

Testimony

before the

U.S. SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFIARS

SUBCOMMITTEE ON HOUSING,  
TRANSPORTATION AND COMMUNITY DEVELOPMENT

Regarding

**“Long Term Sustainability for Reverse Mortgages:  
HECM’s Impact on the Mutual Mortgage Insurance Fund”**

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# “Long Term Sustainability for Reverse Mortgages: HECM’s Impact on the Mutual Mortgage Insurance Fund”

June 18, 2013

## I. Introduction

Mr. Chairman, Ranking Member Moran, and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding the long term sustainability of reverse mortgages and HECM’s impact on the Mutual Mortgage Insurance Fund. We offer our testimony here on behalf of our low income clients.<sup>1</sup>

The long term sustainability of reverse mortgages and the Home Equity Conversion Mortgage (HECM) program will depend on how we address the risks posed by the aggressive marketing and sale of these complex financial products to cash-strapped, often debt-laden older Americans. The market for reverse mortgages has changed dramatically in the last few years and strong protections for consumers are essential to minimize the risk of default and fraud. Without these protections the seniors the program is designed to help will be seriously harmed, and the HECM program will continue to be destabilized and weakened.

HUD has stated that it will take action in the near and long term to ensure that consumers are protected and able to sustain their reverse mortgages, and to better to protect the Fund.<sup>2</sup> We support HUD’s efforts in this regard and urge even more aggressive action to better protect consumers in the marketplace. We suggest changes that will protect the FHA Mutual Mortgage Insurance (MMI) Fund from losses and better align it with the goal of the program, which is to ensure that elders age in place. Specifically, we suggest additional protections on two key subject areas:

1. **Taxes and Insurance.** For both existing reverse mortgage borrowers and future borrowers, HUD’s requirements should ensure that sufficient funds are available – either reserved from the proceeds of the reverse mortgage, or from other assets of the homeowner – to meet ongoing obligations for taxes and insurance.

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<sup>1</sup> The National Consumer Law Center, Inc. (NCLC) is a non-profit organization, founded in 1969, specializing in consumer issues on behalf of low-income people. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income and elderly consumers across the country. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting elders and low-income people, conducted trainings for tens of thousands of legal services, private, and government attorneys on the law as applied to consumer problems facing elders, including housing, debt collection, the electronic delivery of government benefits, predatory lending, and reverse mortgages, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC attorneys regularly testify in Congress and provide comprehensive comments to the federal agencies on regulations under consumer laws that affect elders.

<sup>2</sup> See Dep’t of Hous. & Urban Dev., *Annual Report to Congress Fiscal Year 2012 Financial Status of the FHA Mutual Mortgage Insurance Fund*, November 16 2012.

2. **Protecting Widowed Spouses.** Reverse mortgages made to married homeowners should comply with the law's requirement to treat both spouses as borrowers, and ensure that the survivor is not evicted upon the death of the spouse, even when the surviving spouse was not an owner of the property.

## **II. Background: the need for enhanced protections for reverse mortgage borrowers.**

Reverse mortgages provide a significant benefit to many older homeowners, especially those who lack sufficient income or assets to meet their everyday needs and do not qualify for lower cost options. However, changes in the marketplace, including the aggressive marketing of unsuitable loan options to cash-strapped, debt-laden older adults, has put economically vulnerable homeowners at risk of default and foreclosure. HUD has proposed a slate of interim and long term measures to stabilize the HECM program and shore up the Fund.<sup>3</sup> While some of the proposed changes are a good start, considerably more must be done and stronger measures are needed to protect older homeowners, to stabilize the program, and to prevent further depletion of the Fund.

The HECM program was designed to meet the needs of older homeowners by reducing the economic hardship that results from the increasing cost of health care and housing, and by providing for subsistence needs at a time of reduced income.<sup>4</sup> Congress put in place safeguards to protect economically vulnerable reverse mortgage borrowers from being forced from their homes, paying more than the home is worth, and being denied funds if the lender goes out of business. These and other protections were designed to keep older adults housed in their community until they die or need skilled care outside the home.

The needs identified by Congress when it created the HECM program still exist today and are exacerbated by the economic downturn in recent years. Older adults, like the general population, are struggling to deal with job loss, reduced wages, erosion of retirement savings, and increased expenses, including those related to health care.<sup>5</sup> The unemployment rate for older adults (age 55 and over) has reached the highest level in 60 years.<sup>6</sup> At least one third of older adults are considered economically insecure, meaning that they are in danger of outliving their

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<sup>3</sup> See Written Testimony of Secretary Shaun Donovan, Hearing before the Senate Banking Committee, *Status of FHA Programs and the FY 2012 Annual Review of the Mutual Mortgage Insurance Fund*, December 6, 2012; Dep't of Hous. & Urban Dev., *Annual Report to Congress Fiscal Year 2012 Financial Status of the FHA Mutual Mortgage Insurance Fund*, November 16, 2012.

<sup>4</sup> 12 U.S.C. § 1715z-20(a).

<sup>5</sup> See, e.g., Fidelity Brokerage Services, *Retirees face estimated \$240,000 in medical costs*, May 16, 2012, (a couple retiring in 2012 at age 65 would on average face \$240,000 for medical care and health insurance expenses over their lifetimes, up from an estimated \$160,000 in 2002), available at [www.fidelity.com/viewpoints/retirees-medical-expenses](http://www.fidelity.com/viewpoints/retirees-medical-expenses).

<sup>6</sup> AARP Public Policy Institute, *Recovering from the Great Recession: Long Struggle Ahead for Older Americans*, May 2011.

resources.<sup>7</sup> The situation is particularly dire for African-American and Latino elders, with 52 percent and 56 percent respectively, considered economically insecure.<sup>8</sup>

To bridge the gap between fixed incomes and escalating expenses, older adults are turning to credit cards. The average credit card debt for older adults is the highest of any age group.<sup>9</sup> While older adults are less likely to be seriously behind in debt payment than younger peers, a 2010 Federal Reserve Bank survey of consumers showed that the rate of serious nonpayment was rising most rapidly among older adults.<sup>10</sup>

The economic distress among this population is evidenced in the continued uptick in bankruptcy filings. Older adults make up the fastest growing group of bankruptcy filers.<sup>11</sup> This trend is not due simply to the increased percentage of seniors in the general population. The rapid rise in bankruptcy filings by older adults is due in part to credit card and medical debt. The bankruptcy filings show that older adults are generally more indebted to credit card companies than younger filers.<sup>12</sup>

When used as designed, reverse mortgages provide a needed supplement to the income of struggling homeowners. Reverse mortgages, however, are expensive when compared to other options. The costs and the terms are not commonly understood by homeowners, who do not pay cash out of pocket for the origination of the loan and do not make regular payments on the mortgage. The mortgages do not require payments *from* homeowners during the term; rather they provide payments *to* homeowners. Interest accrues on the rising amounts of principal owed on the loan. As a result, reverse mortgages work counter-intuitively and few homeowners truly understand the way the loans are priced, or how the loan principal grows over time. This lack of transparency makes it virtually impossible for homeowners to protect themselves from some of the abuses associated with this product.

The challenges consumers face in the reverse mortgage market have increased in the past few years as the long-term costs of the mortgages increased and the range of options offered became more complex. This added complexity has been coupled with aggressive marketing of unsuitable loan options – primarily the Standard HECM which was available until early 2013

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<sup>7</sup> Tatjana Meschede, Laura Sullivan, Thomas Shapiro, *From Bad to Worse: Senior Economic Insecurity on the Rise*, Research and Policy Brief, Brandeis Institute on Assets and Social Policy, July 2011 available at <http://iasp.brandeis.edu/pdfs/FromBadtoWorse.pdf>.

<sup>8</sup> Tatjana Meschede, Laura Sullivan, Thomas Shapiro, *The Crisis of Economic Insecurity for African-American and Latino Seniors*, Research and Policy Brief, Brandeis Institute on Assets and Social Policy, September 2011 available at <http://iasp.brandeis.edu/pdfs/InsecuritySeniorsOfColor.pdf>.

<sup>9</sup> Amy Traub and Catherine Ruetschlin, *The Plastic Safety Net: Findings from the 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households*, Demos, May 2012, available at <http://www.demos.org/publication/plastic-safety-net>.

<sup>10</sup> *Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, 98 FRB Bull. Table 17, June 2012 (showed that only 1.5% of 65 to 74 year olds 60 days late paying a debt in 2001 and 6.1% were late in 2010. The 75+ group rose from just to .8% to 3.2% in the same time span.).

<sup>11</sup> John Golmant, *Aging and Bankruptcy Revisited*, ABI Journal, September 2010.

<sup>12</sup> John Pottow, *The Rise in Elder Bankruptcy Filings and Failure of U.S. Bankruptcy Law*, The Elder Law Journal, Vol. 19, 2012, June 1, 2011; University of Michigan Public Law Working Paper No. 210; University of Michigan Law & Economics, Empirical Legal Studies Center Paper No. 10-015, available at SSRN: <http://ssrn.com/abstract=1669298>.

and which required that the full amount of funds available be withdrawn at the at the initiation of the mortgage. This maximizes the profit to the mortgage originators, but it often leaves homeowners in serious jeopardy of depleting their resources and losing their homes.

Thousands of older homeowners have taken out reverse mortgages that are unsuitable to meet their needs. Many of those borrowers are facing foreclosure because of non-payment of property taxes and homeowner insurance. Borrowers, including those in the early years of retirement, were encouraged to cash out all the available equity in their homes. Home equity is the largest asset for most older homeowners.<sup>13</sup> Depleting all the equity in a home early in retirement – or even before retirement – has put these consumers on an unsustainable financial course that may result in the premature eviction from their homes if they do not have sufficient resources to pay for taxes and insurance, maintain the property, or meet unexpected expenses.

The counseling required by the HECM program has clearly been insufficient to stem the tide of abuses associated with the program. As evidenced by the massive defaults in taxes and insurance, and dominance of fixed-rate standard reverse mortgages, good counseling cannot overcome lender pressure. This was borne out by a survey NCLC did this past August of elder and housing advocates nationwide regarding consumers' use of reverse mortgages.<sup>14</sup> This survey highlighted the pressure originators put on borrowers to sign up for standard reverse mortgages that require a full draw. According to one counselor, even after she has educated potential borrowers regarding the drawback of such mortgages, borrowers are “convinced this is the best option because it is what the lender is pushing.”<sup>15</sup> Another counselor noted, “Most of my clients usually tell me they are NOT doing a fixed-rate lump sum once we go through the adjustable rate choices, credit line features. I ask some of them two months later what they did and some say that they decided after talking with a lender to get the fixed-rate lump-sum after all.”<sup>16</sup>

HUD has taken some steps to address the abuses associated with the program. In early 2013, HUD issued a mortgagee letter suspending the use of the Standard HECM Fixed Rate loan.<sup>17</sup> The Standard HECM will be combined with the HECM Saver which offers a lower

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<sup>13</sup> See Lori Trawinski, *Nightmare on Main Street: Older Americans and the Mortgage Market Crisis*, AARP Public Policy Institute, July 2012.

<sup>14</sup> The online survey was created in response to the Consumer Financial Protection Bureau's Notice and Request for Information Regarding Consumer Use of Reverse Mortgages, Docket No. CFPB-2012-0026, 77 Fed. Reg. 39222 (July 2, 2012) (“Notice”). The fifteen questions in the survey – titled “Survey of Consumers’ Use of Reverse Mortgages” were taken verbatim from the Notice. Not all the questions included in the Notice were used in the survey. Most notably, questions regarding the market dynamics and business practices among brokers, correspondent and retail channels for reverse mortgages were excluded. Three questions were added to solicit demographic information. Of the sixty-five respondents who completed the survey, the majority worked closely with older adults in a variety of capacities; the respondents included reverse mortgage counselors, elder advocates, legal services attorneys, and housing advocates. The survey was emailed on July 27, 2012 to 1,877 people with a deadline of August 3, 2012 to respond, and 119 people started the survey and 65 people completed the survey. The survey was anonymous; however respondents had the option of providing their contact information for follow-up.

<sup>15</sup> Excerpt from *Survey of Consumers’ Use of Reverse Mortgages*, conducted August 2012, on file with the National Consumer Law Center.

<sup>16</sup> Id.

<sup>17</sup> Dep’t of Hous. & Urban Dev., Mortgagee Letter 2013-01, Jan. 30, 2013, *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=13-01ml.pdf>.

initial mortgage insurance premium, and reduced upfront fees.<sup>18</sup> This is a good initial step and will address some of the problems associated with the Standard HECM. However, the other abuses still must be addressed. Given the ongoing changes in the reverse mortgage industry, and the growth of the elder population, it is essential that changes be put into place now to address the range of abuses associated with HECMs.

### **III. Previous reliance on counseling to protect older homeowners from displacement and fraud has been misplaced. Substantive and aggressive measures are needed to protect older homeowners and prevent further depletion of the Fund.**

The sustainability of the HECM program depends in large part on the program's ability to fulfill its primary purpose: to allow older adults to shelter in place as they age. As evidenced by the tens of thousands of older homeowners who are now in default and facing foreclosure on HECM reverse mortgages because of unpaid taxes and insurance, the program is failing to fulfill its central mission. Additionally, thousands of homeowners have been victims of fraud in the origination process that leaves their loved ones homeless when they pass away or move from the home.

Specifically, we recommend that HUD make substantive changes to the HECM program to ensure that:

- Prospective borrowers are able to afford property taxes and insurance on an on-going basis and that existing borrowers facing default are given a better opportunity to save their homes.
- Reverse mortgages made to a homeowner who has a spouse who is a non-owner of the home be considered to be made to both spouses (as is required by the statute). This would protect the younger spouse from eviction when the older spouse dies.

These changes will go a long way toward protecting elder homeowners, which will strengthen the program, and ensure its longevity and effectiveness in assisting older adults. Protecting the borrowers for whom the program was designed will also strengthen the economic value of the program and stop the depletion of resources from the Fund.

#### **A. Homeowners' ability to pay taxes and insurance should be evaluated before origination, and current defaults should be dealt with in a manner designed to prevent the loss of the home.**

Nearly 10% of homeowners with outstanding HECM loans are at serious risk of losing their homes due to defaults on their property taxes and insurance.<sup>19</sup> Older adults who expected to age in place or at least remain at home until they need skilled care are now facing the prospect of premature displacement. Not only are older homeowners at risk, but according to HUD the

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<sup>18</sup> (Dep't of Hous. & Urban Dev., Home Equity Conversion Program--Introducing HECM Saver; Mortgage Insurance Premiums and Principal Limit Factor Changes for HECM Standard, Mortgagee Letter 2010-34 (Sept. 21, 2010).

<sup>19</sup> See Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress*, June 28, 2012, § 6.6; 75 Fed. Reg. 58539, 58678 (Sept. 24, 2010).

incidence of property tax and insurance defaults has increased in recent years and this has put a major strain on the program and Fund.<sup>20</sup>

Reverse mortgage borrowers are required to pay the taxes due and the property insurance premiums throughout the life of the loan, even though principal and interest need not be repaid until the borrower dies or moves out of the home.<sup>21</sup> Failure to make these payments makes the loan “deemed to be out of compliance with the FHA requirements and ... delinquent.”<sup>22</sup> When homeowners fail to pay these charges, servicers are initially required to pay them from the loan’s available proceeds.<sup>23</sup> If there are no available proceeds, the servicer is required to advance these amounts and then try to collect them from the homeowner.<sup>24</sup>

Homeowners fail to make these payments for a variety of reasons, ranging from not understanding that they are required to not having sufficient discretionary income.<sup>25</sup> The CFPB’s report to Congress regarding reverse mortgages noted confusion on the part of some consumers regarding the obligation to pay taxes and insurance.<sup>26</sup> Testing by the Federal Reserve Board revealed that some consumers do not understand that the reverse mortgage loan would come due if they failed to pay insurance and taxes.<sup>27</sup> Moreover, as HUD has acknowledged, the dominance of the fixed-rate standard reverse mortgage, which required borrowers to take all eligible cash up front, resulted in insufficient cash in later years for property upkeep, taxes and insurance.<sup>28</sup>

In 2012, HUD announced that it will introduce guidelines for assessing whether reverse mortgage borrowers have the financial ability to make ongoing payments for property taxes and insurance if they obtain the loan.<sup>29</sup> This is an excellent proposal which we wholeheartedly support. We applaud HUD’s efforts to tackle this growing problem on a going-forward basis. However, the rules applicable to existing borrowers who face foreclosure because of unpaid taxes and insurance still need a complete overhaul to prevent unnecessary foreclosures which not only displace elders but drain the Fund.

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<sup>20</sup> See Dep’t of Hous. & Urban Dev., *Annual Report to Congress Fiscal Year 2012 Financial Status of the FHA Mutual Mortgage Insurance Fund*, November 16 2012.

<sup>21</sup> 24 C.F.R. § 206.205(a) (“The mortgagor shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner and shall provide evidence of payment to the mortgagee as required by the mortgage.”).

<sup>22</sup> FHA Mortgagee Letter 2011-01: Home Equity Conversion Mortgage Property Charges Loss Mitigation, January 3, 2011.

<sup>23</sup> 24 C.F.R. § 206.205(c) (“If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor’s account.”).

<sup>24</sup> 24 C.F.R. § 206.205(c) (“If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor’s account.”).

<sup>25</sup> See Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress*, June 28, 2012, § 6.6.

<sup>26</sup> See Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress*, June 28, 2012, § 6.6.1.

<sup>27</sup> See ICF Macro, Summary of Findings: Design and Testing of Truth in Lending Disclosures for Reverse Mortgages, at 14 (July 2010).

<sup>28</sup> See Dep’t of Hous. & Urban Dev., *Annual Report to Congress Fiscal Year 2012 Financial Status of the FHA Mutual Mortgage Insurance Fund*, November 16 2012.

<sup>29</sup> Letter from Acting Assistant Secretary Carol Galante, Dep’t of Hous. & Urban Dev., HECM Program Update (Oct. 5, 2011), available at [http://portal.hud.gov/hudportal/documents/huddoc?id=FHACG\\_05OCT11\\_FINAL.PDF](http://portal.hud.gov/hudportal/documents/huddoc?id=FHACG_05OCT11_FINAL.PDF).



## 1. Assessment for Prospective Borrowers

An evaluation of borrowers' ability to pay taxes and insurance on an ongoing basis is necessary before reverse mortgages are originated. Currently there are no income or credit qualifications for reverse mortgages, other than a general requirement that each mortgagor have a "general credit standing" satisfactory to HUD.<sup>30</sup> Voluntary efforts by reverse mortgage originators to underwrite or include loan reserves have failed as these efforts put some originators at a competitive disadvantage.<sup>31</sup> The industry has already requested that FHA mandate a "baseline underwriting requirement."<sup>32</sup> We support both HUD and the industry in this regard.

We suggest that every prospective reverse mortgage borrower be evaluated to determine whether the borrower has sufficient income to afford taxes and insurance, *or* the reverse mortgage must include sufficient reserves to cover these costs for the entire expected term of the reverse mortgage.

## 2. Stronger protections for existing borrowers facing foreclosure

The 54,000 homeowners at risk of losing their homes due to default on property taxes and insurance need stronger protections. These are homeowners who have failed to make payments for taxes or insurance and do not have sufficient credit available on their loan account to repay the servicer's advances and face default and loss of the home.

The prospect of foreclosure on these elderly homeowners with outstanding reverse mortgages flows directly from a decision made by HUD in January 2011. HUD issued a Mortgage Letter that requires servicers to collect advances they make for delinquent taxes and insurance from homeowners within a very short time period.<sup>33</sup> For example, delinquencies of as much as \$5,000 must be collected from the homeowner on a repayment schedule of only 12 months, while amounts over \$5,000 must be repaid in only 24 months.<sup>34</sup>

These repayment periods are burdensome to elderly homeowners who are, in most instances, unable to afford the payments. Repaying a \$5,000 debt in 12 months requires a payment of more than \$416 a month. Similarly, a \$15,000 debt in 24 months would require a payment of \$625 a month. It is virtually impossible for struggling elderly homeowners to afford these amounts.

HUD's position on this treats senior homeowners with reverse mortgages much worse than it does homeowners with forward-mortgages. Homeowners with forward-mortgages are

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<sup>30</sup> 24 C.F.R. § 206.37.

<sup>31</sup> See discussion of MetLife's withdrawal from the market after experimenting with underwriting requirements, Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress*, June 28, 2012, § 6.6.4a.

<sup>32</sup> *Id.*

<sup>33</sup> Dep't of Hous. & Urban Dev., HECM Prop. Charge Loss Mitigation, Mortgagee Letter 2011-01 (Jan. 3, 2011). The Mortgagee Letter required lenders to make loss mitigation options available to borrowers by establishing a realistic repayment plan for the delinquent property charges, referring the borrower to a HUD-approved housing counseling agency to receive free assistance in developing a resolution to the delinquency, or refinancing the delinquent HECM if there is sufficient equity.

<sup>34</sup> Dep't of Hous. & Urban Dev., HECM Prop. Charge Loss Mitigation, Mortgagee Letter 2011-01 (Jan. 3, 2011).

permitted to repay advances for tax and insurance over the entire remaining term of the loan.<sup>35</sup> It is difficult to understand why HUD would treat senior homeowners worse than it does all other homeowners with FHA insured mortgages. The National Housing Act requires lenders to engage in loss mitigation upon the default or imminent default of an FHA-insured mortgage.<sup>36</sup> Regulations and guidelines issued by HUD require that lenders evaluate the borrower for alternatives to foreclosure before the borrower becomes delinquent on four mortgage payments.<sup>37</sup> This raises the question of why HUD has not required the application of similar home-saving strategies for reverse mortgages.

For example, in standard, forward-mortgages, servicers are required to evaluate homeowners for a special forbearance which allows homeowners to reduce or suspend payments for a minimum of four months so long as the arrearage does not exceed the equivalent of twelve monthly mortgage payments.<sup>38</sup> At the end of the forbearance period, the homeowner must typically begin paying at least the full amount of the monthly mortgage payment due under the mortgage. The repayment period must last at least four months, but otherwise lenders and homeowners are free to agree to any repayment plan for the accumulated arrears throughout the remaining term of the loan.<sup>39</sup> There is no maximum length of time to repay.

Reverse mortgage homeowners should be afforded a similar opportunity to repay the arrears on their loans. It simply does not make sense for HUD to insist that reverse mortgage homeowners repay delinquent amounts in twenty-four months or less, when it is the goal of the FHA and HECM programs to help keep seniors in their homes *and* there are reasonable alternatives that will protect the Fund from large losses.

We ask that HUD revise its guidelines for assisting homeowners currently in default to lengthen the period for repaying arrears. Such a home-saving strategy would by necessity, involve a repayment period beyond 24 months for most homeowners.

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<sup>35</sup> See Dep't of Hous. & Urban Dev., Mortgagee Letter 2010-04 (Jan. 22, 2010).

<sup>36</sup> See 12 U.S.C. § 1715u. A borrower facing imminent default is defined as one that is current or less than thirty days past due on the mortgage and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage in the month it is due. Borrowers facing imminent default can take advantage of HUD's forbearance or FHA-HAMP options. See Dep't of Hous. & Urban Dev., Mortgagee Letter 2010-04 (Jan. 22, 2010).

<sup>37</sup> 24 C.F.R. § 203.605. Notice to the homeowner about foreclosure prevention options together with a HUD brochure on that topic must be sent between the thirty-fifth and the forty-fifth day of delinquency. See Dep't of Hous. & Urban Dev., Mortgagee Letter 00-05 (Jan. 19, 2000); Dep't of Hous. & Urban Dev., Mortgagee Letter 97-44 (Sept. 29, 1997).

<sup>38</sup> HUD temporarily changed its guidelines to extend the minimum forbearance period to twelve months. This change to the guidelines will expire August 1, 2013, and the minimum forbearance period will revert back to four months. See Dep't of Hous. & Urban Dev., Mortgagee Letter 2011-23 (July 7, 2011).

<sup>39</sup> Dep't of Hous. & Urban Dev., Mortgagee Letter 2002-17 (Aug. 29, 2002).

## **B. Stronger substantive protections should be added to the HECM program to prevent eviction of the non-borrowing spouses of reverse mortgage borrowers.**

A second serious problem is that non-borrowing spouses are being forced out of their homes upon the death or move of the mortgagor-spouse.<sup>40</sup> The cause of this problem is that lenders and brokers encourage the younger spouse (generally the wife) to deed over her share of the house to the husband prior to originating a reverse mortgage so that more funds or better terms will be available from the loan. This often occurs if one spouse is sixty-two years of age or older and the other spouse is younger than the required age. Even when both spouses are eligible for the reverse mortgage, the available proceeds will be maximized by having only the older of the two listed as the borrower.<sup>41</sup>

Couples rarely understand the consequences of taking the younger spouse off the title and taking out the reverse mortgage only in the name of the older spouse. Lenders and brokers often mislead or outright lie to consumers regarding the consequences of leaving younger spouses off the deed and reverse mortgage.<sup>42</sup> Borrowers have reported to the CFPB that brokers promised lower rates, additional funds or a more favorable deal if the spouse's name was not on the deed or reverse mortgage, and promised that borrowers would be able to add a spouse or family member when they reached a certain age.<sup>43</sup> According to officials at HUD, who have received many complaints regarding this practice, "borrowers were told the loan was assumable, or a loan officer said that it was alright to remove a spouse from title because they could refinance or add the spouse back to title later without any problem."<sup>44</sup>

Our NCLC attorneys have worked with attorneys in many states who are representing the widowed spouses in these situations. In every single case the widow is shocked to find herself not only a widow, but also about to be evicted from the home she thought the reverse mortgage would preserve for her until death. The stories we hear are near identical, despite the diverse geographical locations from which they come: the couple was assured that when the older spouse

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<sup>40</sup> See e.g., Jessica Silver-Greenberg, *A Risky Lifeline for Elderly is Costing Some Homes*, New York Times, Oct. 14, 2012; Norma Paz Garcia, Prescott Cole, Shawna Reeves, *Examining Faulty Foundations in Today's Reverse Mortgages*, Consumers Union, at 19 (December 2010); *As Complaints Increase, HUD to Address HECM Non-Borrowing Spouse Issue*, Reverse Mortgage Daily, Apr. 29, 2010, available at <http://reversemortgagedaily.com/2010/04/29/as-complaints-increase-hud-to-address-hecm-non-borrowing-spouse-issue/>

<sup>41</sup> This is because the available proceeds on a reverse mortgage are determined based on the life expectancy of the younger spouse.

<sup>42</sup> See, e.g., *Ellison v. Wells Fargo Home Mortgage, Inc.*, 2010 WL 3998091 (E.D. Mich. Oct. 12, 2010) (borrower told that by adding non-borrower spouse's name to the mortgage agreement, spouse could remain in home even after borrower died, and spouse's interest in the property would be protected by borrower's quit-claim deed issued to himself and spouse after execution of the reverse mortgage).

<sup>43</sup> See Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress*, June 28, 2012, § 6.7.1.

<sup>44</sup> *As Complaints Increase, HUD to Address HECM Non-Borrowing Spouse Issue*, Reverse Mortgage Daily, Apr. 29, 2010, (statement of Erica Jessup, Program Specialist at the Dep't of Housing and Urban Dev.) available at <http://reversemortgagedaily.com/2010/04/29/as-complaints-increase-hud-to-address-hecm-non-borrowing-spouse-issue/>

died, the younger one would be permitted to assume the mortgage and continue to live in the home until her death.<sup>45</sup>

Contrary to this sales pitch, when the older spouse dies, sells, or permanently relocates from the home, the reverse mortgage lender calls the loan due and payable. Currently, neither HUD nor reverse mortgage lenders permit the loan to be assumed by the non-borrowing spouse. This position has led to many foreclosures, leaving bereaved spouses not only widowed, but also homeless and generally penniless.

These blatant misrepresentations echo some of the false promises that brokers made during the subprime boom. As with those earlier practices, brokers stand to profit by putting pressure on consumers to remove younger spouses from the reverse mortgage loan. Brokers earn a percentage of the funded loan balance at closing. Any practice that leads to an increase in that amount will put more money in the pocket of the broker.

In the authorizing statute, Congress expressed its intent to protect spouses. The HECM statute states that HUD may not insure a reverse mortgage “unless the mortgage provides that the homeowner’s obligation to satisfy the loan obligation is deferred until the homeowner’s death, the sale of the home, or the occurrence of other events specified in the regulation of the Secretary. For the purposes of this subsection, the term “homeowner” includes the spouse of homeowner.”<sup>46</sup> The statute’s broad definition of homeowner anticipated the need to keep an elder housed even if the spouse passed away or was forced to move.

Though this statutory language indicates that non-borrowing spouses have the same rights as the mortgagor-spouse to remain in the home, HUD’s regulation requires the mortgage to state that it is due and payable upon the death of all surviving *mortgagors*.<sup>47</sup> In a recent decision in a case which challenged this regulation, the D.C. Court of Appeals noted that it was “somewhat puzzled as to how HUD can justify a regulation that seems contrary to the governing statute.”<sup>48</sup>

HUD has issued guidance requiring that non-borrower spouses and co-owners receive HECM counseling.<sup>49</sup> This is simply not sufficient. Misinformation and sales pressure from lenders and brokers too often override information provided by counselors, especially if consumers are told that they need to remove the younger spouse from the deed and reverse mortgage to receive more proceeds. Moreover, the couple simply may not inform the counselor that they are considering removing one spouse from the deed. As a result, the non-borrowing spouse is not fully counseled and will not understand the risks posed by quitclaiming his or her interest in the home.

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<sup>45</sup> See, e.g., Jessica Silver-Greenberg, A Risky Lifeline for the Elderly Is Costing Some Their Homes, New York Times, October 14, 2012. Available at <http://www.nytimes.com>.

<sup>46</sup> 12 U.S.C. § 1715z-20(j).

<sup>47</sup> 24 C.F.R. § 206.27.

<sup>48</sup> *Bennett v. Donovan*, 703 F.3d 582, 586 (D.C. Cir. 2013).

<sup>49</sup> See Dep’t of Housing and Urban Dev. Mortgage Letter 2011-31 (Aug. 26, 2011).

HUD should take more aggressive action to ensure that non-borrowing spouses do not end up homeless. The removal of the younger spouse from the title prior to origination of the reverse mortgage almost always involves fraud. This fraud is compounded by HUD's regulation which is consistent with neither the spirit nor the letter of the authorizing statute. The regulation should be revised to ensure that if a couple is married when the reverse mortgage is originated, the life expectancy runs for the youngest member of the couple, and the termination of the reverse mortgage for death applies to both spouses *regardless of who actually owns the home*. This resolution furthers the traditional and sensible homestead rule of preserving the home for the spouse after widowhood, regardless of legal ownership of the home. Moreover, this rule will not impact the MMI Fund as, going forward, loans will be originated based on the youngest of the couple.

Eviction from the home puts the non-borrowing spouse, mainly women, at risk not only for homelessness, but premature entry into long-term care facilities, like nursing homes. The premature displacement of elders is clearly counter to the purpose of the reverse mortgage product, and to public policy, which supports having older adults "Age in Place."

### **Conclusion**

Reverse mortgages provide a real benefit to many older homeowners struggling to meet day-to-day expenses. However, these mortgages are complex and subject to abuse, and stronger measures are needed to protect consumers, stabilize the program and prevent depletion of the Fund. Thank you for this opportunity to testify. I look forward to your questions.