Mortgage Letter 2009-49, and subsequent FAQ's issued to supplement that Mortgage Letter, that with respect to FHA-insured HECM loans, an existing second lien, as evidenced by the title search and tri-merged credit report, can be satisfied on or at HECM loan closing. Alternatively, an existing second lien may also be subordinated to third lien position behind the HECM first and second liens.

### Escrow Accounts

In addition, the Preamble states that with respect to a senior's responsibility to pay taxes and insurance, in some instances the establishment of an escrow account possibly could reduce the risk of a senior's default with respect to such obligations. We wish to point out that escrow accounts, as opposed to "set asides," do not work well with reverse mortgages.

In our view, generally, escrow accounts must be funded. Such funding can come either through funds brought to the closing table by the borrower or as an addition to monthly principal and interest payments made by the borrower under the loan. With reverse mortgages, however, there are no monthly installment repayment obligations. So, an escrow account cannot be funded in this manner. The only other method to fund an escrow account with a reverse mortgage would be to take draws from available borrower funds (such as a line of credit) and place those amounts in an escrow account. However, by funding an escrow account this manner, a senior would incur interest expense on such drawn funds while the funds sat in the account prior to their disbursement for payment of taxes and insurance.

In appropriate circumstances, we think the better approach would be that the lender and senior agree to "set aside" and restrict a small portion or percentage of available loan proceeds or credit limit to be used only for the payment of "property

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<sup>1</sup> While we note that it is our understanding that, with respect to the proprietary reverse mortgages, private mortgage insurance or other financial guaranty arrangements are not prevalent or readily available at this time, efforts were underway several years ago to craft such arrangements, and such arrangements may arise in the future upon the return of the proprietary reverse mortgage market. To the extent such private mortgage insurance becomes available, we respectfully request that the Agencies take such insurance into consideration as a possible mitigating factor with respect to lender default risk.

charges” (i.e., real estate taxes and/or hazard insurance). In this manner, funds are available when needed, but not drawn prior to the due date of applicable property charges, thus obviating the senior incurring the extra interest expense of an escrow account pre-funded with loan advance draws. This is the manner in which Property Charge set aside accounts are specified under the applicable HECM regulations. *See* 24 C.F.R. § 206.205.

In this regard, we respectfully request that the Agencies make clear in the final guidance that institutions will not be required to establish escrow accounts, as opposed to set aside accounts, in connection with proprietary reverse mortgages.

### ***Proposed Guidance***

#### ***Seniors’ Ability to Pay Taxes and Insurance***

In the Preamble section entitled “*Compliance and Reputation Risks*,” it states that the Agencies are concerned that, among other things, “appropriate steps may not be taken to determine and to assure that consumers will be able to pay required taxes and insurance.” The Proposed Guidance also states that “the Agencies expect institutions to take appropriate steps to determine that consumers will be able to pay required taxes and insurance.”

With regard to assessment of the financial status of a senior, we note that the discussion in the Preamble suggests that institutions will be required to make a determination whether a senior has the financial wherewithal to proceed with a reverse mortgage transaction, at least with respect to the senior’s on-going ability to pay real estate taxes and hazard insurance. This discussion also is contained in the Proposed Guidance itself. As part of the final guidance, reverse mortgage industry participants would expect to see additional guidance with regard to whether credit underwriting must be undertaken in connection with the origination of reverse mortgages or whether some other methodologies should be adopted in determining a senior’s financial wherewithal to pay taxes and insurance, such as qualifying debt to income or asset ratios or a residual income analysis.

In this regard, if the Agencies require such an analysis and determination on a senior’s ability to repay taxes and insurance, we query the Agencies on whether they also expect an institution to deny a senior a reverse mortgage because, based on an institution’s analysis, it determines that such senior will not be able to afford future tax and insurance payments after the senior obtains a proprietary reverse mortgage loan.

We further note that in connection with the HECM program, we understand that the FHA is developing financial assessment guidance for counselors and possibly HECM reverse mortgage originators to utilize in assessing a senior’s wherewithal and capacity to pay for real estate property taxes and hazard insurance covering their home after such senior obtains a HECM reverse mortgage loan. When HUD issues such financial assessment guidance in connection with FHA-insured HECM loans, we respectfully request that the Agencies consider and review such guidance and, if it is found acceptable by the Agencies, that the Agencies update the reverse mortgage guidance to provide that institutions that follow the financial assessment protocols

provided by HUD (for HECM loans) at the time of the origination of a proprietary reverse mortgage, with regard to assessment of senior's ability to pay taxes and insurance after the consummation of a proprietary reverse mortgage loan transaction, are deemed to have adopted best and prudent proprietary reverse mortgage origination practices.

We also observe that if such standards for assessing a senior's ability to pay taxes and insurance are non-existent or are not clear, fair lending issues may arise due to inadequate or inconsistent application of such assessments. We respectfully request that the Agencies take these difficulties under consideration and be mindful of such complexities in their consultations and review of the member institutions in these areas.

### *Communications with Consumers*

With regard to advertising and marketing materials, the Proposed Guidance provides that institutions 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. Further, the Proposed Guidance states that an institution should use promotional materials and other product descriptions that provide information about the costs, terms, features and risks of reverse mortgage products.

NRMLA requests that the Agencies clarify the guidance to indicate the degree of detail such materials must contain, particularly with respect to the stage or timing that such disclosures are provided to consumers. For instance, one would expect that less detailed information would be required in a brochure about reverse mortgages that is provided as a "take away" piece in the lobby of a bank branch.

Further, the Proposed Guidance states that disclosures should be clear and conspicuous. The Agencies should clarify whether the clear and conspicuous standard is the same as that provided under the federal Truth-in-Lending Act and Regulation Z or whether some other clear and conspicuous standard will apply. Also, the guidance should indicate whether there needs to be different levels of "clear and conspicuous" standards for varying degrees of marketing materials. For instance, the guidance should specify that take-away brochures need not contain as much detail as the illustrations referenced in the Proposed Guidance. Further, the guidance should indicate which methods institutions are to apply to determine the point when a consumer is "shopping for a reverse mortgage," an event that triggers the requirement to provide a more detailed disclosure.

With regard to the provision of information about the costs, terms, features and risks of reverse mortgage products, and list of items contained thereafter in the Proposed Guidance, we note some items in the list, such as lump sum and other disbursement options, and fees and charges associated with reverse mortgages, may be "trigger terms" under the advertising rules under Regulation Z, thus necessitating further disclosures and explanations.

With the addition of supplementary disclosures, promotional material may become unwieldy and overburdened with too much detailed information, taking away

from the very effectiveness of communication that the guidance is attempting to promote. This is particularly true in light of recent rulemaking and guidance by some federal regulators that additional trigger terms or explanations in marketing materials be placed in close proximity to the information described or referenced. Discouraging the use of cross references, footnotes or tag lines, while simultaneously imposing requirements that will add more disclosures, increases the challenge to institutions to create effective and informative marketing materials.

In this regard, we note that some industry members have found that the regulatory guidance that marketing materials be clear and easy to understand conflicts with rules and guidance regarding placement, prominence, proximity and the addition of trigger term disclosures.

We respectfully request that the final guidance take these challenges into account and that the Agencies be cognizant of such difficulties in their consultations and review of their member institutions in these areas.

Further, specifically, the Proposed Guidance states that marketing material information should include “possible implications” of lump sum disbursements. NRMLA request that the Agencies give specific examples of such implications.

The Proposed Guidance states that the Agencies expect institutions offering proprietary reverse mortgage products to follow or to adopt as appropriate relevant HECM requirements in the general areas of affordable origination fees. In this area, it would be helpful for institutions to have additional information on whether the guidance is merely addressing additional disclosure of fees or addressing a limit on fees. If the guidance is addressing a limit on fees, institutions will find it useful for the Agencies either to provide indications of specific allowable fees or to indicate whether the Agencies view the type and manner of origination fee assessed with the FHA-insured HECM program as appropriate with proprietary reverse mortgage products.

### ***Qualified Independent Counseling***

With regard to the quality of counseling, we note that in connection with the HECM program, the FHA is updating the required counseling protocols for counselors to follow in connection with counseling prospective HECM reverse mortgage borrowers.

When HUD issues such revised counseling protocols in connection with FHA-insured HECM loans, we respectfully request that the Agencies consider and review such protocols and, if they are found acceptable to the Agencies, that the Agencies update the reverse mortgage guidance to provide that the use of HUD HECM protocols for counselors provided by HUD (for HECM loans) is deemed as best and prudent practices in connection with the counseling of proprietary reverse mortgages.

In the Preamble, it states that HUD encourages, but does not require, that HECM counseling be conducted in person. It further provides that some state laws may have other requirements pertaining to counseling for reverse mortgages, including requirements that counseling be conducted in person. It is not clear to us the extent to which such state laws apply to federally chartered depository institutions. Further, we

wish to point out that, while we agree that in some instances face-to-face counseling can be more effective, requiring every senior to undergo face-to-face counseling can be a hardship on the senior, especially when the senior is limited in mobility or a state has failed to approve an adequate number of reverse mortgage counseling agencies, thus requiring seniors to travel great distances in order to undergo face-to-face counseling.

Moreover, significant funding mechanism challenges exist with regard to the provision of counseling services for non-HECM loans as a result of a lack of federal funding for such services. Without sufficient funding resources, counseling agencies are less able to provide an adequate amount of counselors and locations, again requiring seniors to travel great distances in order to undergo face-to-face counseling. We feel face-to-face counseling should be encouraged, but not required, especially when such face-to-face counseling is not readily available.

The Proposed Guidance further states that “qualified independent counselors should provide adequate time to discuss these matters in detail and to address questions and concerns raised by homeowners, and should be able to inform the consumer about the following and other relevant matters.” It is unclear to us whether the Agencies will attempt to assert supervisory authority over counseling agencies or whether the expectation is that institutions will do so. If the latter, we wish to point out that if institutions were to attempt to exercise such control over counseling agencies that would militate against the counselor’s independence standard. We respectfully request clarification in this regard.

Further, to the extent that counselors must counsel seniors on proprietary reverse mortgage programs, it will be necessary for institutions to inform and educate such counselors on the reverse mortgage programs such institution offers and attempt to ensure that seniors reach those counselors familiar with such institution’s proprietary programs and product offerings. We respectfully request further guidance from the Agencies that an institution may discuss its programs with counseling agencies, as opposed to discussing a the specific circumstances of a prospective borrower, while still avoiding an appearance of a conflict of interest in these instances, and thus assuring counseling agencies maintain both counseling effectiveness and counseling independence.

### *Avoidance of Potential Conflicts*

With respect to the avoidance of potential conflicts of interest, we respectfully request the Agencies make clear in the final guidance that such prohibitions do not apply to hazard insurance, title insurance or other such products that are customarily required in order to obtain a mortgage loan, including a reverse mortgage loan.

Further, we respectfully request that the guidance make clear that any requirement to avoid potential conflicts of interest apply only to requiring a senior to obtain another financial services product from the institution in order to obtain a reverse mortgage, and such a requirement is not a blanket prohibition on an institution merely having an association or affiliation with other entities, divisions or functions that may offer other financial services products or programs.

***Policies, Procedures, and Internal Controls***

In our experience, we are aware and understand that most NRMLA Members that are depository institutions, and other non-depository Members, historically have established and currently have in place robust policies and procedures regarding such things as: (i) counseling; (ii) offering of other financial services and products, including not requiring seniors to obtain another product in order to obtain a reverse mortgage, and avoiding incentives to sell or require such other products; and (iii) third party correspondents and/or mortgage broker set up and approval.

**Conclusion**

NRMLA appreciates the Agencies' consideration of its comments with respect to this important Proposed Guidance. Should questions about them arise or additional information be helpful, please do not hesitate to contact the undersigned at 202-939-1741 or at [PBell@dworbell.com](mailto:PBell@dworbell.com).

Very truly yours,

Peter Bell  
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cc: James A. Brodsky  
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