



Recommendations to Improve Servicing and Reduce Foreclosures of Federal Reverse Mortgages

March 2020

BACKGROUND

Reverse mortgages are intended to help older Americans age in their homes. Yet, across the country, reverse mortgage borrowers and their spouses are losing their homes because the U.S. Department of Housing and Urban Development (HUD) has not acted to prevent unnecessary foreclosures. HUD should take immediate action to expand home retention options for reverse mortgage borrowers who fall behind on property taxes and insurance, address remaining problems facing non-borrowing spouses, and ensure that the companies servicing these complex mortgage loans communicate effectively in order to help older homeowners remain in their homes.

How Reverse Mortgages Work

Reverse mortgage loans are designed to make it easier for older homeowners to age in place by allowing them to borrow against the equity in the home without the risk of displacement. Congress authorized HUD to create a reverse mortgage product, known as the Home Equity Conversion Mortgage (HECM), in order to increase lenders' willingness to extend reverse mortgages. These mortgages are insured by HUD's Federal Housing Administration (FHA).

The proceeds of a reverse mortgage can be taken as a lump sum, a line of credit, or a stream of monthly payments. As long as the borrower continues to occupy the home as his or her principal residence, no payment of principal or interest on the loan is required. Instead, the homeowner is only required to pay the taxes and insurance on the home, and any homeowners association (HOA) fees. Unlike the standard mortgage (a "forward" mortgage), where the balance goes down over time, the loan balance on a reverse mortgage grows over time as the interest is added to the principal balance. The full loan balance becomes due and payable upon a triggering event – in most cases, the death of the last remaining borrower or the date the last remaining borrower leaves the home. The FHA insurance covers the shortfall if the loan eventually grows to exceed the value of the home.

The Reverse Mortgage Foreclosure Crisis

Problems with oversight and servicing of these loans have resulted in older homeowners facing unnecessary foreclosures.

Despite the importance of the HECM program in helping elderly homeowners maintain stable housing while accessing their home equity, problems with oversight and servicing of these loans have resulted in older homeowners facing unnecessary foreclosures. According to HUD data, as of 2016, nearly 90,000 reverse mortgage loans were headed toward foreclosure because the homeowner had fallen behind on the obligation to

pay property taxes and homeowner's insurance.¹ This represents roughly 14% of outstanding FHA-insured reverse mortgage loans.²

In addition, many elders are facing eviction and foreclosure because their spouse took out a reverse mortgage just in his or her name. Under the terms of many reverse mortgages—those taken out before August 4, 2014—when the spouse who is obligated on the reverse mortgage dies or permanently moves out of the home, the non-borrowing spouse must either pay back the reverse mortgage in full within a short time period or lose the home. Gaps in HUD’s servicing policies are significantly contributing to these unnecessary foreclosures.

The following changes to HUD’s servicing rules for reverse mortgages would help prevent avoidable loss of borrower homes. HUD can accomplish all of these important improvements by updating the reverse mortgage provisions as it revises its mortgage servicing handbook or simply by issuing new mortgagee letters.

HUD must expand available loss mitigation options to allow reverse mortgage borrowers to resolve property charge defaults.

Although the borrower is not required to make monthly payments of principal or interest, reverse mortgages do require the borrower to pay property charges, including property taxes, homeowner’s insurance, and homeowners association (HOA) fees. If a borrower falls behind on these property charges, HUD directs lenders to advance the funds and then foreclose. A surge in property charge defaults and resulting foreclosures of HECM borrowers has reached crisis proportions. Consumer advocates from around the country have reported that HUD’s strict foreclosure timelines, lack of robust foreclosure avoidance policies (known as loss mitigation), and servicers’ business decisions influenced by these policies, make it extremely difficult for HECM borrowers to cure these defaults by catching up on the payments to avoid foreclosure. Effective loss mitigation and clearer communication with borrowers would help to stem the tide of property charge foreclosures on reverse mortgage loans.

HUD should allow more flexibility in payment plans for borrowers to catch up on property charge payments.

The primary way that HUD allows reverse mortgage borrowers who have fallen behind on their property charge payments to avoid foreclosure is by giving them a time period to catch up on these charges. But HUD’s repayment plan rules are too rigid and lead to the loss of homes that could be saved. HUD should:

The primary way that HUD allows reverse mortgage borrowers who have fallen behind on their property charge payments to avoid foreclosure is by giving them a time period to catch up on these charges. But HUD’s repayment plan rules are too rigid and lead to the loss of homes that could be saved.

- **Allow repayment terms as long as 120 months.** Under HUD’s rules, servicers are directed to offer repayment plans that extend no longer than 60 months (or potentially shorter if the loan balance is nearing the Maximum Claim Amount, which is the maximum amount that the lender can recover on an insurance claim with HUD). To make affordable repayment plans more available, HUD should extend this period to up to 120 months, as long as the borrowers show that they can make the payments within their current budgets and that they meet the other requirements for loss mitigation.
- **Clarify that the surplus income percentage is a target, not a cap.** Many servicers believe they cannot approve a repayment plan unless the borrower can make the required

payment using no more than 25% of surplus income.³ HUD should clarify in the handbook that 25% of surplus income should be the target payment amount, but that repayment plans should be offered when the necessary payment consumes more than 25% of the borrower's surplus as long as it otherwise meets the loss mitigation requirements.

- **Allow successive repayment plans.** Under HUD's current rules, a borrower who defaults on a repayment plan and owes more than \$5,000 is currently not eligible for another repayment plan.⁴ This restriction is too limiting, especially in states where property tax amounts are higher. HUD should make repayment plans more flexible for borrowers by removing any ban on successive repayment plans where the borrower otherwise can afford the payments.
- **Allow repayment of HOA fees.** HUD currently does not allow servicers to include HOA fees in a repayment plan. There is no reason not to allow borrowers to catch up on these fees in the same way that they can catch up on taxes and insurance. All loss mitigation options should be available to repay a servicer's advance of HOA fees to the same extent as other property charges.

Extend HUD's foreclosure timelines for all borrowers with critical health circumstances, not just those who are over age 80, and streamline the annual reapproval process.

HUD's current policies require reverse mortgage servicers to start the foreclosure process soon after a reverse mortgage borrower falls behind on property charges, and to push the foreclosure along under strict time deadlines. HUD makes an exception (known as the "At-Risk Extension") for borrowers with critical health circumstances, such as long-term illness, but only if all borrowers in the household are over the age of 80. This extension should be available to all borrowers with critical health circumstances, regardless of age.

In addition, HUD's policies require the borrower to reapply annually to continue the extension. Requiring a full reapplication every year is excessively burdensome and should be replaced with an automatic renewal policy or a streamlined renewal. If HUD elects to continue requiring some kind of recertification annually, the servicer should be required to reach out to the borrower twice--at least 90 days in advance and then 45 days in advance of the recertification deadline--and the requirement should be simply for the borrower to certify that the circumstances previously documented have not changed.

HUD also should offer an option for borrowers who are unable to make a serious dent in the arrearage but can begin to pay current property charges going forward. This option, which would be similar to the FHA partial claim for forward mortgages (also known as a "silent second" mortgage), would place the arrearage amount at the end of the loan to be paid off when the property is sold. This could be an additional option for critically ill or disabled borrowers who do not meet all the criteria for the At-Risk Extension, but would face significant hardship if displaced from the home.

Allow and encourage loss mitigation after foreclosure has been initiated, and provide for a clear deferral of foreclosure deadlines in order to evaluate loss mitigation options.

The commencement of the foreclosure process on a reverse mortgage should not mean that it is too late to save the home. For a time, HUD did not allow servicers to even offer loss mitigation after foreclosure had been initiated. It reversed this position in 2015,⁵ but many servicers still refuse to offer loss mitigation options to reverse mortgage borrowers once a foreclosure action has been commenced, because they fear that they will be financially

penalized by HUD for not foreclosing fast enough. As a result, homes are lost that could have been saved.

HUD should make it clear that servicers are permitted to offer loss mitigation after a foreclosure has been initiated. HUD also should remove some of the pressure servicers feel to rush to foreclose by making it clear that if a servicer is complying with HUD's requirements, a loss mitigation *evaluation* (not simply an offer of a repayment plan, which occurs at the end of the evaluation) pauses the timeclock on the foreclosure deadline.

Clarify that servicers are neither required nor permitted to pay property taxes early or when the borrower is in an installment plan with the taxing authority

Servicers too often pay property taxes when they are not yet delinquent according to the taxing authority, or when the borrower is in an active installment plan provided by the taxing authority. By jumping the gun in this way, the servicer terminates whatever payment plan the borrower had worked out with the taxing authority. Servicers also often treat their payment of the property taxes as grounds for terminating any payment plan it has worked out with the borrower to catch up on an earlier default, a payment plan which may be more affordable to the homeowner. Once the payment plan is revoked, HUD's policies require the servicer to start the foreclosure process.

Taxes should not be considered delinquent or past-due when paid within any extensions or grace periods allowed by the taxing authority or if the borrower is in good standing on a payment plan or installment plan with the taxing authority.

HUD should clarify in the handbook that taxes are considered "current" when paid prior to the date when they would be considered delinquent by the local taxing authority. Taxes should not be considered delinquent or past-due when paid within any extensions or grace periods allowed by the taxing authority or if the borrower is in good standing on a payment plan or installment plan with the taxing authority.

Make it mandatory for servicers to evaluate reverse mortgage borrowers for loss mitigation options.

Until recently, HUD required servicers to evaluate borrowers for loss mitigation prior to declaring a loan due and payable as the result of a property charge default.⁶ In 2015, HUD changed its policy to make all loss mitigation efforts optional, at the servicer's discretion. Returning loss mitigation to mandatory status (as was the case prior to 2015) would help improve HECM loan performance and further the mission of the program. Advocates working with homeowners report that many HECM borrowers who could afford a repayment plan are being denied the opportunity to obtain one, leading to unnecessary foreclosures.

Allow lenders to let borrowers make monthly payments into escrow for taxes and insurance.

One way to reduce HECM foreclosures due to unpaid property charges is to allow servicers to escrow for those annual charges from the outset. In 2015, HUD implemented the "Financial Assessment," in which reverse mortgage borrowers with either insufficient income or a flawed credit history are required to have funds set aside at closing to pay the property charges for their expected life span. While these new rules have reduced the rates of property charge defaults on newer loans, they have also blocked some potential borrowers from obtaining a reverse

mortgage based on credit history alone. Borrowers who can afford to pay the property taxes and insurance on a monthly basis through a regular escrow account should have the option to do so. Borrowers are significantly less likely to default on property charges if they are paying into a monthly escrow, rather than paying a large lump sum annually or semi-annually. If the escrow option is combined with clear communication from the servicer to the homeowner and access to post-closing housing counseling, it has the potential to work well for a significant number of low-income homeowners who might be boxed out by HUD's current financial assessment and set-aside rules. Creating a prospective escrow option would help further Congress's intent in creating the HECM program with minimal risk to the insurance fund, since a payment default would be small in amount and noticed immediately, allowing plenty of time for loss mitigation or, if necessary, foreclosure. HUD could authorize a demonstration program, allowing a limited number of HECM borrowers with several different servicers to pay property charges through a monthly escrow.

HUD should ensure that non-borrowing spouses are protected from foreclosure on pre- and post-2014 HECM loans.

When Congress authorized HUD to create the HECM program, it wanted to protect older homeowners, including their spouses, from the risk of displacement from their homes. Congress specified that HUD could only insure loans that protected both the homeowner and any spouse from displacement.⁷ However, despite this statutory requirement, HUD issued regulations and required lenders to use form loan documents that made the loans due and payable upon the death of the borrower – ignoring any spouse that was not included as a borrower on the loan.⁸ This created an incentive for some lenders and mortgage brokers to encourage married couples to leave off the younger spouse so more money could be borrowed on the loan. Most couples who took out a reverse mortgage in the name of only one spouse had no idea that the non-borrowing spouse would face foreclosure and eviction because the loan would become due and payable upon the death of the borrowing spouse. Once the loan becomes due and payable, the full amount must be paid immediately or else the lender has the right to foreclose.

After lengthy litigation, HUD responded to this problem in two ways.⁹ First, in 2014 it announced a new policy for reverse mortgages originated after August 4, 2014. For these loans, any non-borrowing spouse must be disclosed and factored into the calculation of initial loan proceeds. In addition, the reverse mortgage loan documents now allow the non-borrowing spouse to remain in the home after the borrower's death while complying with the requirements of the loan.

Second, to deal with reverse mortgages that had been originated before this change, HUD created what it calls the Mortgagee Optional Election (MOE). For HECMs originated prior to August 4, 2014, this option allows the surviving non-borrowing spouse to remain in the home until his or her death or until some other triggering event occurs. Servicers that choose to offer this option make the "election" to assign the loan to HUD. Then HUD holds the loan and allows the non-borrowing spouse to remain in the home. Having the option to assign the loan to HUD allows the lender to be paid its insurance claim and made financially whole without having to carry out a foreclosure while a non-borrowing spouse is still in the home.

Until September 2019, a large number of non-borrowing spouses who could have benefited from this new MOE program were blocked from the program due to problematic deadlines and a burdensome requirement to show "good and marketable title" or a legal right to remain in the home until the spouse's death. Fortunately, on September 23, 2019, HUD significantly revamped the MOE program, which applies to HECMs made prior to Aug. 4, 2014, making it

much more accessible. However, problems remain, both for pre-2014 borrowers and post-2014 borrowers.

- HUD should make the MOE available when the borrowing spouse has not yet died, but has had to move out of the home due to health circumstances.

HUD's issuance of Mortgagee Letter 2019-15 has made a huge difference for non-borrowing spouses on pre-2014 reverse mortgages, but there still is no pathway to avoid foreclosure if the loan becomes due and payable because the borrower enters a nursing home (leaving the property). HUD allows non-borrowing spouses to seek to have the loan assigned to HUD through the Mortgagee Optional Election (MOE) program *only* when the borrower has died. The same relief for non-borrowing spouses is needed when the loan has become due and payable because the borrower had to move out of the home permanently due to declining health. There is no principled reason to deny access to the MOE program to NBSs who otherwise meet eligibility criteria but whose spouse is living in a nursing home or other facility.

- HUD should allow non-borrowing spouses to continue with existing loss mitigation (or obtain a new repayment plan) to repay property charge defaults while still obtaining the MOE.

HUD continues to take the position that a loan may not be assigned to HUD through the MOE until any property charge default is cured. This imposes a significant impediment for many non-borrowing spouses, who are often adjusting to a loss of household income after the death of the borrower, may be faced with other large expenses related to the borrower's death, and may not have the means to come up with a lump sum payment to cure a property charge balance in such a relatively short period of time--within six months of the borrower's death.

HUD should change its policy to allow a loss mitigation plan to continue in place if the spouse continues to perform under an existing plan, and to allow a spouse to obtain loss mitigation to cure a property charge default if no plan is currently in place.

- HUD should update its model Non-Borrowing Spouse Information Sheet and Non-Borrowing Spouse Fact Sheet, or provide assurance to lenders that adjusting the language of these documents is still in compliance with the Mortgagee Letter

HUD has made the important decision to require servicers to send information about the MOE program to HECM borrowers along with the annual occupancy certification, and has offered model forms—a model Information Sheet and a model Fact Sheet—for servicers to use.

These model forms should be clarified to make them more readily understandable to an average consumer. For example, the Information Sheet asks if the borrower's spouse is "named in the HECM." Many spouses will not understand what this means, and may answer incorrectly. This question appears to be unnecessary since the servicer already knows who is "named in the HECM." The form also notes that the spouse "may be eligible for a deferral." Most consumers will not understand what deferral means or why it might be needed. Near the bottom of the form, it asks whether the borrower and spouse "meet requirement 2a or 2b in the provided Fact Sheet" – which is confusing – and then asks for unspecified "supporting documentation."

The Information Sheet also requests personal information, such as the Social Security Number of the non-borrowing spouse, that may make some consumers less likely to complete and return the form due to concerns about providing sensitive information. Although this information may be required later for MOE approval after the borrower has

passed away, the initial response form should request only basic, essential information so servicers may identify the existence of a non-borrowing spouse, such as the spouse's name and the date of the marriage.

In NCLC's [recent comments \(see Exhibit A\)](#), we recommend a clarified version of the model Information Sheet. Our proposed model includes having the top section pre-filled by the servicer, because the servicer already has the information regarding the property address, FHA Case Number, and most importantly, the identity of the borrower(s) on the loan. Some spouses may not know whether they are borrowers or non-borrowers, because spouses are often asked to attend the loan closing and sign various documents, even though they are not asked to sign the mortgage note. HUD should indicate that this version of the model form is acceptable, address the issues discussed above regarding the model forms, or specifically state that lenders will not be penalized for modifying the forms in the ways suggested here. HUD also should do consumer testing of its model form over the next few months, perhaps in cooperation with the CFPB, and make any adjustments that would promote consumers' understanding.

- HUD should make the same change for post-2014 HECM non-borrowing spouses that it has made for pre-2014 spouses: address any deadline issues and remove the requirement to show "good and marketable title or a legal right to remain."

The deferral period that HUD requires reverse mortgages originated after August 4, 2014, to provide for operates in a way that is similar to the MOE: it allows a non-borrowing spouse to remain in the home whether the borrower's death would otherwise trigger a foreclosure. On September 23, 2019, when HUD issued Mortgagee Letter 2019-15, it removed the most significant barriers that had prevented eligible spouses from accessing the MOE program: unnecessarily harsh deadlines and the requirement to show "good and marketable title or a legal right to remain in the home" within a certain timeframe after the borrower's death. However, HUD has not yet signaled whether it will make the same crucial changes with respect to post-2014 HECMs entering a deferral period upon the death of a borrower. The same reason that HUD removed the "good and marketable title" requirement for pre-2014 loans should lead it to do so with respect to

post-2014 loans. There is no need to determine the heirs to the property in connection with a non-borrowing spouse entering a deferral period. If the spouse does not have a legal right to reside in the home and gets removed, the deferral period will end. HUD should not require properly identified non-borrowing spouses of post-2014 loans to face greater hurdles to remaining in their homes than those with pre-2014 reverse mortgage loans. The requirement that servicers obtain a certification within 30 days of notice of the borrower's death also poses an unreasonable and

unnecessary impediment to the non-borrowing spouse remaining in the home. This time period should be lengthened to at least 120 days from notice of the death.

HUD should not require properly identified non-borrowing spouses of post-2014 loans to face greater hurdles to remaining in their homes than those with pre-2014 reverse mortgage loans.

HUD should focus on promoting effective and clear servicer communication with HECM borrowers

Although there is no required monthly payment of principal or interest on a reverse mortgage, companies called "servicers" still handle the day-to-day communications with borrowers, including providing monthly or quarterly statements showing the interest that has accrued on the loan and ensuring that all loan obligations are being met. Servicing of reverse mortgages could

be dramatically improved if HUD would update its rules and provide appropriate oversight of the HECM servicers, a market dominated by three large companies. This also would reduce unnecessary reverse mortgage foreclosures.

- Clarify servicer communications with borrowers

Too often, the letters sent to HECM borrowers by loan servicers use opaque language and legal terms of art. Servicing letters should be written in plain English. Many servicing letters sent in the event of a default on property charges or after notice of the death of the borrower are extremely long (11 or 12 pages, for example) with the most important information buried in the middle of a dense letter. Servicers claim that these letters are often dictated by a desire not to run afoul of HUD's requirements.

Recent research indicates that effective servicing and clear communication can make a significant difference in borrowers' performance in maintaining property charge payments.¹ HUD should ensure that the handbook does not perpetuate overly lengthy or opaque servicing letters, but rather leads to simple, clear written correspondence.

Recent research indicates that effective servicing and clear communication can make a significant difference in borrowers' performance in maintaining property charge payments.¹⁰ HUD should ensure that the handbook does not perpetuate overly lengthy or opaque servicing letters, but rather leads to simple, clear written correspondence. HUD should provide model letters that have been vetted through consumer testing, perhaps through consultation with the CFPB, to assist servicers in effectively communicating with mortgagors. Until such letters can be developed, HUD should clarify and streamline as much as possible the content servicers are required to include in communications with borrowers and their heirs.

- HUD should conduct oversight of servicers and incentivize good servicing

A United States Government Accountability Office (GAO) study revealed that HUD has not been consistently conducting reviews of HECM servicers in recent years. Ensuring that servicers are properly communicating with borrowers and avoiding unnecessary foreclosures is essential. HUD should consider ways to incentivize the most effective servicing practices, including by providing incentives to servicers that reduce the rate of property charge defaults or achieve high success rates in curing defaults through repayment plans. Sending borrowers invoices or monthly coupons for the repayment plan amount would greatly increase success rates. In addition, servicers should encourage borrowers in repayment plans to speak with a housing counselor, to assist with a budget and help prepare for the next installment of property charges that will come due.

CONCLUSION

The federally insured reverse mortgage program has the potential to strengthen our social safety net and promote housing stability by allowing older homeowners to tap into their home equity without the risk of displacement. Despite this important program goal, reverse mortgage foreclosures are at an all-time high. HUD could significantly stem the tide of reverse mortgage foreclosures and preserve this important program for the growing population of older homeowners who will need it in the coming decades through sensible, modest servicing reforms.

For more information, please contact National Consumer Law Center attorneys Sarah Bolling Mancini (smancini@nclc.org) or Odette Williamson (owillamson@nclc.org).

Endnotes

¹ Integrated Financial Engineering, Actuarial Review of the Federal Housing Administration Mutual Mortgage Insurance Fund HECM Loans For Fiscal Year 2016, at 19 (Nov. 15, 2016), available at <https://www.hud.gov/sites/documents/ACTUARIALMMIFHECM2016.PDF> [hereinafter FY 2016 Actuarial Review].

² *Id.*

³ This belief stems from confusing language in Mortgagee Letter 2015-11 (Apr. 23, 2015) at 6-7. At the recent NRMLA conference in November 2019, servicers again expressed the belief that the monthly payment exceeding 25% of surplus income was a basis for denial of a repayment plan.

⁴ Mortgagee Letter 2015-11 (Apr. 23, 2015) at 8.

⁵ See Mortgagee Letter 2015-11 (Apr. 23, 2015) at 3; Mortgagee Letter 2016-07 (Mar. 30, 2016); U.S. Dep't of Hous. & Urban Dev., Frequently Asked Questions, <https://hudgov.prod.parature.com/link/portal/57345/57355/ArticleFolder/26/Reverse-Mortgage-Programs>.

⁶ Dep't Housing and Urban Dev't, Mortgagee Letter 2011-01 (Jan. 3, 2011).

⁷ 12 U.S.C. § 1715z-20(j).

⁸ 24 C.F.R. § 206.27(c); see also *Plunkett v. Castro*, 67 F. Supp. 3d 1 (D.D.C. 2014).

⁹ National Consumer Law Center, Home Foreclosure (2019) § 14.3.3.3.

¹⁰ Stephanie Moulton et al., Reminders to Pay Property Tax Payments: A Field Experiment of Older Adults with Reverse Mortgages (New York: SSRN, 2019), available at <https://appam.confex.com/appam/2019/webprogram/Paper32786.html>. The study found that HECM borrowers who received periodic reminders to pay property taxes had a default rate 2/3 the rate of borrowers who did not receive reminders, and were less than half as likely to have a default balance of over \$2,000 (p. 15.)