



Priorities for Consumers with HECM Reverse Mortgages September 2015

Since September 2012 the U.S. Department of Housing and Urban Development (HUD) has taken steps to overhaul the Home Equity Conversion Mortgage (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, some challenges have emerged as the program has changed. Highlighted briefly below are four new or ongoing challenges that consumers face in the origination and servicing of HECM loans, along with steps HUD can take to further enhance protections for consumers under the program.

1. Immediate action is needed to stop foreclosures due to property charge defaults to allow homeowners access to loss mitigation options.

Homeowners in foreclosure due to tax and insurance arrears are being denied the opportunity to access the loss mitigation options offered under Mortgagee Letter 2015-11. Under previous guidance servicers offered homeowners loss mitigation options to cure the arrears even after the foreclosure process was initiated. Under Mortgagee Letter 2015-11, however, servicers are asserting that the only option a borrower in foreclosure has to save the home is to pay the arrearage in a lump sum.

HUD must direct servicers to allow homeowners in foreclosure to access loss mitigation in order to enter reasonable repayment plans for arrearages. This change is essential to protect borrowers who may be confused by lenders' loss mitigation correspondence or have difficulty understanding its import (including those who may be developing financial decision-making capacity issues). Such a change also would be in line with loss mitigation requirements under the federal government's Home Affordable Modification Program (HAMP) and the Consumer Financial Protection Bureau (CFPB) mortgage servicing rules, which grant loss mitigation protection to homeowners already in foreclosure. Legal service providers have found that homeowners often do not respond to loss mitigation offers or seek out legal assistance until foreclosure has been commenced. Servicers are not evaluating homeowners for loss mitigation prior to foreclosure unless the homeowner requests a loss mitigation review, which many seniors fail to do because of confusion or uncertainty regarding their rights. Thus, many homeowners have not been meaningfully evaluated for loss mitigation prior to the initiation of the foreclosure.

Moreover, homeowners currently in foreclosure had no notice of this policy change and are now thrust into a situation with no viable options. Many of these homeowners could clearly avoid the

foreclosure if they were permitted to enter into the loss mitigation options available under Mortgagee Letter 2015-11 or even the options previously available under Mortgagee Letter 2011-01. HUD is to be commended for enhancing the loss mitigation options offered to homeowners with property charge defaults, but more needs to be done ensure that homeowners in foreclosure have a true opportunity to save their homes from foreclosure.

2. Non-Borrowing Spouses still face major hurdles in avoiding foreclosure and displacement under Mortgagee Letter 2015-15.

The Mortgagee Optional Election (MOE) Assignment option outlined in Mortgagee Letter 2015-15 provides a meaningful opportunity for non-borrowing surviving spouses of reverse mortgage borrowers to avoid displacement and eviction from their home. The removal of the Principal Limit Test, required under earlier versions of the MOE, greatly enhances the utility of this option. However, a key barrier remains that will prevent otherwise eligible non-borrowing spouses from accessing this option. Mortgagee Letter 2015-15 requires that within ninety days following the death of the last surviving borrower, the non-borrowing spouse must establish “good, marketable title to the property or a legal right (e.g., executed lease, court order, etc.) to remain in the property for life.” If a death occurred years ago, it is impossible for a spouse just learning of the MOE Assignment option to meet this deadline. Whatever timeframe is imposed, the clock should run from the later of the death of the last borrower or the effective date of Mortgagee Letter 2015-15.

Ninety days is a very short period of time within which to require a grieving spouse to establish title or a right to remain in 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 clarify that this requirement is satisfied, for example, if a probate action is opened within ninety days of the borrower’s death where the non-borrowing spouse seeks to establish his or her right to the property.

In addition, more guidance from HUD is needed regarding this prong of MOE eligibility prior to the October 12 deadline for servicers to elect the MOE. HUD should also extend the October 12 deadline so that non-borrowing spouses will have further opportunity to benefit from this option once the requirement is clarified.

3. More support and training is needed for HECM counselors so they can effectively assist consumers under the new Financial Assessment and Property Charge Guidelines.

Reverse mortgage counselors shoulder heavier responsibilities with the introduction of the HECM Financial Assessment and Property Charge Guidelines. In addition to the detailed information counselors are required to provide potential borrowers regarding HECM and its alternatives, counselors must now be prepared to help older consumers navigate the financial assessment process. As older consumers undergo this new evaluation they may seek additional assistance from counselors on how to resolve or explain delinquencies or correct inaccurate credit reports or may need assistance in documenting sources of income and assets. Most

counselors do not have experience providing this type of hands-on assistance to consumers and significant on-going training and other types of support may be necessary to assist reverse mortgage counselors in their new role. Counseling agencies will need to allocate more time and resources to the counseling process and may increase the charge for counseling services to compensate. HUD should seek to increase the level of funding and support provided to counselors and agencies.

Moreover, the counseling protocol should be updated so that counselors can review disclosures and other key information regarding the terms of the HECM loan offered. If the consumer has obtained a copy of the key HECM disclosures, the consumer should be able to receive counseling based on the features, terms, and costs of the product they are considering. This would involve a revision of the counseling protocol to enable consumers to receive targeted and tailored information related to the loan they are considering.

4. Inadequate HECM servicing depletes consumers' resources and denies consumers and their families a fair opportunity to preserve the home.

Poor or improper servicing of HECM loans places a burden on older homeowners who seek to age in place and on heirs who seek information and an opportunity to preserve the home for family members. Among several servicing related issues that advocates are concerned about, the force placing of insurance and lack of notice and an opportunity to purchase the property at 95% of the appraised value are highlighted below.

- **Forced-place insurance.** Reverse mortgage servicers have been challenged for improperly imposing flood insurance on homeowners who have pre-existing flood insurance, but in amounts that the servicer deems inadequate. The force placing of excessive flood insurance causes the depletion of money set aside for property charges and available credit under the reverse mortgage, triggering foreclosure. The depletion of resources caused by the placement of expensive replacement insurance may further exacerbate financial challenges faced by low-income homeowners who depend on the proceeds of the reverse mortgage to supplement meager budgets. HUD should clarify its policy regarding replacement insurance to better protect consumers from expensive and unnecessary insurance.
- **Inadequate notice and opportunity to purchase the property at 95% of the appraised value.** Lenders are denying family members of deceased borrowers, including surviving spouses and children, a fair opportunity to pay off the reverse mortgage and preserve the family home. Contrary to HUD's guidance, lenders are demanding payment of the full balance on the mortgage on the death of the last surviving borrower without offering family members and other heirs the opportunity to pay off the mortgage for less than the amount owed. In particular, the demand letters sent to family members and other heirs fail to state clearly that the borrower's estate or personal representative can pay off the loan's balance for ninety-five percent of the home's market value. Grieving family members, unfamiliar with reverse mortgages, are unlikely to seek clarification or independent advice regarding their rights. Even when family members and other heirs inquire about purchasing the home for the appraised value, lenders insist on payment in

full. This misinformation is compounded with servicer unresponsiveness, which makes getting even basic information regarding the mortgage difficult.

- **Family members and other heirs with the desire and resources to retain the home are simply not aware of their rights, and are losing their homes unnecessarily to foreclosure.** HUD should ensure that lenders are complying with the HECM regulations and provide further clarification and guidance to approved mortgagees through a letter that reiterates that upon the death of a borrower, the estate or heirs must be provided with the option of satisfying the HECM debt by paying the lesser of the mortgage balance or ninety-five percent of the current appraised value of the home.

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