COMMENTS
to the
U.S. Department of Housing and Urban Development
on
Federal Housing Administration (FHA):
Strengthening the Home Equity Conversion Program

81 Fed. Reg. 31770 (May 19, 2016)

Docket No. FR-5353-P-01
RIN 2502-AI79

By the
National Consumer Law Center
On behalf of its low-income clients

July 18, 2016

The National Consumer Law Center[1](NCLC) respectfully submits the following comments on behalf of its low-income clients in response to the notice and request for comments on the *Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Program* issued by the U.S. Department of Housing and Urban Development (HUD). In this comment we address the servicing of reverse mortgages, provide feedback from a national survey of elder advocates regarding the servicing of reverse mortgages, and provide comments on select portions of the proposed rules. We thank HUD for its continued efforts to improve the stability and longevity of the program and its addition of several protections for older borrowers. We urge the agency to take further action to protect consumers from problems related to the servicing and origination of reverse mortgages, and to withdraw certain proposals that would impose an undue burden on older homeowners.

[1] The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. 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 consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. 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 and private attorneys on the law as applied to consumer problems facing elders, including 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 the regulations under consumer laws that affect elders. These comments were written by NCLC attorneys Odette Williamson, Andrew Pizor and Sarah Bolling Mancini, and Legal Intern Lee Staley.

I. Summary

The National Consumer Law Center appreciates the opportunity to comment on the proposed changes to the FHA's Home Equity Conversion Mortgage program. Reverse mortgages are an important source of financial security for homeowners who are house rich but cash poor. Since September 2012 HUD has taken steps to overhaul the HECM program to increase protections for consumers and address the long-term sustainability of the loan program and its financial impact on the insurance fund. Consumers and elder advocates have welcomed many of these changes. While consumers benefit from many of the new program guidelines, important challenges remain.

The proposed amendments to 24 CFR Parts 30 and 206 attempt to address some of these challenges as well as codify existing policy as announced in various Mortgagee Letters. The proposed amendments add a number of protections for consumers, including:

- Providing flexibility to adjust the first-year disbursement to accommodate the health or safety needs of the homeowner;
- Requiring that borrowers participating in the HECM for purchase program receive mandatory housing counseling by an independent HUD-certified counselor prior to signing a purchase agreement or depositing funds into escrow;
- Requiring HECM lenders to inform potential borrowers regarding the full range of HECM options, regardless of whether or not they sell all products;
- Requiring servicers to conduct an appraisal within 30 days of being alerted that a borrower seeks to sell her property;
- Capping interest rate growth at one percent per year and five percent over the lifetime of the loan;
- Granting the Commissioner flexibility to permit property sales for less than 95 percent of the appraised value to adapt to market conditions and other factors;
- Developing a streamlined process to permit "cash for keys" disposal of the properties;
- Collecting relevant information regarding eligible non-borrowing spouses; and
- Allowing borrowers to designate an alternative point of contact for notifications from the mortgagee.

Some new requirements, such as the inclusion of utilities in the property charges definition and the establishment of a periodic property inspection and repair requirement, will not help older homeowners but burden them with new requirements and expenses that may lead to foreclosure. Moreover, the proposed rules fail to adequately address the challenges borrowers and heirs face with the servicing of reverse mortgages.

HUD should take steps to further enhance protections for consumers under the amended rule. This comment calls on HUD to:

- Address improper or inadequate servicing of reverse mortgages;
- Exclude utilities from the definition of property charges so as not to increase the risk of default among elders;
- Reconsider the addition of a periodic inspection and repair program as it is potentially discriminatory and may be subject to abuse;
- Enhance protections for non-borrowing spouses;
- Enhance the loss mitigation program designed to help homeowners cure property charge defaults; and
- Reevaluate parts of the new flood insurance mandate.

Addressing these issues would strengthen the proposed rule and enhance protections for vulnerable older homeowners.

II. A national survey of elder advocates and attorneys reveals widespread and systemic issues regarding the servicing of reverse mortgages that are not adequately addressed by the proposed rule.

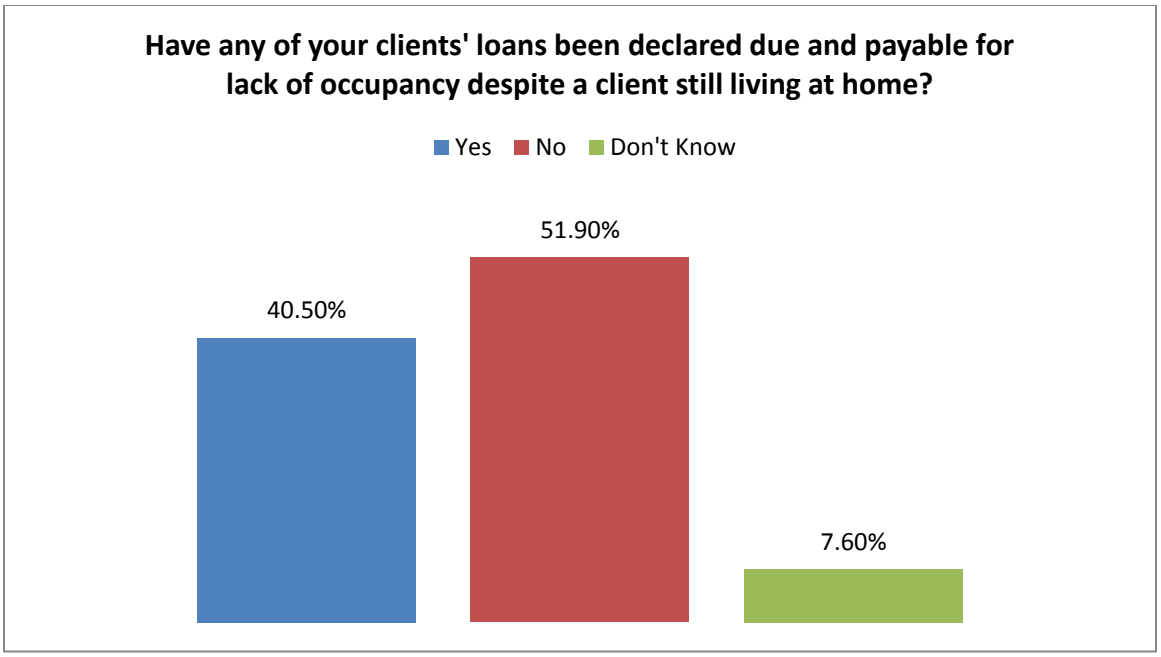
The National Consumer Law Center created a survey to evaluate the servicing of reverse mortgages with respect to certain key issues, including servicer compliance with loss mitigation relief offered to consumers under Mortgagee Letter 2015-11, and consumers' ability to access the Mortgagee Optional Election Assignment option (MOE Assignment) pursuant to Mortgagee Letter 2015-15. The survey also requested general feedback regarding the servicing of reverse mortgage loans. The online survey was sent to thousands of elder and housing advocates, legal services attorneys, and reverse mortgage counselors nationwide.[2] The majority of people who responded to the survey represent older adults or surviving spouses facing foreclosure or work closely with older adults in other contexts. They include fifty-eight legal services or private attorneys, twenty-eight housing or reverse mortgage counselors, and forty-two elder advocates.

[2] The survey – titled "Reverse Mortgage Survey" – solicited information regarding loss mitigation relief for defaulted taxes and insurance offered under Mortgagee Letter 2015-11; non-borrowing spouses exercising the Mortgagee Optional Election Assignment Option pursuant to Mortgagee Letter 2015-15; and other problems related to the servicing of reverse mortgages, including payment of property related charges before they are due, false certification of non-occupancy, force-placed insurance, and excessive fees for property inspection. The survey also provided space for respondents to comment generally on the servicing of their clients' loans. The survey was email on February 18, 2016 to approximately 20,000 attorneys, housing, elder and consumer advocates, reverse mortgage counselors, government officials and consumers nationwide. Respondents were given a week to complete the online survey created using Survey Monkey. The survey received 128 responses; 93 people completed the survey. Respondents hailed from thirty-seven states. Most respondents worked in legal services or organizations that provided direct services to elders. The survey was distributed before the issuance of Mortgagee Letter 2016-07. A copy of the survey is attached as Exhibit A. Responses to the survey are on file with NCLC.

The national survey revealed widespread and systemic failures with respect to the servicing of reverse mortgage loans. Many of the complaints mirrored the frustrations that consumers are facing with forward mortgages. The respondents identified a kaleidoscope of servicing failures, including:

- Providing incorrect and inconsistent information to borrowers and imposing requirements that are not authorized;
- Failure to provide adequate loss mitigation prior to initiating foreclosure;
- Instituting foreclosure for alleged failure to occupy the home without evidence supporting the claim that an eligible mortgagor does not continue to occupy the home;
- Advancing taxes and insurance prematurely or in excess amounts, and then seeking to foreclose even though no underlying due and payable event had occurred;
- Charging excessive fees for appraisals and fees for property inspection that were not performed;
- Instituting foreclosure proceedings against non-borrowing spouses despite the loan being in the MOE Assignment option deferral period;
- Arguing in court proceedings that the mortgage documents need not be interpreted consistently with federal law, as a way of evading program requirements;
- Instituting foreclosure proceedings due to property tax default while the borrower was applying for assistance through a state program;
- Misapplication of borrower payments made pursuant to a repayment plan;
- Payment of taxes to a taxing authority even when the borrower was up to date or payment had been approved under the state's Hardest Hit Fund;
- Failure to pay property taxes when authorized to do so;
- Losing paperwork and other documents submitted to apply for the MOE Assignment, loss mitigation, or to prove payment of property charges;
- Months-long delays in reaching a decision regarding an application for the MOE Assignment or loss mitigation;
- Lack of communication with borrowers, attorneys and heirs, and general unresponsiveness;
- Force-placed flood or hazard insurance; and
- Paperwork mailed to clients with cognitive disabilities despite power of attorney or legal representation.

Many of these servicing errors resulted in the loan being improperly called due and payable or led to improper foreclosures. For example, a surprisingly large number of respondents to NCLC's Reverse Mortgage Survey (41 of the 79 advocates that answered the question) noted that their clients' loan had been called due and payable for an alleged failure to occupy the home even though an eligible mortgagor lived in the home. Certification of occupancy represents the most basic and vital servicing function under the HECM program, yet servicers are routinely failing to carry it out properly.



Respondents commented that servicers sent foreclosure documents based on alleged non-occupancy, and received responses from mortgagors living in the home, but still did not cancel the foreclosure.

By design, the survey unearthed complaints by elder advocates and attorneys. Unrepresented older adults, many of whom are suffering from cognitive decline or other ailments, and surviving family members may face an even steeper challenge in communicating and interacting with servicers. When servicers provide contradictory or inconsistent information regarding the availability of loss mitigation, the procedures for paying off the loan or the methods for curing a default, the result is early and unnecessary foreclosure and added mental stress for borrowers and their families. Poor servicing has a real impact. Given the affected population, servicers have a special responsibility to service HECM loans with care.

The findings of NCLC's Reverse Mortgage Survey mirror and are consistent with the servicing challenges noted by the Consumer Financial Protection Bureau (CFPB) in its *Snapshot of Reverse Mortgage Complaints: December 2011-December 2014*.[3] In its Report, the CFPB reviewed complaints the agency received regarding reverse mortgages and noted that "the servicing problems consumers describe are exacerbating many of the other problems that borrowers and their families are experiencing with reverse mortgages."[4] The Report highlighted frustrations with loan servicers when attempting to repay the loan, including the lack of a clear process to repay the loan; problems with the appraisal process, including lengthy delays; multiple requests for the same documents when attempting to remedy defaults; failure to keep accurate records of critical

[3] Consumer Financial Protection Bureau, Office of Older Americans, *Snapshot of Reverse Mortgage Complaints*, at 15 (Feb. 2015).
[4] *Id.*

documents, including tax records; and servicers who provide inconsistent instruction or are unresponsive.[5] Borrowers and heirs complained that servicers delay and impede attempts to cure HECM defaults and avoid foreclosure.[6] The unresponsiveness of loan servicers was a particular challenge for grieving family members trying to settle the estate of a loved one.

Generally, the CFPB Report noted, consumers and families are confused and frustrated by the terms and requirements of reverse mortgages, making deficits in loan servicing an additional burden.[7] Servicers also face challenges. HUD has issued more than ten significant policy changes to the HECM program since 2011.[8] Many of these changes are quite complex and pertain to origination as well as servicing requirements. Servicers have faced challenges accurately interpreting and applying HUD guidelines.

Violations of HECM servicing obligations expose homeowners to a risk of foreclosure and impose significant financial and emotional harm on HECM borrowers. The proposed amendments to allow the Mortgagee Review Board to initiate a civil money penalty action against a mortgagee or lender who knowingly and materially fails to timely submit documents that are complete and accurate in connection with a claim for insurance benefits in accordance with § 206.127 and against a mortgagee or lender who knowingly and materially fails to service FHA mortgages in accordance with the requirements of 24 CFR part 206 are appropriate. Robust and accurate servicing is essential given the complexity of the product, the age of the recipients, and the potential for confusion or misjudgment. Stepping up oversight of servicing practices is essential.

HUD must go further, however, to protect older adults from inept and abusive servicing. Overall the proposed amendments to the regulations place significantly more responsibility on servicers, who are already straining under the weight of existing program guidelines, without providing corresponding accountability or benefits to older consumers. In addition to reconsidering some of the requirements, as discussed below, HUD should both step up enforcement of existing guidelines and provide consumers with more tools to challenge servicing errors and abuses.

III. HUD should not impose requirements that will further burden older homeowners with additional costs and no corresponding benefit.

The proposed rules have some enhanced protections and benefits for older homeowners. However, several proposed amendments to the rule would put elders at enhanced risk of foreclosure due to burdensome new requirements, shifting costs or inadequate protections. We highlight several areas of concern below.

[5] *Id.* at 12-14.
[6] *Id.* at 14.
[7] *See id.* at 3.
[8] *See id* at 15.

A. The inclusion of utilities within the definition of property charges would put substantially more elders at risk of foreclosure.

HUD proposes three revisions to § 206 that would implicate borrowers' utility charges: (1) amending § 206.3 to include "utilities" within the definition of *property charges*; (2) amending provisions on payment of insurance claims in § 206.129(d) to allow insurance-claim reimbursement of corporate advances covering "utility charges that are liens prior to the mortgage;" and (3) amending provisions on property-charge obligations in § 206.205(a) to make borrowers responsible for "all utilities." These changes will substantially increase the number of loans called due and payable, unnecessarily increase the risk of foreclosure borne by elderly borrowers, and place unsustainable responsibilities on servicers.

1. Including utilities under the definition of *property charges* would significantly expand borrowers' mortgage obligations and heighten the risk of foreclosure.

The inclusion of utilities within the definition of *property charges* is inconsistent with a stated purpose of HUD's proposed rule. Despite its aim to reduce the incidence of property-charge defaults, the proposal takes the unexpected step of widening the definition of property charges, expanding borrowers' obligations under the mortgage.[9] Utility related property-charge defaults are likely. For vulnerable low-income elders living on a fixed or reduced income, utility bills account for a significant portion of their household budgets.[10] Older adults struggling to pay for necessary utility services may be eligible for various needs-based programs that would assist with the payment of utility-related charges or weatherization of the home. Such assistance programs are available in most jurisdictions but are often underutilized by eligible older adults, who may not be aware of the programs or their eligibility requirements.

Many states and localities also offer shut-off protection.[11] These programs ensure that the lights stay on and the water keeps running—at least in the short run—even if the elder cannot pay the bill on time. Knowing such protections exist, an elder may choose to divert payments away from utility expenses and toward mortgage obligations (taxes, hazard insurance, etc.) so as to avoid a default on the mortgage. Such elders are usually able to get caught up on the utility bills within a reasonable time, either through a repayment plan or through one of the needs-based programs described above. HUD's proposal would needlessly create an event of default based on a temporary inability to pay utility bills. Thus, even if a utility arrearage does not result in the immediate loss of utility service, it could lead to foreclosure and, ultimately, loss of the home.

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[9] *See* 81 Fed. Reg. 31770, 31772 (May 19, 2016).

[10] *See* Economic Opportunity Studies, The Burden of FY 2008 Residential Energy Bills on Low-Income Consumers (Mar. 20, 2008), http://www.opportunitystudies.org/repository/File/energy_affordability/Forecast_Burdens_08.pdf, last visited July 14, 2016.

[11] Protections may include disconnection protection during summer or winter months, procedures requiring several months' notice of arrearage, and exemptions for utility customers experiencing illness. *See* National Consumer Law Center, *Utilities Advocacy for Low-income Households in Massachusetts* 9-20 (3d ed. 2013).

Borrowers who fall behind on utility payments should have the opportunity to benefit from state or federal energy-assistance programs for which they are eligible.[12] The array of energy-assistance programs is decentralized and can be time consuming to navigate. A borrower's good-faith effort to obtain energy assistance should not count against her when determining her mortgage's due-and-payable status.

Rather than make the payment of utilities a trigger for a due and payable event, servicers should be required to periodically remind borrowers that assistance programs may be available to help them pay their utilities, manage their budget, and access other services that would enable them to meet their basic needs and remain in the home. This could be accomplished at no cost by including a sentence or two in the monthly statements or on the outside of the envelopes alerting borrowers that a housing counselor may be able to assist them if they are having trouble paying their utilities.

2. Servicers do not possess the skill or expertise to monitor utility-related defaults.

HUD has issued more than ten significant policy changes to the HECM program since 2011.[13] Servicers are increasingly pressed to keep up with the new requirements. As highlighted above in the results of the NCLC Reverse Mortgage Survey, borrowers are bearing the brunt of servicers' errors and missteps. This proposed rule would add significantly to servicers' responsibilities to monitor taxes, hazard and flood insurance by now requiring them to track utility payments and defaults. The most likely result of this proposal, if adopted, would be to increase the frequency of defaults, adding to the hardships imposed upon borrowers and the administrative costs associated with documenting and reimbursing corporate advances.

Utilities are subject to varying state regulations and controls that govern the collection of debt, withholding of service, protection of consumers and resolution of errors.[14] Servicers may not understand, for example, how utilities are required to deal with arrears, and may take action that would undermine any available consumer protection. Creating a system where mortgage servicers intervene in utility arrears would upend carefully-crafted state structures that protect consumers and have no bearing on the extent to which consumers will comply with the essential terms of the reverse mortgage.

Moreover, servicers are having a hard time correctly accounting for more common property charges. Of particular concern to advocates and noted several times by

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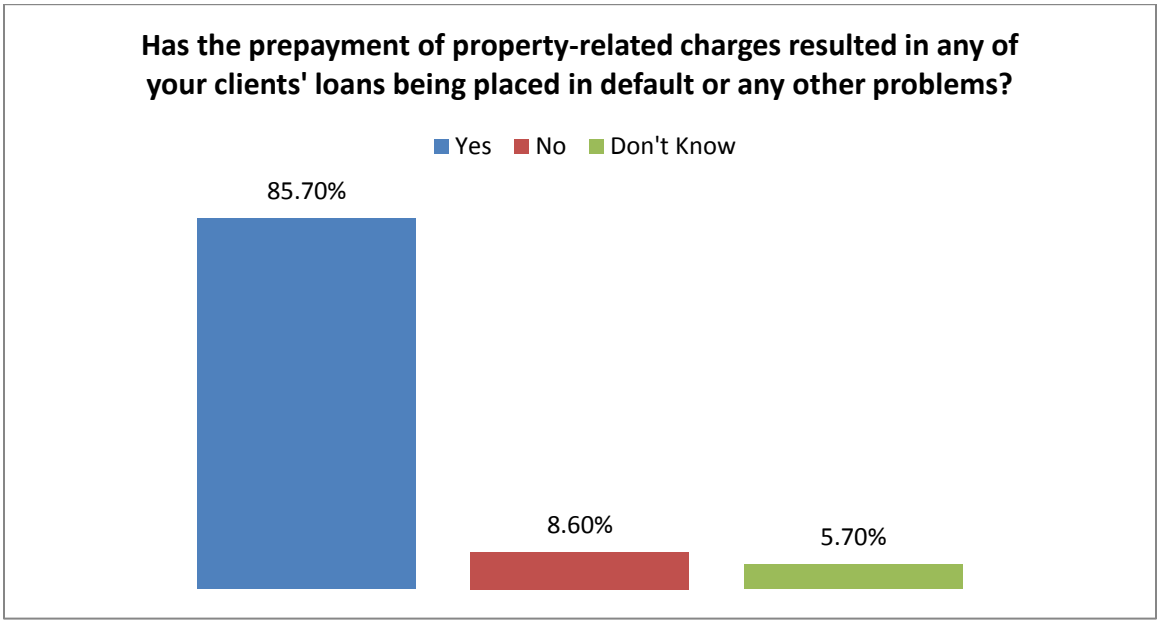
[12] *See generally id.* at 25-46; *see also PA Struggles with LIHEAP Applications Backlog*, LIHEAP Clearinghouse (Apr. 13, 2013), https://liheapch.acf.hhs.gov/news/april13/pabacklog.htm, last visited July 15, 2016.

[13] Consumer Financial Protection Bureau, Office of Older Americans, *Snapshot of Reverse Mortgage Complaints*, at 15 (Feb. 2015).

[14] To the extent that reported utility arrearages are based on erroneous billing information or unfair billing practices, borrowers would bear the brunt of such risks. *See generally* National Consumer Law Center, *Credit Invisibility and Alternative Data: The Devil is in the Details* (June 2015), https://www.nclc.org/images/pdf/credit_reports/ib-credit-invisible-june2015.pdf, last accessed July 15, 2016 (discussing utilities' practice of over reporting bad credit data due to protections against shut-off).

respondents to NCLC's Reverse Mortgage Survey is the disposition of property taxes. The prepayment of property-related charges, most notably taxes, often leads to their clients' loans being improperly called due and payable and homes placed in foreclosure.



Another problem is the proposed rule's lack of clarity. The proposed rule incorporates utilities or utility charges in §§ 206.3, 206.129(d), and 206.205(a) but fails to specify what services would fall within its meaning. There are a range of possible utility charges that could be added to borrowers' mortgage obligations, including those that do not directly impact borrowers' health and wellbeing. An expansive definition of "utilities" could trigger a tsunami of due and payable requests. Failure to concretely define the term could lead to confusion on the part of servicers when dealing with utility-related delinquencies. Servicers will seek to avoid running afoul of HUD's timelines and procedures for calling loans due and payable, and may be inclined to aggressively respond to utility-charge delinquencies and initiate foreclosure prematurely. The majority of elders who fall behind on utilities will ultimately get caught up, either through a repayment plan or a needs-based assistance program. Foreclosures initiated prematurely and needlessly will impose substantial costs on elderly homeowners and the HECM insurance fund.

3. Imposing such undue burdens on older adults is unnecessary to protect the MMI Fund.

We believe that utility arrearages should have no bearing on the viability of borrowers' HECMs. While we are sensitive to both the FHA's duty with respect to the Mutual Mortgage Insurance (MMI) fund and HUD's related obligation to ensure that

HECMs preserve their lien status,[15] we believe that the proposal to explicitly consider utility arrearage as a triggering event is an outsized response to the agency's concerns.

Unpaid utility arrears generally do not result in a first priority lien being placed on the property. Even in the limited cases where arrearages associated with municipal utility service are converted into liens,[16] it is not necessarily true that the lien is senior to prior liens—namely, mortgage liens. In fact, even if a utility lien is treated like a tax lien, states may still designate prior mortgages as being senior in status.[17] Therefore, in most instances mortgagees need not be concerned that their lien status will be jeopardized by utility arrearages.[18]

If a utility arrearage cannot result in a lien that is senior to the mortgagee's lien, there is no reason that utility bills should be a basis for calling HECMs due and payable. If HUD is concerned that utility liens in a particular locale will jeopardize the seniority of HECM liens, the proper policy is one that is tailored to the given locale—not an overbroad rule that creates harmful spillover effects for all HECM borrowers.[19] We condemn any proposal that triggers due-and-payable status based on utility bills because this would significantly weaken programs that provide energy assistance to elders and would ignore less harmful alternatives to preserving the seniority of HECM liens.

Transforming utility payment into a mortgage obligation would weaken protections for consumers and convert the choice whether or not to pay the electricity bill on time into a determinant of one's ability to keep their home.[20] Because expanding the definition of *property charges* to include utilities would magnify borrowers' risk of mortgage default, we strongly urge HUD to abandon the proposed changes that pertain to utilities in §§ 206.3, 206.129(d), and 206.205(a).

B. Requiring periodic inspections and repairs subsequent to closing is overly broad, potentially discriminatory and subject to abuse.

To ensure that the borrower complies with their obligation under the mortgage to maintain the property in good repair, HUD is considering a regime to conduct periodic property inspections for the life of the HECM, allowing the cost of such inspections to be

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[15] *See* 12 U.S.C.A § 1715z-20(b)(4)-(5) (West 2016).
[16] *See generally* 14 McQuillan, The Law of Municipal Corporations, at § 35:69, Westlaw (database updated July 2016).
[17] *See* 85 C.J.S. Taxation § 2216, Westlaw (database updated June 2016).
[18] *See, e.g.,* Isaac v. City of Los Angeles, 77 Cal. Rptr. 2d 752, 761 (Cal. Ct. App. 1998) (holding unconstitutional an ordinance that granted utilities superpriority lien status); *cf. also* Annabella Barboza, *Code Liens are not "Superpriority" Liens: Is it the End of the Debate?*, 87 Fla. B. J. 28, 31-32 (2013).
[19] In particular, HUD might examine the practicality of negotiating intercreditor agreements or subordination agreements with subject utility providers.
[20] Some states, for example, require that households receive a notice of disconnection to become eligible for Low-Income Home Energy Assistance Program (LIHEAP) funding. *See, e.g.*, California Department of Community Services and Development, Low-Income Home Energy Assistance Program (LIHEAP), http://www.csd.ca.gov/services/helppayingutilitybills.aspx, last visited July 15, 2016. In these states, the proposed rule would have the effect of penalizing those who must wait for a notice of disconnection before seeking LIHEAP assistance.

added to the borrower's loan balance and allowing the mortgagee to set aside a portion of the borrower's funds for repairs. While the agency's motivation to verify that homes securing HECM loans are being maintained as required by the terms of the mortgage note is understandable, an inspection and repair program of the nature proposed is overly intrusive, potentially discriminatory and subject to abuse. HUD does not impose such a requirement on other FHA-insured properties. The clear implication is that older homeowners, unlike younger borrowers, are less likely to maintain their homes. HUD should not put a program in place that would impose further costs and add restrictions and burdens on older adults.

All borrowers have an obligation to maintain the collateral that secures the mortgage loan. In addition, borrowers are required to maintain hazard insurance on homes subject to a HECM loan and other FHA-insured properties.[21] Such insurance requirements are standard and considered adequate to protect the value of the secured collateral in every federal housing program. The system of inspections proposed in the rule would upend current practice and subject homeowners to routine and often unnecessary inspections by third parties. The third party inspector and the servicer will make decisions regarding the maintenance and improvement of the property, but the homeowner will be responsible for executing and paying for the repairs. The homeowner will not control the timing, frequency and cost of the inspection, but will pay for the inspection. Nor will the homeowner be able to choose or evaluate the expertise of the inspector, to ensure that he or she is competent to evaluate the condition of the home. If the available principal limit is exhausted, the homeowner may be required to come up with funds to do the repairs.

Despite this loss of control, the homeowner will suffer significant consequences if a repair is ordered. Proceeds will be taken out of available funds to do the repairs. That money may have been set aside to pay medical or other health-related expenses, to supplement on-going day to day expenses or to pay other necessary expenses such as property taxes and insurance. For non-borrowing spouses the stakes are particularly high as they will not have access to the available principal limit, yet they may be forced to make repairs. This loss of control will impact the elder's ability to age in place and may force a premature move from the home if the elder's resources are diverted to make property repairs. Moreover, the homeowner may lose the opportunity to take advantage of state or local home repair programs that are specifically targeted at elder homeowners because of the time constraints imposed by servicers and inspectors or the fact that they have now been declared in default on the mortgage.

A broad program of inspections and repairs puts the financial wellbeing of the elder at risk and could turn into a revenue generating scheme for unscrupulous servicing companies. Servicers may have an incentive to increase the timing and frequency of the inspections unless this practice is tightly regulated and monitored. The cost of such inspections would be included as a reasonable and customary charge and added to the borrower's loan balance and subject to interest, eating away at available equity.

[21] *See, e.g.,* 24 C.F.R. § 206.27 (2016) (HECMs); 24 C.F.R. § 203.23 (2016) (forward mortgages).

Imposing a requirement for a periodic inspection would likely significantly increase costs to the program as well as the burden on the homeowner. Many problems related to the property could be uncovered up front, prior to closing, with an enhanced system of inspection and appraisal. HECMs are typically retired after six years.[22] Less than 30% are still outstanding after 10 years.[23] A robust system of inspection prior to closing rather than belatedly afterwards, when the borrower has expended money to take out the loan and may not have enough resources to address uncovered repairs, would be more efficient and more likely to preserve the property for the average tenure of most HECM loans. It would also be less intrusive than requiring post-closing interior inspections which are highly disruptive to elders and family members.

Moreover, HUD's consideration of an alternative requirement which would limit the property inspection and repair requirement based on the value of the property and age of the home comes with hidden risks to consumers. Imposing a requirement based on the age of the home is problematic. Older properties tend to be located in urban areas with large populations of relatively poorer homeowners and homeowners of color. A policy that is not uniformly applied to all HECM borrowers may have a disparate impact on homeowners of color and poor homeowners.

To the extent that HUD or a servicer requires repairs to be made to a property to protect its value, such requirements should be restricted to conditions that pose a health or safety hazard as defined by code enforcement requirements where the property is located, such as those applicable to major systems like plumbing, heating and cooling, and exterior maintenance such as roofing, siding, windows, doors, and the like. For borrowers who cannot afford to make required repairs, counseling should be offered to explore options. For borrowers who can afford to repay advances for repairs, a loss mitigation plan should be developed.

C. More protections should be added for non-borrowing spouses to ensure they are able to take advantage of the MOE Assignment option and avoid displacement as prescribed by 12 U.S.C. §1715z-20(j).

Consumers' ability to exercise the MOE Assignment option outlined in Mortgagee Letter 2015-15 is greatly impacted by the servicing of the mortgage. Although servicers are nearly universally willing to offer non-borrowing spouses the MOE Assignment, they have generally been very slow to implement the provisions of Mortgagee Letter 2015-15 that permits eligible non-borrowing spouses to remain in their homes after the death of the borrowing spouse. Non-borrowing spouses continue to face challenges accessing this option further defeating the statutory intent of 12 U.S.C. § 1715z-20(j), which requires that FHA-insured reverse mortgages protect the borrower and her spouse from displacement.

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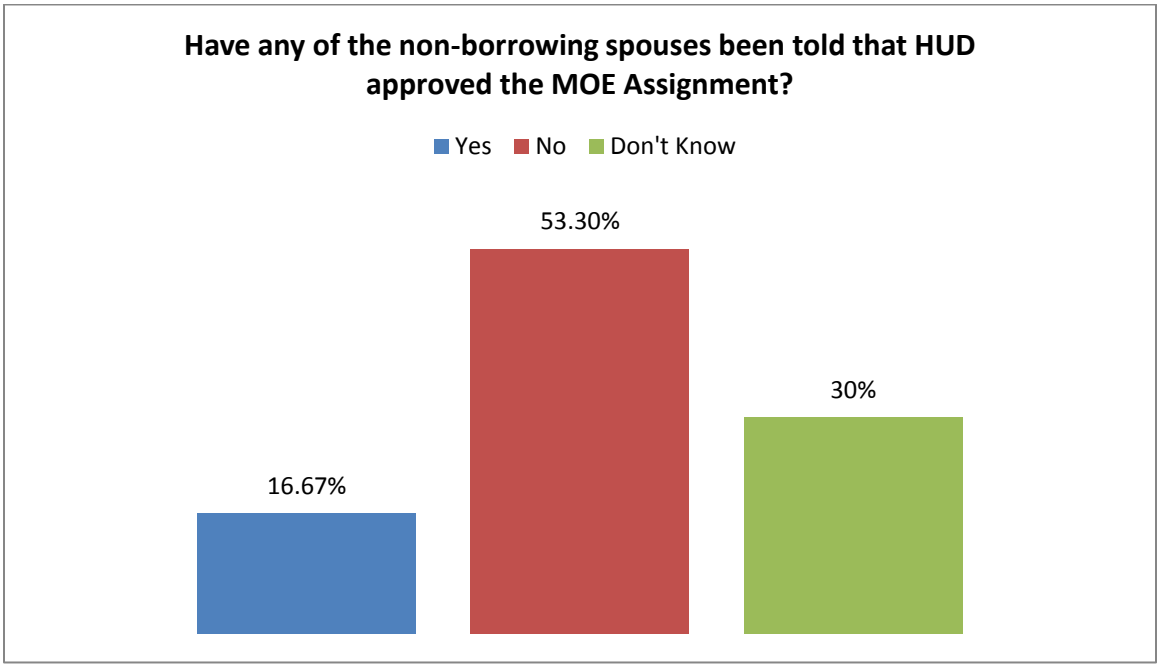
[22] Edward Szymanoski et al, *Home Equity Conversion Mortgage Terminations: Information to Enhance the Developing Secondary Market*, Cityscape: A Journal of Policy Development and Research, Volume 9, Number 1 (2007).

[23] *Id*. *See also* Consumer Financial Protection Bureau, *Reverse Mortgages: Report to Congress*, at 31 (June 28, 2012). CFPB has found, however, that the average lifetime of the typical HECM has been in decline since 2001. *See id.* at 63-66.

Nationwide, NCLC has been contacted by advocates for non-borrowing spouses who have struggled to ensure that servicers are providing correct information and properly implementing the MOE Assignment requirements. Non-borrowing spouses who sought to apply were told they were not eligible for incorrect reasons. Servicers have not adequately educated their customer service representatives, who continue to provide conflicting and inaccurate information, reject paperwork for unexplained reasons, lose paperwork, and otherwise make the process impossibly difficult and highly stressful for older adults who are already in distress over losing their spouse. Many servicers make matters worse by instituting foreclosure proceedings while MOE applications are pending, despite the automatic deferral period triggered by the MOE application. Servicers also make repetitive debt collection calls to non-borrowing spouses and their families during the deferral period.

Most advocates with affected clients responding to NCLC's survey have had their clients' MOE Assignment application rejected.



Servicers and advocates alike have struggled and continue to struggle to understand what evidence of title or a right to remain will suffice. Across the country, there are great differences in the information that servicers require. Even within a servicer organization, spouses report being told internally inconsistent information from one hour to the next. Confusion, disputes, and shifting information about what is needed to qualify for the MOE Assignment result in people being denied the right to stay in their home. For example, in some cases, borrowers are told to probate the estate when probate is not required; this unnecessarily increases the cost of remaining in the home by thousands of dollars, or makes it financially impossible for non-borrowing spouses to take advantage of the MOE Assignment. Even where the servicer is generally willing to offer the MOE Assignment, a local foreclosure attorney for the servicer may make it

unnecessarily costly or otherwise impossible for the homeowner to obtain the MOE Assignment.

Fundamentally, however, the time period to establish legal ownership or a right to remain in the property under the MOE Assignment guideline is too short. Ninety days, as proposed to be codified under §206.55(d)(1), is an insufficient time within which to require a grieving spouse to take practical measures to secure her right to the property. If the property has to go through probate, it is most likely impossible for the spouse to complete that process and establish legal ownership within ninety days. Moreover, most delays in the probate process are outside of the surviving spouse's control. HUD should not codify this requirement and should instead issue further guidance to clarify how this requirement can be satisfied. Where the non-borrowing spouse seeks to establish his or her right to the property, HUD may, for example, establish that a probate action opened within a reasonable time after the borrower's death is sufficient.

Moreover, a non-borrowing surviving spouse should be afforded a reasonable opportunity to cure any default related to the mortgage. The thirty day requirement in §206.57 to cure a default does not provide the surviving spouse with a meaningful opportunity to save the home. Most spouses will need more time, for example, to obtain documentation or evidence from a taxing authority to prove timely payment. Moreover, as discussed extensively above, dealing with servicers may be a challenge and surviving spouses should be afforded more flexibility to ensure that they are able to successfully navigate the servicer's protocols.

To further enhance protections for non-borrowing spouses, HUD should prohibit servicers from instituting foreclosure proceedings while an MOE Assignment application is pending, and clarify that servicers are responsible for providing accurate information regarding the MOE Assignment requirements. HUD should affirmatively require servicers to cease foreclosure activity pending a determination on MOE Assignment eligibility and extend the time frame for non-borrowing spouses to elect the MOE Assignment option until such time as HUD can clarify for servicers and eligible surviving spouses what documentation is necessary or sufficient to establish eligibility. HUD should also consider extending the time frame to produce the necessary evidence to at least 180 days, in light of the significant stress this requirement causes following so closely after the death of a spouse.

HUD should also develop clear informational materials explaining to borrowers what is required to qualify for an MOE Assignment, and what steps they can take while still alive to ease the transition after the borrower's death.

Nationwide and across all servicers, heirs, non-borrowing spouses and their attorneys and advocates have experienced barriers to communicating with servicers because the servicer refuses to accept the authority of the heir to communicate about the property. HUD should encourage servicers to request that borrowers designate family members or others who are authorized to speak with them about a loan on behalf of a borrower or following the death of a borrower.

D. HUD should extend the repayment period for property charge advances and extend the foreclosure time frames for "at risk" homeowners.

HUD revised the loss mitigation options outlined in Mortgagee Letter 2015-11 with the publication of Mortgagee Letter 2016-07. On paper, the amendments to Mortgagee Letter 2015-11 appeared to provide generous opportunities for homeowners in default due to delinquent taxes or insurance to repay advances over a five year period. But when applied in real world situations, HUD's repayment requirements significantly limit the opportunity for borrowers to avoid foreclosure when compared to the previous loss mitigation provisions.

Particularly problematic was HUD's prohibition on servicers entering into repayment plans, or offering a deferral to "at-risk" borrowers over age 80, after they take their first legal action and the loan enters foreclosure. This cut-off failed to account for the reality that in many jurisdictions homeowners have access to foreclosure prevention assistance only after the servicer initiates foreclosure. In fact, many homeowners may not even realize they need to take action to repay an advance or otherwise cure a default until they receive notice from a court regarding the foreclosure. Under the amended repayment provisions, servicers are precluded from agreeing to a loss mitigation plan at the time when assistance and interventions actually become available to repay advances, preserve the home, and ensure long term sustainability.

NCLC appreciates HUD's efforts to correct these problems through Mortgagee Letter 2016-07. However, many servicers continue to refuse to offer any loss mitigation after taking the first legal action. HUD's policy, as clarified in a recent FAQ, still prohibits servicers from offering the "at-risk" extension once foreclosure has been initiated. NCLC urges HUD to eliminate the strict cut-off to permit more borrowers to take advantage of loss mitigation assistance and ensure that servicers actually understand HUD's revised policy.

Additionally, the revised repayment plan requirements present problems for borrowers because repayment plans are formulaic and inflexible. Servicers are not permitted to work out a flexible arrangement tailored to the abilities of the borrower to repay delinquent charges. Even borrowers who timely seek to enter into repayment plans may still be ineligible if the required calculation based on their recurring income is not sufficient to allow them to repay the advance in equal monthly increments within five years or such shorter time period as necessary to ensure repayment before the mortgage reaches 98 percent of the Maximum Claim Amount. This regime fails to recognize or allow for the fact that a borrower's cash flow is not typically linear. For example, a borrower may have seasonal or intermittent employment income, the opportunity to sell items to raise funds, or the ability to borrow from friends and family. The borrower may have suffered a temporary price shock from which she can rebound, given sufficient time, or may anticipate a lump sum payment such as Social Security, Social Security Disability Insurance, a property settlement, or a tax refund, or may have access to other forms of monetary assistance. More flexibility will ensure that more homeowners benefit from the loss mitigation options offered.

HUD should also extend the loss mitigation option to eligible non-borrowing surviving spouses. As discussed above, a thirty day right to cure property charge defaults is too short. Although HUD requires non-borrowing spouses to agree to be bound by the terms of the mortgage, HUD excludes them from participating in loss mitigation repayment plans. Considering the small number people who have been approved for the MOE Assignment option, extending full loss mitigation to them would not jeopardize the stability of the insurance fund and would significantly improve the utility of the HECM program to enable people to age in their homes.

E. The proposal to add a new flood insurance mandate "to the extent required by the Commissioner" is vague and unnecessary.

HUD has proposed requiring borrowers to "insure all improvements on the property . . . against loss by floods to the extent required by the Commissioner."[24] The only explanation for this requirement is a vague reference in the Supplementary Information to "litigation risk."[25] There is no description of the criteria the Commissioner would use to determine when or where flood insurance is required, how much flood insurance is required, or how the Commissioner would make this determination. Currently federal law requires flood insurance only when a property is in a special hazard flood area (SHFA), as determined by the Federal Emergency Management Agency (FEMA).[26] The proposed regulation gives no indication of whether the Commissioner would merely follow existing law for FEMA-identified SHFAs, use FEMA's experience for guidance, or impose stricter requirements.

Considering past practices, it appears likely that any FHA pronouncement regarding flood insurance requirements would be issued via a Mortgagee Letter—with limited opportunity for public comment. Given the complete lack of detail in the proposed regulation, this amendment appears far more likely to increase the Commissioner's litigation risk than to reduce it. Flood insurance is one of the most expensive forms of insurance available to homeowners. And given recent changes to the federal insurance program, it is likely to become even more expensive in the future.[27]

Federal law and the flood insurance program were designed to protect mortgagees and the federal government from the risk of property loss due to floods. Therefore it would appear that federal law already protects the FHA to the extent necessary. This makes the proposed amendment even more confusing. We can think of no rational basis for the FHA to impose an insurance requirement that exceeds what is already required by federal law. We therefore encourage HUD to delete this provision of the proposed amendment. Should HUD decide in the future that the flood insurance requirements need

[24] *See* 81 Fed. Reg. 31770, 31782 and proposed § 206.27(b)(2); 206.45(c)(1)(ii).
[25] *See id.*
[26] Rawle O. King (Congressional Research Service), *The National Flood Insurance Program: Status and Remaining Issues for Congress* at 2-3 (Feb. 6, 2013).
[27] FEMA, How April 2015 Program Changes Will Affect Flood Insurance Premiums (Oct 2014), available at https://www.fema.gov/media-library-data/1414004070850-3e90be61f9762523126c385a1d7fa95a/FEMA_HFIAA_OctoberBulletinFS_100814.pdf (discussing changes to flood-insurance programs and premium increases).

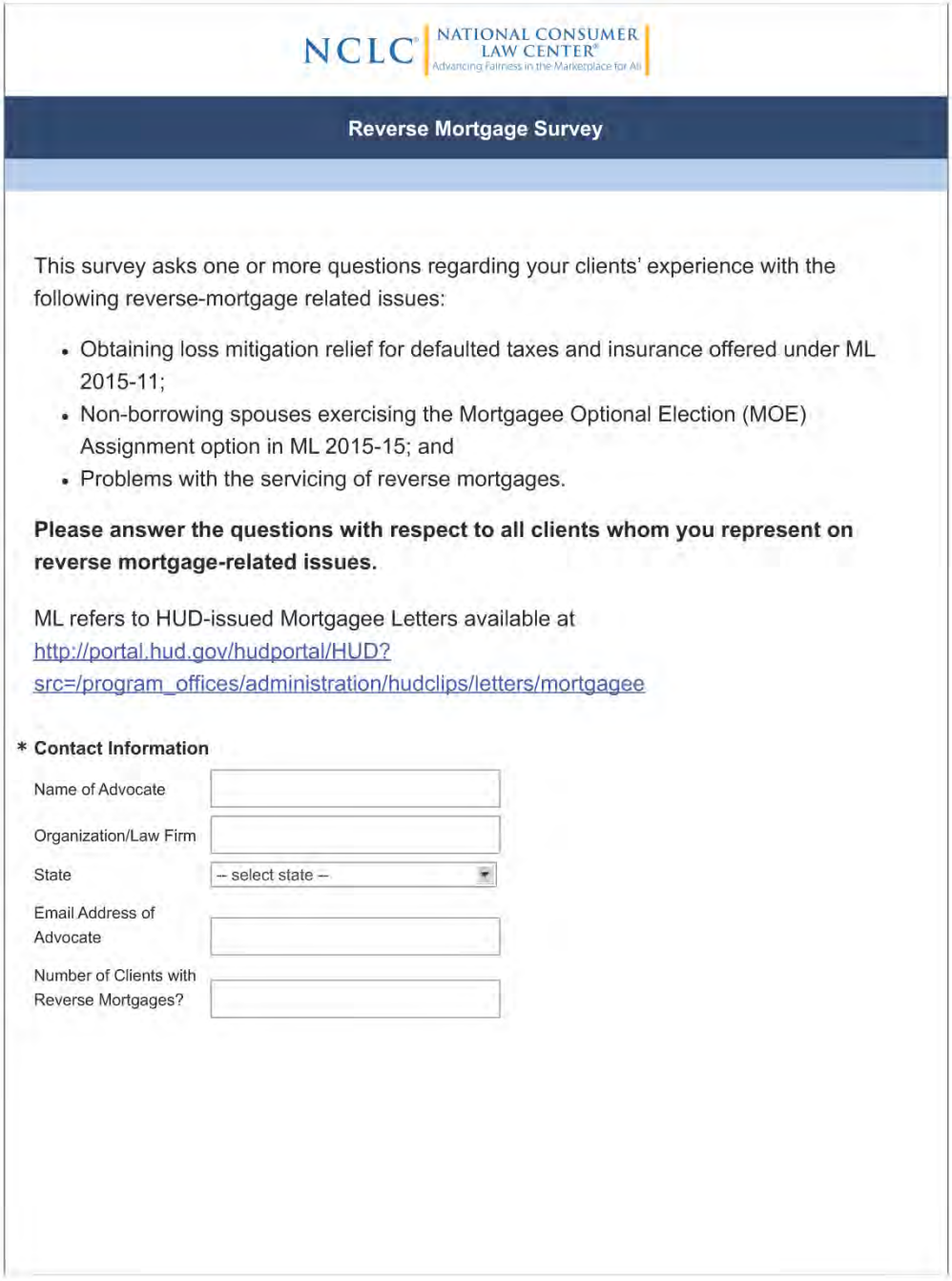
to be changed, those changes should be proposed in the Federal Register and subject to notice and comment.

Finally, the proposed § 206.45(c)(1)(ii) has a drafting error that should be corrected if the provision is not deleted. We recommend deleting § 206.45(c)(1)(ii). But if HUD retains clause (ii), paragraph (1) should be edited by adding a paragraph break after the first comma in § 206.45(c)(1)(ii). Without a paragraph break at that point, it will be unclear whether the phrase "if flood insurance under the National Flood Insurance Program (NFIP) is available" applies only to clause (ii) or to clause (i) as well. We assume it applies equally to both but that is not clear from how the regulation is drafted. Adding a paragraph break will also clarify whether the final phrase ("to obtain and to maintain NFIP flood insurance coverage on the property improvements during such time as the mortgage is insured") applies to both clauses and only clause (ii).

IV. Conclusion

NCLC appreciates the opportunity to respond to HUD's request for comments. We support making changes to the HECM program to ensure its long-term sustainability and to protect both borrowers and taxpayers. NCLC supports the continuation of the HECM program and we look forward to working with HUD to ensure that older Americans can tap their home equity with safe, affordable, government-insured reverse mortgage loans that enhance their ability to age in place.

EXHIBIT A



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Reverse Mortgage Survey

This survey asks one or more questions regarding your clients' experience with the following reverse-mortgage related issues:

- Obtaining loss mitigation relief for defaulted taxes and insurance offered under ML 2015-11;
- Non-borrowing spouses exercising the Mortgagee Optional Election (MOE) Assignment option in ML 2015-15; and
- Problems with the servicing of reverse mortgages.

Please answer the questions with respect to all clients whom you represent on reverse mortgage-related issues.

ML refers to HUD-issued Mortgagee Letters available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee

* **Contact Information**

Name of Advocate

Organization/Law Firm

State -- select state --

Email Address of Advocate

Number of Clients with Reverse Mortgages?

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Reverse Mortgage Survey

Property Charges Arrears

1. Have any of your clients had reverse mortgage loans called "due and payable" or put in default because of arrears on taxes, insurance or other property charges?

- ◯ Yes
- ◯ No
- ◯ I don't know

If "No" skip to Question 11

2. Were any of your clients able to obtain loss mitigation to address the tax, insurance or property charge default?

- ◯ Yes
- ◯ No
- ◯ I don't know

If "No" skip to Question 4

3. If yes, please describe the loss mitigation your client(s) received?

4. Were any of your clients denied a loss mitigation option because their loan was in foreclosure?

- ◯ Yes
- ◯ No
- ◯ Other reason (please specify)

5. Did the servicer offer to stop the foreclosure process only if the borrower paid the property charge arrearage in a lump sum?

- ◯ Yes
- ◯ No
- ◯ Other reason (please specify)

6. HUD has indicated that servicers may seek a waiver of the agency's restriction on loss mitigation for loans in foreclosure. Have you requested a waiver of HUD's policy on behalf of one or more clients in foreclosure due to property charge defaults?

- ◯ Yes
- ◯ No

7. Did the servicer pass along the request for a waiver of the policy to HUD?

- ◯ Yes
- ◯ No
- ◯ I don't know

8. Was the request for a waiver of the policy granted?

- ◯ Yes
- ◯ No
- ◯ I don't know (please specify)

9. Does your state administer a program (e.g., under the Hardest Hit Fund) to help borrowers, including reverse mortgage borrowers, catch up on tax, insurance or other property charge arrears?

- ◯ Yes
- ◯ No
- ◯ I don't know

10. If yes, were any of your clients able to access such funds to resolve the property charge default?

- ◯ Yes
- ◯ No
- ◯ I don't know (please specify)

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Reverse Mortgage Survey

Non-Borrowing Spouses Exercising the MOE Option

11. Do you represent non-borrowing spouses who may face foreclosure because their spouse (the borrower listed on the reverse mortgage) has died and the servicer has declared the loan due and payable?

- ◯ Yes
- ◯ No

If "No" skip to Question 16

12. Do you represent non-borrowing spouses seeking the MOE option outlined in ML 2015-15?

- ◯ Yes
- ◯ No

If "No" skip to Question 16

13. Have any of the non-borrowing spouses been told that HUD approved the MOE Assignment?

- ◯ Yes
- ◯ No
- ◯ I don't know (please specify)

14. If yes – How many non-borrowing spouses were granted the MOE Assignment/ how many were denied the option?

15. If one or more of your non-borrowing spouses were denied the MOE Assignment, what were the reasons for the denial?

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Reverse Mortgage Survey

Servicing-Related Issues

16. Has the servicer paid your clients' taxes, insurance or other property-related charge prior to the due date established by the taxing entity, insurance company or other agency/entity?

- ◯ Yes
- ◯ No
- ◯ I don't know

17. If yes, has the prepayment of property-related charges resulted in any of your clients' loans being placed in default or any other problems?

- ◯ Yes
- ◯ No
- ◯ I don't know (please specify)

18. Have any of your clients' loans been declared due and payable for lack of occupancy despite a client still living at home?

- ◯ Yes
- ◯ No
- ◯ I don't know

19. If yes, did any of your clients return the certification of occupancy?

- ◯ Yes
- ◯ No
- ◯ I don't know (please specify)

20. Has a servicer ever force-placed flood and/or hazard insurance on any of your clients' accounts?

- ◯ Yes
- ◯ No
- ◯ I don't know

21. If yes, did any of your clients have existing flood or hazard insurance at the time the insurance was force-placed?

- ◯ Yes
- ◯ No
- ◯ I don't know

22. Upon the loan's default, has the servicer charged any of your clients an excessive fee for property inspection?

- ◯ Yes
- ◯ No
- ◯ I don't know

23. Were there any other problems related to servicing of your clients' accounts?

24. Please provide any additional information regarding your clients' experience with the origination or servicing of reverse mortgage loans.