

# Defending Reverse Mortgage Foreclosures



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# Presenter – Tara Twomey

- Is currently Of Counsel to the National Consumer Law Center and the Amicus Project Director for the National Association of Consumer Bankruptcy Attorneys.
- She has been a Lecturer in Law at Stanford, Harvard and Boston College Law Schools.
- Ms. Twomey is a former Clinical Instructor at the Hale and Dorr Legal Services Center of Harvard Law School where her practice focused, in part, on sustainable homeownership for low- and moderate-income homeowners.
- She is a contributing author of several books published by the National Consumer Law Center including, Foreclosures: Defenses, Workouts and Mortgage Servicing and Bankruptcy Basics..





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## Past HECM Products

Fixed v. Adjustable  
Standard v. Saver  
Special Purpose HECMs

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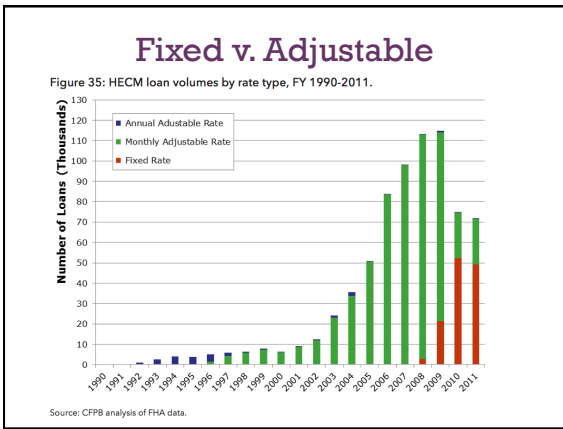
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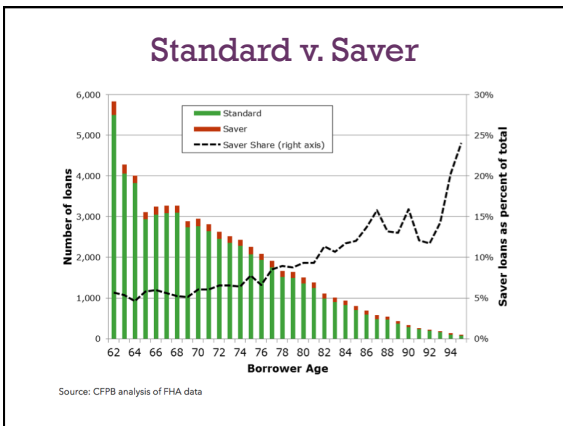
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### Special Purpose HECMs

	2010	2011
Regular HECM	92.2%	95.4%
HECM for Purchase	1.8%	2.3%
HECM Refinance	6%	2.3%

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The Silver Tsunami  
 Borrowers' Age  
 Secondary Market  
 HECM Lender

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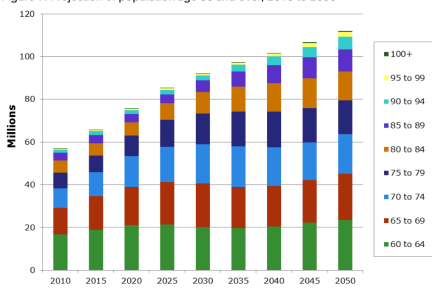
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### The Silver Tsunami

Figure 9: Projection of population age 60 and over, 2010 to 2050



Source: U.S. Census Bureau

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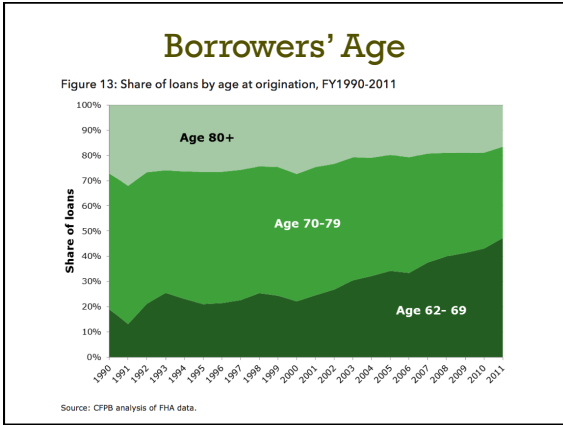
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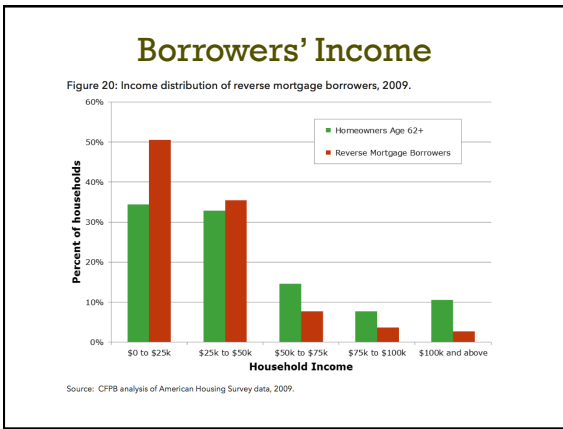
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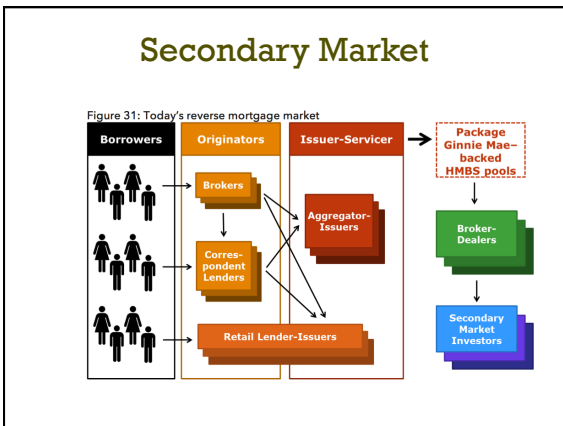
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### HECM Lenders

	Q4 2010	
	# loans	% of total market
<b>Top 10 Originators</b>		
WELLS FARGO BANK NA	4,678	25%
BANK OF AMERICA NA CHARLOTTE	2,048	11%
METLIFE BANK, N.A.	1,519	8%
ONE REVERSE MORTGAGE LLC	1,005	5%
GENERATION MORTGAGE COMPANY	360	2%
1ST AA REVERSE MORTGAGE INC	336	2%
URBAN FINANCIAL GROUP	266	1%
FINANCIAL FREEDOM ACQUISITION	218	1%
SECURITY ONE LENDING	201	1%
AMERICAN ADVISORS GROUP	178	1%
<b>Total Top 10</b>	<b>10,809</b>	<b>59%</b>
<b>Total</b>	<b>18,384</b>	<b>100%</b>

Source: CFPB analysis of FHA data.

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### HECM Lenders 12 Months Through April 2013

Rank	Lender	# of Loans (Pct)
1.	Liberty Home Equity	8,665 (15.8%)
2.	Urban Financial Group	7,124 (13.0%)
3.	Security One Lending	6,744 (12.3%)
4.	Generation Mortgage	5,712 (10.4%)
5.	One Reverse Mortgage	5,020 ( 9.1%)
6.	American Advisors Group	4,867 ( 8.9%)

Source: Reverse Mortgage Insight, Inc.

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<b>NON-BORROWING SPOUSE</b>	Yield Spread Premiums
	Taxes & Insurance
SUITABILITY	FMV Rule

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<b>NON-BORROWING SPOUSE</b>	
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**Non-borrowing spouse**

- Repayment demand can not occur until death of "homeowner", sale of property or other terminating event. 12 U.S.C. 1715z-20(j).
- Homeowner defined to "include the spouse of the homeowner"

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**BENNETT  
V.  
DONOVAN**

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**NON-  
BORROWING  
SPOUSE**

*FMV Rule*

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Non-recourse rule

**95% rule**

24 C.F.R. § 206.125

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### FMV rule

- Mortgage Letter 2008-38
  - Non-recourse provision only applies when property is sold
  - Heirs (surviving spouse or children) must pay full mortgage balance to keep the home even if it exceeds the value of the property
  - Arm's length transaction required for sale at 95% or more of appraised value

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### Non-recourse rule

- Santos v. Reverse Mortgage Solutions, Inc., 2013 WL 5568384, 2013 U.S. Dist. LEXIS 146334, \*19 (N.D. Cal. Oct. 9, 2013)
- Chandler v. Wells Fargo (N.D. Cal.) proposed (b)(2) class action alleging Wells Fargo failed to observe FMV Rule
- ML 2008-38 rescinded by ML 2011-16 (April 5, 2011). No further guidance from HUD to date.

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**NON-BORROWING SPOUSE**

**Taxes & Insurance**

**FMV Rule**

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### Taxes and Insurance

- Taxes and insurance can be escrowed or must be paid by the borrower
- About 10% of RMs in default for failure to pay T&I
- ML 2011-01 sets forth guidance for dealing with T& I defaults

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### Taxes and Insurance

Corporate Amount Advanced	Repayment Schedule
\$1 - \$500	up to 3 months
\$501 - \$1,000	up to 6 months
\$1,001 - \$5,000	up to 12 months
\$5,001 or more	up to 24 months

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### Taxes and Insurance

- T&I default may be cured through a chapter 13 bankruptcy.
- Material misrepresentation  
A promise that no payments will be required during the term of the loan is clearly misleading.

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<b>NON-BORROWING SPOUSE</b>	Yield Spread Premiums
	Taxes & Insurance
	FMV Rule

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**Yield Spread Premiums**

- RM Origination Fees Capped
  - \$2500 or 2% of max claim amount up to \$200k + 1% of max claim amount above \$200k; overall cap \$6,000
- Origination fees cover full array of origination services. ML 2008-34
- Lenders don't count YSP as part of origination fees
- New YSP rules limiting compensation to broker from both borrower and lender only apply to fixed-rate (closed end) HECM loans. 75 Fed. Reg. 58509 (Sept. 24, 2010); 24 C.F.R. §§ 226.5b, 226.36

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<b>NON-BORROWING SPOUSE</b>	Yield Spread Premiums
	Taxes & Insurance
<b>SUITABILITY</b>	FMV Rule

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### Suitability

- Complexity of HECM products has increased
- Some are touting RMs as an investment tool
- Fixed rate loans can be inappropriate but generate larger profits for lenders

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### Moving Forward

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### Reverse Mortgage Stabilization Act of 2013

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Principal Limit Factor

**INITIAL DISBURSEMENT**

**MIP Changes**

**FINANCIAL ASSESSMENT**

LE Set Aside

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Principal Limit Factor



The maximum amount of money borrowers can take out goes down

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**INITIAL DISBURSEMENT**

60% Rule

Mandatory Obligations  
+ 10%

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**MIP Changes**

60% Rule  
Upfront MIP .5%

Otherwise  
Upfront MIP 2.5%

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**FINANCIAL ASSESSMENT**

**LE Set Aside**

Residual Income Analysis

Credit Analysis

Required Set-Aside

Voluntary Set-Aside

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Proprietary RMs  
Financial Planning Tool

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