

# How HUD is Failing to Protect Widows and Widowers of Reverse Mortgage Borrowers

## Case Studies and Recommendations

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Reverse mortgages are intended to help elders age in their homes. Yet, across the country, widows and widowers are losing their homes because of HUD's failure to prevent foreclosures on reverse mortgages their now-deceased spouses previously obtained. HUD should take immediate action to better inform reverse mortgage borrowers and their spouses about options to avoid foreclosure on a non-borrowing spouse, remove arbitrary and unrealistic deadlines for lenders to elect to participate in the program, and ensure that the program can work effectively to help non-borrowing spouses stay 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 an FHA-insured reverse mortgage product, known as the Home Equity Conversion Mortgage (HECM), in order to increase lenders' willingness to extend reverse mortgages.

The proceeds of a reverse mortgage can be taken as a lump sum, a line of credit, or a stream of monthly payments. So 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. The loan balance grows over time as the interest is added on to the principal balance, unlike most mortgages, where the balance goes down over time (hence the name "reverse" mortgage). The full loan balance becomes due and payable upon a triggering event - in most cases, the death of the last remaining borrower.

Because the loan balance will grow over time, HUD requires lenders to calculate the initial amount of the loan based on the age of the youngest borrower - so that the younger the borrower, less money will be loaned, making it less likely that the balance will grow to exceed the value of the home. The FHA insurance covers the shortfall if the loan eventually does grow to exceed the value of the home.

## HUD'S STATUTORY MANDATE TO PROTECT A REVERSE MORTGAGE BORROWER'S SPOUSE FROM DISPLACEMENT WHEN THE BORROWER DIES

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.<sup>1</sup> 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.<sup>2</sup> This created an incentive for some lenders and mortgage brokers to encourage married couples to leave off the younger spouse, so that more money could be borrowed on the loan. Most couples that opted to take

out a reverse mortgage in the name of only one of two spouses 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.

HUD fixed this problem prospectively for new HECMs originated after August 4, 2014, in which non-borrowing spouses are factored into the calculation of initial loan proceeds and automatically allowed to defer foreclosure if they outlive the borrower. After litigation, HUD created the Mortgagee Optional Election (MOE) for HECMs originated prior to August 4, 2014 to allow the surviving non-borrowing spouse to remain in the home until his or her death or until some other triggering event occurs. This is done through a mechanism in which servicers can elect to assign the loan to HUD when a qualifying non-borrowing spouse resides in the home, so that HUD can hold the loan and allow 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. Then HUD can hold the loan, deferring the “due and payable” status of the loan and postponing foreclosure until the non-borrowing spouse passes away or otherwise fails to maintain the loan obligations.

To be eligible to have the loan assigned to HUD through the MOE program, there are a number of substantive eligibility requirements. The loan must not be due and payable for any other reason – meaning that the borrower and spouse must have continued to pay the required property taxes and homeowner’s insurance for the home. The spouse must have been legally married to the borrower at the time the loan was taken out, with a limited exception for same-sex couples, and must have remained married until the borrower’s death. Finally, the spouse must be able to show that he or she has “good and marketable title” or a legal right to remain in the home until his or her death. This final requirement should pose no problem for most spouses, who inherit either through a will or intestate law, but some servicers have imposed onerous documentation requirements due to a lack of clarity in HUD’s policies, creating unnecessary hurdles.

By far the biggest hurdle for non-borrowing spouses attempting to prevent foreclosure through the MOE Assignment, though, is the very strict set of deadlines HUD has imposed for a servicer to make the MOE election and initiate the assignment to HUD.<sup>3</sup> As a result of these deadlines, many otherwise eligible spouses are being denied the opportunity to remain in their homes. HUD requires that the election to carry out the MOE Assignment be made within 120 days of the borrower’s death and that the assignment itself be initiated within 120 days after the election. Because spouses often do not know about these deadlines and may be overwhelmed by the many demands they face after losing a loved one, many do not meet these deadlines. Moreover, processing at the servicer often takes longer than 120 days, in part because HUD has imposed requirements that are not spelled out in its governing policy document (Mortgagee Letter 2015-15) and because servicers do not have a clear understanding of how HUD is interpreting certain requirements, such as having “good and marketable title” or a legal right to remain in the home. HUD’s MOE deadlines are arbitrary and capricious, unreasonable, and unworkable, and have resulted in a huge number of inappropriate denials for the MOE.

HUD must reform its MOE rules to provide reasonable access to the program. Instead of the current rules, when a borrower dies and leaves behind a non-borrowing spouse on a HECM originated prior to August 4, 2014, assignment of the HECM to HUD should be allowed up until a foreclosure sale has been completed. It is simply not realistic to require a recently widowed spouse, grieving and attempting to get his or her affairs in order, to obtain enough information from the mortgage servicer about the MOE and then provide the necessary information to the servicer within 120 days of the borrowing spouse’s death. Moreover, HUD should require servicers to regularly inform borrowers and their spouses of the MOE program prior to the borrower’s death. Right now, too

many spouses have no idea that the program even exists until it is too late.

The problems with strict, arbitrary deadlines are exacerbated by poor distribution of information about the MOE by both servicers and HUD, as well as mistaken implementation of the MOE requirements by both. NCLC has heard from numerous advocates representing spouses where the servicer made the MOE election, but either the servicer or HUD have incorrectly applied the MOE criteria, causing delays and leading to a later rejection of the MOE Assignment as untimely. Many of these improper denials relate to misunderstandings surrounding the requirement that a non-borrowing spouse have good and marketable title or a legal right to remain in the home within 90 days of the borrowing spouse's death.

NCLC recommends the following changes to HUD's MOE Assignment program, in order to make it more accessible and viable for most non-borrowing spouses.

- HUD should remove unnecessary deadlines for the MOE program or, at a minimum, provide waivers of deadlines in appropriate cases.
- HUD should require servicers to communicate clearly with borrowers and non-borrowing spouses about the MOE program and steps needed to qualify for the program, beginning immediately, even before the borrower's death.
- To the extent any deadlines remain in place for the program, HUD should clarify that when a servicer initiates an assignment within the allowed timeframes, this is deemed timely, even if HUD asks for the servicer to take certain follow-up actions to complete the process.
- HUD should explain the requirement for "good and marketable title" or a legal right to remain in the property until death. Probate need not be completed in order to demonstrate a legal right to remain in the home in situations where the spouse is an heir, has automatic rights in the home under state law, or otherwise has a legal right to remain. Subordinate liens that do not jeopardize the mortgage's first lien priority need not be satisfied, in order to meet this standard. Yet, many servicers are requiring a probate court order and cancellation of subordinate liens, blocking spouses from accessing the MOE.
- HUD should allow additional time for non-borrowing spouses to cure a default on property taxes or insurance when spouses are actively attempting to repay these charges or are eligible for help paying the charges through an assistance program, such as a Hardest Hit Funds program.
- HUD should require servicers to communicate with non-borrowing spouses at every step of the process, and HUD's Servicing Center should provide accurate, up to date information to any non-borrowing spouse who makes an inquiry into the status of their assignment.
- HUD should expand the MOE program to allow lenders to elect to assign loans to HUD when a loan has become due and payable due to a borrower permanently moving out of the home, for health or other reasons, if there is a non-borrowing spouse still residing in the home.

The following cases studies demonstrate why these recommended policy changes are so important in order to prevent unnecessary foreclosures that would dispossess non-borrowing spouses.

## **CASE STUDIES**

These case studies were provided to NCLC by advocates around the country representing non-borrowing spouses (NBS's) facing the risk of foreclosure due to their inability to access the MOE program.

### **1. HUD should make the MOE Assignment program viable by removing unreasonable deadlines or granting waivers of the deadlines.**

*A. Deadline problems have arisen because of servicers' failures to communicate clearly about the requirements and failure to clearly understand the requirements for the MOE. HUD's failure to provide clarity in the requirements, at least initially, caused many servicers to miss the deadline despite a desire to make the MOE election.*

**P.B., Philadelphia, PA**

Submitted by: Michael Froehlich, Community Legal Services of Philadelphia

Servicer: Reverse Mortgage Solutions (RMS)

P.B., aged 68, married Mr. B in 1976 and moved into her mother's house. Mrs. B purchased the home from her mother in 2007. The home needed repairs. Someone came to the home in 2010 and advised them that if Mrs. B (then 60 years old) transferred the house to Mr. B (then 62 years old), they could get a reverse mortgage. Both Mrs. B and her husband were told that if he died first, she would still be able to remain in the home. Mrs. B transferred her home to her husband, and they received \$35,000 from a HECM loan to do home repairs.

Mr. B died on April 4, 2016. RMS sent a notice dated April 22, 2016, about a means for Mrs. B to stay in her home, and requested certain documents, including "a copy of the deed." Mrs. B promptly sent in all the documents requested, including a copy of the 2010 deed transferring the property to Richard. She did not know—and was not told—that RMS in fact wanted a deed transferring the property back to Mrs. B. RMS made at least two more requests for a copy of the deed, and in response to each of these requests, Mrs. B mailed in copies of the 2010 deed.

In September 2016, RMS sent Mrs. B a Notice of Intent to Foreclose. Mrs. B then contacted a housing counselor. In October 2016, the housing counselor called RMS to find out what was needed to obtain the MOE Assignment for a NBS. Only then did RMS explain to the housing counselor that it needed a deed in Mrs. B's name. Mrs. B probated Richard's estate and, with the help of the housing counselor and the Senior Law Center, recorded a deed transferring the house to Mrs. B on August 29, 2017.

RMS told Mrs. B that it could not complete the MOE Assignment because it was now past the applicable deadlines. Beth Shay, Esq., from the Senior Law Center reached out to HUD's National Servicing Center on July 3, 2018. HUD responded that it had no control over RMS's decision not to continue with the MOE Assignment, ignoring the fact that RMS was willing to proceed with the MOE Assignment if only HUD would agree to waive the deadlines. Mrs. B has continued to maintain the home, pay her property taxes, and stay current on her hazard insurance, in order to keep herself eligible for the MOE Assignment in the event that HUD may allow it.

**J.P., Annapolis, MD**

Submitted by: Susan Cook, Attorney and Bronwyn Belling, Housing Counselor

Servicer: Reverse Mortgage Solutions (RMS)

J.P. and her advocates notified RMS within 30 days of her husband's death. They received no response until almost 5 months after the death (and then only after initiating contact through a connection her advocates had). Meanwhile, the date for RMS to Elect the MOE Assignment (10/10/2015) had passed; RMS did not upload the Notice of Election until 12/22/2015. RMS then sought multiple extensions of time from HUD. Ms. P is eligible for the MOE in every respect except for the deadline issue. RMS's conduct makes it clear that RMS wants to make the assignment, and would do so, if HUD would agree to accept it.

Ms. P's advocates contacted HUD's National Servicing Center (NSC) by email for assistance. On 4/20/2018 they advised that RMS did not meet the required deadlines, including failing to upload the assignment into HUD's servicer communication system, HERMIT, therefore precluding a HECM assignment. According to HUD, the only option was for RMS to foreclose, or to determine whether the NBS might be eligible for other types of relief (such as a deed in lieu of foreclosure). When RMS finally responded to inquiries from Ms. P in 2018, it incorrectly claimed that she had failed to provide proof of title.

Ms. P's advocates are still attempting to negotiate with the attorney representing RMS. They have not heard anything for over 30 days and fear the lender may be moving forward with foreclosure.

**Mrs. J., Chicago, IL**

Submitted by: LAF (Legal Assistance Foundation) of Chicago

Servicer: Reverse Mortgage Solutions (originally Urban Financial)

\*Pending foreclosure action

Mrs. J reached out to RMS within 120 days of her husband's death. She provided the documentation that RMS requested. However, RMS failed to make the MOE election within the 120 day deadline, and also never informed Mrs. J of this deadline. HUD denied the MOE Assignment because of RMS's failure to meet the deadline. Even though RMS had indicated a desire to avoid foreclosure and recognizes Mrs. J as an eligible surviving spouse, RMS is now planning to move forward with the foreclosure because of the denial it received from HUD. Mrs. J is 74 years old and has been in the home since 1978. She is current on her property taxes and her insurance.

**Mrs. Y., Oliver Springs, TN**

Submitted by Janet Mynatt, Legal Aid Society of Middle Tennessee and the Cumberlands

Servicer: Reverse Mortgage Solutions, Inc.

Mrs. Y and her husband purchased their home in 2006. In May 2009, they entered into a reverse mortgage loan with Mr. Y as the sole borrower. He was age 70 and she was age 66 at the time. Mr. Y passed away on March 19, 2015. He did not leave a will, but Ms. Y was an heir under intestate law.

On April 24, 2015, Mrs. Y submitted documentation per her servicer's instructions (Champion Mortgage) to establish that she met the eligibility criteria for the MOE Assignment of the loan to HUD for deferral of due and payable status until her death. Under Tennessee law Mrs. Y automatically, as a spouse, has the legal right to remain in the property for life. RMS began servicing the loan on May 1, 2015. Mrs. Y submitted documentation to show she met all requirements for the MOE Assignment to RMS multiple times after they began servicing the loan. RMS notified HUD of its intent to utilize the MOE Assignment on October 9, 2015, within the applicable deadline. Mrs. Y then heard nothing from RMS for about six months. Mrs. Y executed and returned a Forbearance and Tolling Agreement prepared by counsel for RMS, upon request, on April 27, 2016.

RMS last requested additional documentation for its assessment of eligibility on November 3, 2016 to be submitted to RMS by November 30, 2016. Mrs. Y again provided RMS the requested documentation along with legal authority supporting her legal right to remain in the property on November 20, 2016. On April 20, 2018, a different law firm (not the Trustee firm) notified Legal Aid that HUD had declined the MOE Assignment. Legal Aid contacted the HUD National Servicing Center by e-mail on May 2, 2018, and learned from HUD that RMS never made the MOE Assignment and that if RMS made the assignment now, it would be declined as untimely. On June 12, 2018, the firm representing RMS acknowledged that RMS never made the MOE Assignment and advised that it now must pursue foreclosure or a short sale by the terms of the HECM Deed of Trust and in order

to maximize the amount of FHA insurance reimbursement RMS will be eligible to receive for the loan. Mrs. Y faces the risk of imminent foreclosure and is desperate to save her home.

*B. Even when servicers do initiate the assignment within the applicable deadline, issues have arisen with HUD asking for additional documentation and then rejecting the assignment as untimely.*

**Mrs. S., Stone Mountain, GA**

Submitted by Rachel Scott, Atlanta Legal Aid Society

Servicer: RMS

Mrs. S is 85 years old and has lived in her home for 38 years. She was married to Mr. S for more than 57 years when he passed away. At the time the reverse mortgage loan was originated in 2009, Mrs. S was 76 years old. It is unclear why the lender did not give Mrs. S the option of being included as a borrower on the HECM with her husband. Mrs. S was only eight months younger than her husband, so her inclusion as a borrower would have had a negligible effect on the available loan proceeds and would have been feasible.

Mr. S passed away in January 2014. Mrs. S was awarded full title to the property by the Probate Court on August 12, 2014. She has also continued to maintain the property taxes and homeowner's insurance on her home. Following HUD's 2015 creation of the MOE program, RMS began working with Mrs. S to assign her loan pursuant to the MOE program. RMS advised that it timely made the election to pursue the MOE Assignment on October 9, 2015 (within 120 days of ML 2015-15). Mrs. S's legal aid attorney also understands that RMS timely initiated the MOE Assignment to HUD less than 120 days from the date of election.

However, despite Mrs. S's eligibility as a qualifying non-borrowing spouse under the MOE criteria, and despite RMS's compliance with the deadlines to make the MOE election and initiate the assignment, Mrs. S's attorney was informed that HUD denied the assignment for reasons other than those set forth in Mortgagee Letter 2015-15.

HECM servicers report that in many cases, as in this one, HUD has denied the MOE Assignment with instructions that the servicer can correct the denial reasons and then resubmit the loan for assignment. However, once the servicer corrects the issues and resubmits, HUD then denies the assignment as being submitted more than 120 days after the date of election (referred to herein as the 240-day deadline). Ms. S faces imminent foreclosure and loss of her home of 38 years unless HUD agrees to waive the MOE deadline or acknowledges that RMS met the relevant deadlines by "initiating" assignment within 120 days of the election.

*C. The strict deadlines to make the election and initiate the assignment are sometimes unrealistic because there are complicated issues to resolve, including title issues and property charge defaults.*

**Mr. M., Queens Village, NY**

Submitted by: Jennifer Levy, JASA Legal Services for the Elderly in Queens

Servicer: Champion

Mr. M is 67 years old. He is a non-borrowing spouse whose terminally ill wife took out a reverse mortgage in her name only because she was the older spouse. Mr. M's name was removed from the deed. Shortly after, Mrs. M passed away and the reverse mortgage loan was immediately called due and payable. Around the same time, the servicer advanced funds to pay for property taxes and insurance, which had gone into default.

When Mr. M came to JASA/LSEQ, Champion had already scheduled a foreclosure sale. JASA/LSEQ was able to get Champion to agree to postpone the sale, but after that it was a long and arduous process to obtain relief. After over a year of opposing counsel refusing to have Mr. M considered for the HUD deferral program as a non-borrower surviving spouse and refusing to provide JASA/LSEQ authorization to speak directly with JASA/LSEQ's contacts at Champion, we were finally able to speak with Wendy Stewart at Champion. It was Champion's position that Mr. M was not eligible for the MOE Assignment because his name was not on the deed. Unfortunately, the attorneys who helped the M's take out the reverse mortgage also drafted a deathbed will for Mrs. M that disinherited her husband. Although a probate proceeding was commenced and Mr. M was named the executor of Mrs. M's estate, Champion still took the position that Mr. M could show no legal interest in the property. JASA/LSEQ explained that regardless of what the will stated, Mr. M as her spouse could not be disinherited under New York law, and so retained a legal interest - therefore qualifying him to be able to remain in his home for the rest of his life as required for the MOE Assignment. During all that time, the HUD rules were still being developed after federal litigation and other national advocacy, resulting in new a Mortgagee Letter being published by HUD in June 2015. JASA/LSEQ assisted Mr. M in obtaining a grant of over \$17,000 to bring the property charges current. Champion ultimately approved Mr. M's status as a non-borrowing spouse and discontinued its foreclosure action. The loan was successfully assigned to HUD. However, if the borrower's death had occurred after June 2015, HUD's very strict deadlines would likely have barred Mr. M from accessing the MOE, because proving Mr. M's interest in the home under state law required a lengthy period of advocacy.

*D. HUD's refusal to grant any waivers of the MOE deadlines leads to unnecessary foreclosures harming eligible non-borrowing spouses.*

### **Ms. B., Philadelphia, PA**

Submitted by: Michael Froehlich, Community Legal Services of Philadelphia

Servicer: Celinek

Ms. B's attorney notified Celinek's attorneys that Ms. B wanted to pursue the MOE Assignment on June 20, 2015, while her case was in mortgage foreclosure proceedings. Ms. B submitted all of the necessary documents showing that she is an eligible non-borrowing spouse on August 24, 2015, well within 120 days after issuance of Mortgagee Letter 2015-15. Celinek then, within its 120-day deadline, informed HUD that it was electing to assign the loan under the MOE program. Its foreclosure attorneys then failed to initiate the assignment in a timely manner. The servicer notified Ms. B that there was an escrow deficit, giving her until December 18, 2015 to cure it, which she did. Then, on December 22, the servicer told Ms. B that there were other outstanding liens. Ms. B agreed to pay the liens she was responsible for, on the condition that the servicer would make the MOE election. The servicer refused to make that promise and said that, instead, it would no longer consider her for the assignment. In December 2017, Celinek asked HUD to make an exception to the timelines and accept the assignment. HUD refused (even after the intervention of Senator Bob Casey of Pennsylvania). The case went to trial in May on the foreclosure and the parties are awaiting a decision from the judge. Ms. B is eligible for the MOE in all respects except for the deadline issues, and it is clear that if HUD would accept the assignment, Celinek would again attempt to assign the loan.

### **Ms. G., Jamaica, NY**

Submitted by Stacey Woods, Queens Legal Services

Servicer: Reverse Mortgage Solutions (RMS)

\*Foreclosure lawsuit pending

Reverse Mortgage Solutions ("RMS") began to evaluate Ms. G for the MOE on October 8, 2015. By

that time, the only barrier to assignment of the loan to HUD was past due property charges in the amount of \$7,295.51. (The borrower was behind on his property taxes at the time of his death on June 18, 2014, and the arrears continued to accrue after his death.) On January 28, 2016, RMS sent Ms. G a notice informing her that she was an eligible non-borrowing spouse and that she had 30 days to submit payment for the property taxes advanced by RMS. Mrs. G was unable to come up with the \$7,295.51 in a lump sum. RMS notified HUD on March 8, 2016 that it was calling the loan due and payable. RMS notified Ms. G on April 25, 2016 that she did not qualify for the MOE and that it would commence foreclosure proceedings. RMS commenced the foreclosure action on July 8, 2016. Mrs. G is represented by Queens Legal Services in the foreclosure proceedings. Mrs. G was approved for a loan from the local department of social services in August of 2016, and checks totaling \$7,295.51 were sent to RMS. RMS rejected the payment. RMS's counsel represented to QLS during settlement negotiations that it had asked HUD to waive the MOE Assignment deadlines imposed by Mortgagee Letter 2015-15 and to accept assignment of the loan, but that HUD refused. QLS asked HUD to waive the deadlines on July 17, 2017 via email and phone, and HUD has again refused. Ms. G has lived in her home since 1975. Her husband was a World War II veteran. If HUD does not grant an exception to the MOE deadline, Ms. G will face foreclosure, eviction, and displacement from her longtime home.

*E. Non-borrowing spouses are often unaware of the status of an MOE Assignment, and may not even realize there is a problem.*

#### **Ms. R., Nashua, NH**

Submitted by: Stephanie Bray, New Hampshire Legal Assistance  
Servicer: Reverse Mortgage Solutions (RMS)

Ms. R is 53 years old. The reverse mortgage in question was originated in February 2014. Ms. R meets all eligibility criteria for the MOE Assignment. She is current on taxes and insurance. RMS initially sent a "Tolling, Release and Forbearance Agreement" to her probate counsel on or about March 7, 2016. This agreement specifically referenced HUD Mortgagee Letter 2015-15. RMS agreed that Ms. R qualified for the MOE Assignment, but apparently took a very long time to send the required documents to HUD. After March 7, 2016, there followed a long period of silence from RMS, during which Ms. R and her counsel assumed that RMS was moving the process along with HUD. On May 2, 2018, Ms. R's attorney got a call from an attorney for RMS. He indicated that HUD was saying that RMS was out of compliance (with HUD's MOE deadlines), and that this put RMS in a bind with HUD. The attorney wanted to know if Ms. R would be interested in a deed in lieu or other non-retention solution. Ms. R said no, she wanted to remain in her home. Neither Ms. R nor her counsel have heard anything since May 2, 2018. There is a serious concern that RMS may initiate foreclosure unless HUD will agree to take assignment of the loan.

#### **P.K., Philadelphia, PA**

Submitted by: Michael Froehlich, Community Legal Services of Philadelphia  
Servicer: James B. Nutter & Company

P.K. met all eligibility requirements to be considered an eligible non-borrowing spouse, and requested the MOE Assignment from her lender on August 17, 2015, well within 120 days of the issuance of Mortgagee Letter 2015-15. Her servicer requested additional information in October of 2016, which Ms. K provided promptly. The servicer eventually confirmed that it would assign the reverse mortgage to HUD on January 11, 2017. As of June 2018, Ms. K was still waiting on confirmation of this transfer actually occurring, and public records do not reflect that the transfer took place. Her story illustrates the degree to which non-borrowing spouses are at the mercy of the reverse mortgage servicer to make the timely election to HUD, and the difficulty spouses are having getting information regarding the status of the assignment.

## **2. HUD should require servicers to communicate with borrowers about the MOE regularly prior to the borrower's death and to explain the MOE option to non-borrowing spouses promptly after receiving notice of a death.**

*One reason the MOE deadlines are often missed is that spouses don't know about the program at all. Servicers should be required to notify borrowers and spouses of the program routinely during the life of the loan (perhaps along with the annual occupancy certification) and to notify spouses promptly after learning of a borrower's death.*

### **G.R., Philadelphia, PA**

Submitted by: Michael Froehlich, Community Legal Services of Philadelphia

Servicer: Champion Mortgage

Date of Death: January 31, 2016

G.R., age 70, didn't know that her husband had executed a reverse mortgage and only found out at the time of his death. Though she was eligible for the MOE Assignment, the 120 day window to elect the MOE Assignment expired before she knew about the option. After her husband's death, Ms. R stopped paying the property taxes and insurance because she assumed that she was going to lose their family home—purchase in 1969—but if she had been advised that there was a way to save the home via the MOE Assignment, she would have continued to pay taxes and insurance and again applied for the assignment program.

### **Mrs. W., Chicago, IL**

Submitted by: LAF (Legal Assistance Foundation) of Chicago

Deceased Borrower's Name: W.W., Jr.

\*Pending foreclosure action and related litigation against HUD

On January 5, 1979, Mr. and Mrs. W were married. The property was purchased by Mr. and Mrs. W in 1993. Mr. W took out a reverse mortgage in 2009 when he was 65 years old. Mrs. W's name was taken off the title in order to obtain the reverse mortgage because she was only 54 years old at the time. Mr. W passed away on November 22, 2015. Mrs. W was unaware that she needed to report Mr. W's death to the lender until July 2016 when Mrs. W received the annual occupancy certification from RMS in the mail. She then immediately informed RMS of Mr. W's passing. In August 2016, RMS told Mrs. W to send in information to remain in the property, including Mr. W's death certificate, the Ws' marriage license, and Mrs. W's identification. She immediately complied. However, in October 2016, RMS told Mrs. W that she did not have a right to remain in the property as a non-borrowing spouse, since the 120-day deadline had already passed before RMS could make the election.

Mrs. W, now 63 years old, has always paid her property taxes, paid homeowner's insurance, and made home repairs. Mrs. W has lived in the property for 25 years. Mrs. W would like HUD to waive the 120-day requirement to allow her to elect to remain in the property. Mrs. W believes that the statutory protection for non-borrowing spouses gives her a right to remain in the property as a surviving spouse, who is not a borrower on the reverse mortgage. She was married to Mr. W when he took out the reverse mortgage, and she remained married to Mr. W continuously until his death. Mrs. W also continued to live in the property as she did before Mr. W had obtained the reverse mortgage and has continued living in the property until the present time. Mrs. W has an inherited interest in the home and the legal right to remain in the home until her death. The only impediment to the MOE Assignment is HUD's 120-day deadline.

### **Ms. S., Staten Island, NY**

Submitted by: Jessica Scholes, NYLAG Consumer Protection Unit

Servicer: Champion Mortgage

\*Pending foreclosure action

Ms. S, 68, has lived in her home for eleven years. Her husband, Mr. S, took out a reverse mortgage on the property in 2008. Ms. S's name was taken off the deed so that her husband could secure the reverse mortgage. When Mr. S passed away in 2014, Champion Mortgage called the reverse mortgage due and payable and commenced foreclosure proceedings. At this time, Ms. S contacted Champion and informed them that she wanted to stay in her home. Champion failed to inform her of any options she might have as a non-borrowing spouse. In the following years, Ms. S attended court multiple times as part of the foreclosure case and communicated with Champion's representatives over the phone. She repeatedly asked to keep the property, but Champion's representatives and attorneys never provided her with the information on how to do so. She was never informed about the existence of Mortgagee Letter 2015-15 or given any options for property retention. In 2016, Champion's representatives claimed that Ms. S could not be added to the reverse mortgage as a non-borrowing spouse because she had failed to notify Champion within the appropriate timeframe after her husband's death. This was incorrect, as Ms. S had notified Champion promptly and well before Champion's deadline to make the election (which would have been 120 days after the issuance of Mortgagee Letter 2015-15). Ms. S meets all criteria for the MOE Assignment and had been asking Champion to help her stay in her home well before the 120-day deadline. Ms. S's case illustrates how the timeframes provided in Mortgagee Letter 2015-15 are too short, especially because borrowers often are not given correct information about the MOE option by the servicer or its attorneys. As a result of this situation, Ms. S now faces foreclosure and, if HUD is unwilling to grant a waiver of the deadlines in her case, she will likely lose her home.

**Ms. O., South Ozone Park, NY**

Submitted by: Jennifer Levy, JASA Legal Services for the Elderly in Queens

Servicer: Celinek

\*Pending foreclosure action

Ms. O found JASA Legal Services for the Elderly in Queens after she had been scammed by an attorney who charged her \$5,000 and never filed a motion to stop the foreclosure sale. JASA/LSEQ successfully filed and argued a motion for a stay of the sale, resulting in an order that granted permission to file a late answer and vacated all prior orders including the Judgment of Foreclosure and Sale which the lender had obtained prior to JASA/LSEQ becoming involved in the matter. Opposing counsel has since refused to provide the default balance due on the account and the servicer, Celinek, has refused to even speak to Ms. O. Celinek claims that Ms. O's estranged daughter is the executor of Ms. O's husband's estate and therefore is the only authorized person on the account. Ms. O has a legal right to remain in her home under the NBS HUD deferral program because she has a legal interest in the home (at the minimum, a 1/3 share of the estate as the spouse, regardless of what is provided in the will). Therefore, she is entitled to receive information about the HECM and to be reviewed for the MOE Assignment. If JASA/LSEQ were to have authorization to speak directly with Celinek to obtain the default balance, the advocates could assist Ms. O in obtaining a grant to bring the account into good standing - which is a requirement for the MOE Assignment. However, despite efforts to obtain the default balance amount due, Plaintiff's counsel also claims that HUD will not allow any waiver of the MOE deadlines. However, the servicer never provided Ms. O with the opportunity to apply within the timeframes, because all correspondences were allegedly sent to her daughter who lives in New Jersey. No notices were ever sent to the non-borrowing spouse. This is problematic because Ms. O and her daughter are not on good terms. Furthermore, the letters the servicer allegedly sent to Ms. O's daughter at the New Jersey address were sent about 3 years after Ms. O's husband had passed - when HUD deadlines has passed already. Plaintiff's counsel has failed to provide proof that the servicer sought a waiver of the

deadlines.

### **3. HUD should clarify the MOE rules, especially with respect to good and marketable title or a legal right to remain in the home.**

*Too many servicers still misunderstand this eligibility requirement, and tell non-borrowing spouses that they must have full legal title to the home (rather than a partial ownership interest), must have completed probate, or must pay off any liens, even those that are subordinate to the HECM.*

#### **Ms. T., Chicago, IL**

Submitted by: LAF (Legal Assistance Foundation) of Chicago

Servicer: CIT Bank, N.A. (and Financial Freedom)

\*Pending foreclosure action

In 2008, Mr. T took out a reverse mortgage. Ms. T was taken off title at that time because she was too young to be on the reverse mortgage. She was told she could be put back on title once she was old enough. However, she never was. After Mr. T died, Ms. T was denied the MOE Assignment program by the lender for allegedly not showing proof of title or the right to remain in the home within 90 days of her husband's death. However, under Illinois law, Ms. T inherited a one-half interest in the home immediately upon her husband's death, so she had a legal right to remain in the home until her death within 90 days. Mrs. T is 66 years old and has been in the home since 1983. She is current on her property taxes and her insurance.

#### **Ms. C., Atlanta, GA**

Submitted by Rachel Scott, Atlanta Legal Aid Society

Servicer: Financial Freedom

Ms. C and her husband purchased their home together in 1971. At the time Mr. C took out a reverse mortgage in 2002, the lender assured the couple that Ms. C would be able to stay in the home until her death, so long as she kept paying the taxes and insurance. However, when her husband passed away on November 3, 2017, Ms. C faced the risk of foreclosure. She informed her servicer immediately of Mr. C's passing, and Financial Freedom made the election to assign the loan to HUD under the MOE program a mere ten days after his death.

However, Ms. C was later told by Financial Freedom that her request for assignment of her loan pursuant to the MOE program was denied as untimely. After making the MOE election, Financial Freedom imposed an improper requirement on Ms. C, stating that she had to have a subordinate lien canceled. This requirement was justified as being necessary for "good and marketable title," although she was already on the deed to the property and had a legal right to remain for her life. As a result of this improper demand, Financial Freedom did not initiate the assignment to HUD within 120 days of making the election. Financial Freedom informed Ms. C that HUD would not accept the assignment due to the missed deadline. Ms. C is 78 years old and was scheduled for foreclosure on July 3, 2018. Although apparently the sale was postponed, Ms. C has not been given any pathway to save her home of 47 years, and therefore moved out in preparation for the impending foreclosure.

### **4. HUD should allow eligibility for the MOE to be triggered by borrower non-occupancy, even when the borrower has not yet passed away.**

#### **P.S., Trussville, AL**

Submitted by: Rhonda Hood, Attorney

Servicer: Reverse Mortgage Solutions, Inc. (RMS)

P.S. is a non-borrowing spouse on a 2012 reverse mortgage with RMS. She was under age 62 at the time the loan was taken out. On January 23, 2017, her husband Mr. S was admitted to the Alzheimers/Dementia Unit of the State Veterans Hospital. February 25, 2017, a letter was sent to RMS purportedly drafted and signed by Mr. S, stating he was walking away from the home. It appears this letter was drafted by Mr. S's son; Mr. S would not have had the mental capacity at the time to understand what he was signing.

April 12, 2017, RMS sent an acceleration letter notifying Mr. S that the reverse mortgage was in default and loan was being accelerated and demanded payment of \$203,699.67 from Mr. S because "the Property is no longer your principal residence" and stating "[w]e have determined you do not occupy the property as your principal residence." At the time of the letter, Mr. S was merely temporarily absent from the home due to mental illness. He was not violating the occupancy requirement of his reverse mortgage, had been out of the home for less than three months, and had no intention of being outside of the home for more than twelve months.

RMS then began dealing with Mrs. S as a non-borrowing spouse before Mr. S's death based on the non-occupancy acceleration. Ms. S provided all documents requested by RMS. Mr. S passed away on June 8, 2017. RMS made the MOE Assignment election on September 29, 2017, well within the 120-day deadline.

On January 11, 2018, RMS sent Mrs. S a letter saying she failed to meet all of the eligibility requirements of Mortgagee Letter 2015-15 because the loan became due and payable due to non-occupancy. Mrs. S's case shows that there is an urgent need for HUD to allow servicers to initiate the MOE Assignment after a borrowing spouse becomes unable to reside in the home, and not just after a death. Moreover, because the non-occupancy acceleration was improper in this case, Mrs. S should be eligible to have her loan assigned to HUD, but HUD's 120-day deadline poses an insurmountable barrier. Mrs. S was forced to litigate in an attempt to save her home from foreclosure. She has recently been told that HUD has reconsidered its prior position and will accept the assignment of her loan, but only after she found an attorney to represent her in litigation and administrative appeals to HUD.

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<sup>1</sup> U.S.C. § 1715z-20(j).

<sup>2</sup> C.F.R. § 206.27(c); see also *Plunkett v. Castro*, 67 F. Supp. 3d 1 (D.D.C. 2014).

<sup>3</sup> Dept. Housing and Urban Dev't, Mortgagee Letter 2015-15 (June 12, 2015).