

**Testimony of Sarah B. Mancini  
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**On**

**Protecting Seniors: A Review of the FHA's Home Equity  
Conversion Mortgage (HECM) Program**

**Before the United States House Financial Services Committee,  
Subcommittee on Housing, Community Development, and Insurance**

**September 25, 2019**

Chairman Clay, Ranking Member Duffy, and Members of the Committee, thank you for the opportunity to testify today regarding FHA's Home Equity Conversion Mortgage (HECM) Program.

I am an attorney with the National Consumer Law Center (NCLC).<sup>1</sup> In my work at NCLC, I provide training and technical assistance to advocates around the country representing homeowners who are facing reverse mortgage foreclosure. In addition to my work with NCLC, I am an attorney for Atlanta Legal Aid Society, and in this capacity I represent low-income homeowners who are trying to save their homes from foreclosure. For over 12 years I have represented homeowners facing the risk of foreclosure, including reverse mortgage foreclosure. I testify here today on behalf of the National Consumer Law Center's low-income clients.

Congress has an important role in overseeing the U.S. Department of Housing and Urban Development's (HUD) administration of the Federal Housing Administration's (FHA) reverse mortgage program. Congress authorized HUD to create the HECM program to encourage lenders to make reverse mortgage loans that would better enable seniors to tap into their home equity and age in place. This product often is able to make a huge difference in the lives of seniors—providing personal and financial stability. Unfortunately, a significant number of reverse mortgage loans are now in foreclosure – putting elderly borrowers at risk of eviction and homelessness. My testimony today will provide a brief overview of the problems facing reverse mortgage borrowers while focusing on improvements that could be made to reduce the number of vulnerable seniors at risk of losing their homes.

The central point is that reverse mortgages provide an important safety net for older adults to allow them to remain stable in their homes. The reverse mortgage foreclosure crisis we are facing now was caused by problematic origination practices that largely have been addressed for new HECM loans through HUD's requirement that lenders evaluate the borrower's ability to pay property charges before making the loan (the Financial Assessment requirement) and its 2014 policy that creates some protections for non-borrowing spouses. However, in order to stem the tide of HECM foreclosures of existing loans and further prevent such a crisis from reoccurring, the following steps are needed:

- Make loss mitigation mandatory for new HECMs that go into default on property charges;
- Expand loss mitigation options for existing HECMs and provide for a clear extension of foreclosure deadlines while servicers evaluate loss mitigation;

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<sup>1</sup> Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises including Mortgage Lending, Truth in Lending and Foreclosures. NCLC attorneys provide assistance on a daily basis to the attorneys and housing counselors working with distressed homeowners across the country. This testimony is based on the field experience of these advocates as well as our knowledge and expertise in mortgage origination and servicing.

- Remove unreasonable deadlines for the Mortgagee Optional Election (MOE) Assignment program, which is intended to protect non-borrowing spouses when the borrowing spouse dies, and expand the MOE program to cover situations where the borrower has to move out of the home for health reasons but the home is still occupied by the non-borrowing spouse;
- Clarify and streamline the procedures that allow post-2014 non-borrowing spouses to enter a deferral period after the death of the borrower; and
- Improve servicer communications with borrowers.

The discussion draft of the Preventing Foreclosures on Seniors Act of 2019 put forward by Chairwoman Waters specifically addresses these issues and would make a significant difference.

### **I. Congress authorized HUD to create the HECM program to help low-income seniors tap into their equity without increasing the risk of displacement.**

Congress established the Home Equity Conversion Mortgages (“HECM”) program in 1988 following years of public and private initiatives to create reverse mortgages or other equity conversion products.<sup>2</sup> Advocates were concerned about the financial plight of older adults who were struggling to meet daily expenses, including housing and health related expenses.<sup>3</sup> Elder advocates pushed policymakers to create an equity conversion product that would be widely accepted by the lending industry and that would provide basic consumer protections for vulnerable older homeowners.<sup>4</sup>

The HECM program was designed specifically “to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income” while also preventing the risk of displacement from the home.<sup>5</sup> Under the program, HUD-approved private lenders originate HECM loans that are FHA-insured, subject to the agency’s regulations.<sup>6</sup>

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<sup>2</sup> Home Equity Conversion Mortgage Insurance Demonstration, Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 417, 101 Stat. 1815 (1988). The program was made permanent in 1998.

<sup>3</sup> Advocates highlighted the desire of elders to remain in their community and age in place despite the economic strain caused by rising taxes, utility costs and home maintenance. See The 1981 White House Conference on Aging, Report of the Mini-Conference on Aging for the Elderly, *available at* <https://babel.hathitrust.org/cgi/pt?id=pur1.32754066676069;view=1up;seq=18>.

<sup>4</sup> Both the 1981 White House Conference on Aging and the President’s Commission on Housing recommended that the federal government take a more active role in the creation of a reverse mortgage program. See 1981 Mini-Conference Report, *supra* note 15. See also Turning Home Equity Into Income for Older Homeowners: An Information Paper Prepared By the Staff of the Special Committee on Aging, U.S. Senate, 97th Cong., 2d Sess. (July 1982), *available at* <https://www.aging.senate.gov/imo/media/doc/reports/rpt682.pdf> (noting that accessing equity has the potential to raise elders’ monthly income above the poverty line; elders can repair homes or make changes to accommodate disability; and pay for medical or health related expenses).

<sup>5</sup> 12 U.S.C. § 1715z-20.

<sup>6</sup> HUD guarantees that the lender will be compensated, up to specified limits, for any losses after default on the loan. 12 U.S.C. § 1715z-20(i)(C). The homeowner is also protected by HUD in the event the lender is unable to fulfill its payment obligation. 12 U.S.C. § 1715z-20(i)(A).

To be eligible for a HECM, the borrower must be at least sixty-two years old.<sup>7</sup> The borrower can receive loan proceeds in a lump sum, a line of credit, or a stream of payments over time. The borrower is not obligated to pay principal or interest on the loan over time; instead the interest gets added to the principal balance owed, which grows until the loan comes due when the borrower dies, sells the home, or permanently moves out of the home.

The initial loan amount is calculated based on the property value, prevailing interest rates, and the age of the youngest borrower or spouse.<sup>8</sup> The amount that can be borrowed depends on the life expectancy of the borrower, with younger homeowners able to borrow less because of the expectation that interest will accrue over a longer time period before the loan is repaid. If the balance owed on the mortgage exceeds the value of the home at the time of disposition, the FHA insurance covers any shortfall. Neither reverse mortgage borrowers nor their heirs are personally liable for any amount above the property value.

Although there is no obligation to pay principal or interest on the loan until a triggering event occurs, borrowers are required to keep the property in good repair and pay property-related charges, including property taxes and hazard insurance premiums, referred to as “property charges,” in a timely manner.

Reverse mortgages play a crucial role in helping older adults to bridge the resource gap in retirement, when they may be living on limited income and are likely to be carrying significant medical bills and other expenses. Approximately eighty percent of adults age sixty-five or older own a home.<sup>9</sup> A home is the most common financial asset owned by most Americans, eclipsing ownership of retirement accounts and other forms of savings and assets.<sup>10</sup> Moreover, for most homeowners, the home is their most valuable asset.<sup>11</sup> Older consumers can use reverse mortgages to tap into their home equity in order to supplement their income, pay off debt, and repair or otherwise modify homes to accommodate physical disabilities. Unlike other options, a reverse mortgage allows an older adult to access the equity in the home without selling and moving from the home or taking on a traditional loan with a monthly payment obligation that may not be affordable on limited retirement income.

Nearly half of the respondents to a survey by AARP sought a reverse mortgage to pay for basic necessities and essential expenses.<sup>12</sup> Survey respondents who were over eighty years old, in poor or fair health, women, and those who were divorced or widowed were most likely to seek

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<sup>7</sup> 12 U.S.C. § 1715z-20(b)(1); 24 C.F.R. § 206.33.

<sup>8</sup> Until August 2014, loan amounts were calculated solely based on the age of the youngest borrower, disregarding non-borrowing spouses. This policy created the non-borrowing spouse problems discussed *infra* in Section IV.

<sup>9</sup> For those sixty-five and older the percentage is 79.5% as of the fourth quarter of 2016. U.S. Census Bureau, Figure 7: Annual Homeownership Rates for the United States by Age Group, 1982-2016, *available at* <https://www.census.gov/housing/hvs/data/charts/fig07.pdf>.

<sup>10</sup> Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances, 103 Fed. Reserve Bulletin, No. 3, at 18 (Sept. 2017), *available at* <https://www.federalreserve.gov/publications/files/scf17.pdf> (noting that 63.7% of Americans own a home; this percentage exceeds other forms of saving and assets, including retirement accounts (52.1%), cash-value life insurance policies (19.4%), stocks (13.9%) and savings bonds (8.6%)).

<sup>11</sup> *See id.*

<sup>12</sup> *See* Donald Redfoot, Ken Scholen & S. Kathi Brown, AARP Pub. Pol’y Inst., Reverse Mortgages: Niche Product or Mainstream Solution? Report on the 2006 AARP National Survey of Reverse Mortgage Shoppers (Dec. 2007).

reverse mortgages to deal with necessities.<sup>13</sup> For younger borrowers, reducing household debt, typically by paying off a forward mortgage, was the primary motivation for obtaining a reverse mortgage.<sup>14</sup>

While only a tiny fraction of eligible homeowners have taken out a reverse mortgage, for many it is a key tool. And as the baby boomer population ages, it is likely that a growing number of elders will need a reverse mortgage to make ends meet. More homeowners are entering retirement with mortgage debt than in prior generations.<sup>15</sup> Older adults are also carrying more non-mortgage debt, including credit card and student loan debt, into retirement than in past decades.<sup>16</sup> While debt is rising for seniors, the decline in traditional pension plans and a lack of retirement savings add to the financial strain of growing older.<sup>17</sup>

Federally-insured reverse mortgages make up the vast majority of the reverse mortgage market. Therefore, the government's role in keeping this product viable and ensuring that it provides the benefits Congress intended is significant.

## **II. Too Many Reverse Mortgage Borrowers are Losing Their Homes to Foreclosure, Especially in Communities of Color, Due to Mortgage Servicing and Oversight Failures.**

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 losing their homes to foreclosure at an alarming rate. Approximately 24,000 HECM borrowers received “due and payable” notices in the 2015 federal

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<sup>13</sup> *Id.*

<sup>14</sup> *See id.* *See also* Stephanie Moulton, Cäzilia Loibl & Donald Haurin, *Reverse Mortgage Motivations and Outcomes: Insights from Survey Data*, 19 *Cityscape: J. Pol’y Dev. & Research*, No. 1 (2017); Nat’l Council on Aging, *Changing Attitudes, Changing Motives: The MetLife Study of How Aging Homeowners Use Reverse Mortgages*, MetLife Mature Market Institute (Mar. 2012), *available at* <https://www.metlife.com/assets/cao/mmi/publications/studies/2012/studies/mmi-changing-attitudes-changing-motives.pdf>.

<sup>15</sup> Consumer Fin. Prot. Bureau, Office for Older Americans, *Snapshot of Older Consumers and Mortgage Debt at 8* (May 2014), *available at* [http://files.consumerfinance.gov/f/201405\\_cfpb\\_snapshot\\_older-consumers-mortgage-debt.pdf](http://files.consumerfinance.gov/f/201405_cfpb_snapshot_older-consumers-mortgage-debt.pdf) [hereinafter CFPB Snapshot 2014] (analyzing Census data and concluding that the percentage of homeowners age 65 and older carrying mortgage debt increased from twenty-two to thirty-percent). *See also* Joint Ctr. for Hous. Studies of Harvard Univ., *Projections and Implications for Housing a Growing Population: Older Households 2015-2035* (Dec. 2016).

<sup>16</sup> Fed. Reserve Bd., 2016 Survey of Consumer Finances Chartbook at 837 (Sept. 20, 2017), *available at* <https://www.federalreserve.gov/econres/files/BulletinCharts.pdf> (49.8% of families headed by someone seventy-five or older were in debt in 2016 compared to 21% in 1989; 70.1% of families headed by someone aged sixty-five to seventy-four were in debt in 2016 compared to 49.6% in 1989). *See also* Craig Copeland, *Employee Benefit Research Inst., Debt of the Elderly and Near Elderly, 1992-2013* (Jan. 2015) (the percentage of American families with heads ages fifty-five or older that had debt increased from 53.8 percent in 1992 to 65.4 percent in 2013); CFPB Snapshot 2014, *supra* note 10, at 6 (increasing percentage of older Americans owe a mortgage on their home); Fidelity Viewpoints, *Retirees face estimated \$240,000 in medical costs*, May 16, 2012 (a couple retiring in 2012 at age sixty-five would face, on average, \$240,000 for medical care and health insurance expenses over their lifetimes, up from an estimated \$160,000 in 2002).

<sup>17</sup> *See* Annamaria Lusardi, Olivia S. Mitchell, Noemi Oggero, *Debt and Financial Vulnerability on the Verge of Retirement* (NBER Working Paper No. 23664) (Aug. 2017).

fiscal year, which ended September 2015.<sup>18</sup> That was triple the number for 2014, according to HUD.<sup>19</sup> According HUD data, as of 2016, nearly 90,000 reverse mortgage loans were headed toward foreclosure due to a default on the obligation to pay property taxes and homeowner's insurance.<sup>20</sup> This represents roughly 14% of outstanding HECM loans.<sup>21</sup>

According to recent reporting, the impact of the reverse mortgage foreclosure crisis is being felt primarily and disproportionately in communities of color. Even when comparing only lower income areas, reverse mortgage foreclosure rates are six times higher in predominantly African American neighborhoods than in majority white ones.<sup>22</sup> The impact of high rates of HECM foreclosures in these communities is severe. Many HECM borrowers facing foreclosure are losing homes that have been in the family for generations. Experts estimate that every foreclosure depresses nearby home values by 1%.<sup>23</sup> The HECM foreclosure crisis is draining communities of color of home equity in more ways than one.

HECM borrowers are required to pay property charges, including property taxes and homeowner's insurance, and the failure to do so provides a basis for the loan to be called due and payable, followed by foreclosure. A surge in property charge defaults and resulting foreclosures of HECM borrowers has reached crisis proportions. The poor origination practices that led to a large rate of property charge defaults have been addressed through the imposition of a Financial Assessment, in which the loan officer must evaluate the potential borrower's ability to afford property charges and consider a set-aside to cover them if needed. Consumer advocates from around the country have reported that HUD's strict foreclosure timelines and the lack of robust loss mitigation policies, and servicers' business decisions influenced by these policies, make it extremely difficult for HECM borrowers to cure property charge defaults and avoid foreclosure. Effective loss mitigation and clearer communication with borrowers would help to stem the tide of property charge foreclosures on existing loans.

A significant number of HECM borrowers are at risk of foreclosure due to being in default on property charges. Out of 448 reverse mortgage foreclosure filings in Philadelphia during 2016, 64% were based on property charge defaults.<sup>24</sup> In November 2016, a HUD actuarial report by an independent accounting firm showed that 89,064 HECMs were in default on property charges with no payment in the past twelve months.<sup>25</sup> This represents about 14% of

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<sup>18</sup> Jennifer McKim & Koby Levin, *Seniors Face More Foreclosures as Reverse Mortgages Bite Back*, New England Center for Investigative Reporting, May 1, 2016, available at <https://www.necir.org/2016/05/01/seniors-face-foreclosures-reverse-mortgages-bite-back/>.

<sup>19</sup> *Id.*

<sup>20</sup> 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].

<sup>21</sup> *Id.*

<sup>22</sup> Nick Penzenstadler and Jeff Kelly Lowenstein, "Seniors were sold a risk-free retirement with reverse mortgages. Now they face foreclosure," USA Today (July 5, 2019).

<sup>23</sup> *Id.* (citing a study that found that homeowners within approximately 600 feet experience a reduction in value of 1% per foreclosure).

<sup>24</sup> Email with attached data analysis from Rachel Labush, Community Legal Services of Philadelphia, September 18, 2019.

<sup>25</sup> FY 2016 Actuarial Review, at D-6.

HECM loans.<sup>26</sup> The report projected that roughly 18% of HECMs currently outstanding would experience a property charge default at some point in time.<sup>27</sup> HECM actuarial reports released in November 2017 and 2018 have not included data regarding the current number of loans with property charge defaults. Congress should require HUD to publicly release data regarding HECM foreclosures in the same way that HUD currently publishes data about HECM originations.

### **III. Better Loss Mitigation Rules to Address the Crisis of Property Charge Defaults Would Reduce the Number of HECM Foreclosures.**

#### **A. Better loss mitigation is needed to address property charge defaults on the existing stock of HECMs originated before lenders were required to consider the borrower's ability to pay property charges, and at a time of frequent misrepresentations that HECMs were "payment-free."**

*Charlotte Lowe was struggling to find a way to pay for the repairs needed on her modest home in Cambridge, Massachusetts. After working a lifetime, she was now living off of Social Security benefits and a small amount of extra cash from babysitting neighborhood children. She and her husband had bought this home in the 1960s when they were expecting their fourth child and they needed more room. They did a lot of work on the house at the beginning. She worked as a switchboard operator connecting telephone calls and a host of other jobs after that. When they divorced after twenty-three years of marriage, she stayed in the home. But in 2003, at sixty-eight years old, she was faced with the need to make significant modifications and repairs. She had no other savings besides the equity in her home. But, the mortgage on her home of thirty-eight years was paid off; she had significant equity in the property.*

*Ms. Lowe took out a reverse mortgage in 2003. Years later, she ended up in foreclosure. When she obtained the loan she understood that there were no payments required. The majority of her reverse mortgage proceeds were paid out for the significant work that had to be done on her home. Unbeknownst to Ms. Lowe, the reverse mortgage servicer began at some point paying property charges owed on her house. Ms. Lowe believed her property taxes were in abatement and did not realize they had become delinquent and been paid by the servicer. She entered into a repayment plan, but her servicer terminated that agreement and was unwilling to offer her any other options when another year's property taxes fell delinquent. In 2015, Ms. Lowe received a letter from a law firm that had been retained to carry out a foreclosure of her home.<sup>28</sup>*

There are a number of reasons why so many HECM borrowers have gone into default on property charges. To be sure, some borrowers defaulted due to a lack of sufficient income with which to meet their ongoing expenses, after having exhausted their home equity through the

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<sup>26</sup> Jennifer McKim, *More Seniors are Taking Loans Against Their Homes - and It's Costing Them*, Wash. Post, Aug. 25, 2017.

<sup>27</sup> FY 2016 Actuarial Review, at D-7 (Nov. 15, 2016).

<sup>28</sup> Sarah B. Mancini and Odette Williamson, *Reversing Course: Stemming the Tide of Reverse Mortgage Foreclosures through Effective Servicing and Loss Mitigation*, 26 ELDER LAW JOURNAL 85 (2018).

HECM.<sup>29</sup> However, other structural factors in the lending market have contributed to the surge of property charge defaults.

One significant factor leading to high rates of default on property charges has been false advertising regarding the way reverse mortgages work and a resulting lack of understanding among HECM borrowers that they were required to pay these charges.<sup>30</sup> Older adults being solicited for a reverse mortgage are often told that this loan is “payment free.”<sup>31</sup> If they previously had a forward mortgage loan, as is the case for most HECM borrowers, consumers were used to having the funds for annual or semi-annual property taxes or insurance escrowed by their mortgage company as part of their monthly housing payment.<sup>32</sup> As recently as late 2016, the CFPB took action against three reverse mortgage lenders for deceptive advertising practices, including misrepresenting that HECM borrowers would have no payments and could not lose their homes.<sup>33</sup> Advertisements for reverse mortgages typically discuss borrower obligations like tax and insurance payments only in the fine print, if at all, and many older adults cannot read the fine print used in advertisements.<sup>34</sup>

Required pre-loan counseling has been inconsistent at informing borrowers of the requirement to pay property charges.<sup>35</sup> Concerns have been raised periodically about the overall effectiveness of required pre-loan counseling.<sup>36</sup> Even when HUD counseling protocols are followed, a telephone counseling session that may last less than one hour is not going to correct most consumers’ misconceptions about the reverse mortgage terms.<sup>37</sup> HECM servicers have not effectively communicated the necessity to pay property charges to borrowers after the loan closing. Thus, many HECM borrowers have no idea that they are obligated to pay their property taxes and hazard insurance annually, did not know how much it would cost them, and did not realize they needed to plan ahead for this expense. Taxing authorities are not set up to provide

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<sup>29</sup> This problem appears to have been significantly curtailed by the Financial Assessment, discussed *infra*.

<sup>30</sup> See Consumer Fin. Prot. Bureau, Report to Congress on Reverse Mortgages 81 (June 28, 2012) available at <https://www.consumerfinance.gov/data-research/research-reports/reverse-mortgages-report/>, at 130 [hereinafter CFPB Report to Congress 2012].

<sup>31</sup> In November 2012, the FTC, in coordination with the CFPB, issued warning letters to companies regarding potentially misleading mortgage advertisements. See Press Release, Fed. Trade Comm’n, FTC Warns Mortgage Advertisers that Their Ads May Violate Federal Law (Nov. 19, 2012); Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau Warns Companies Against Misleading Consumers with False Mortgage Advertisements (Nov. 19, 2012). One misrepresentation singled out by the agencies was the claim that “consumers who enter into a reverse mortgage will have ‘no payments,’ notwithstanding that such consumers may continue to be responsible for tax and insurance payments.”

<sup>32</sup> See CFPB Report to Congress 2012, at 129 (citing to complaints received by the CFPB and the FTC revealing that HECM borrowers did not realize they were obligated to pay these charges).

<sup>33</sup> Press Release, Consumer Fin. Prot. Bureau, CFPB Takes Action Against Reverse Mortgage Companies for Deceptive Advertising (Dec. 7, 2016).

<sup>34</sup> Consumer Fin. Prot. Bureau, Office for Older Americans, A Closer Look at Reverse Mortgage Advertisement and Consumer Risks 7 (June 2015), available at <https://www.consumerfinance.gov/data-research/research-reports/a-closer-look-at-reverse-mortgage-advertisements-and-consumer-risks/>.

<sup>35</sup> See CFPB Report to Congress 2012, at 123 (explaining that confusion about taxes and insurance persisted after pre-loan counseling).

<sup>36</sup> See U.S. Gov’t Accountability Office, Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls Over Counseling for Borrowers 8 (June 2009), available at <http://www.gao.gov/new.items/d09606.pdf>, at 8.

<sup>37</sup> See CFPB Report to Congress 2012, at 124. See also 82 Fed. Reg. at 7112 (public comment noting that counseling is ineffective at correcting misconceptions advanced by unscrupulous mortgage brokers).



customer service, and some do not even send a bill in advance of the due date.<sup>38</sup> The requirement that the borrower pay taxes by the due date does not accommodate alternative payment arrangements, such as payment plans, that might be available with the taxing authority. This means that a borrower can be in default even though they have made payment arrangements on their taxes. Many HECM borrowers begin to experience cognitive disabilities or memory loss as they reach their seventies and eighties, which also contributes to property charge defaults and the need for more expansive loss mitigation.<sup>39</sup>

This lack of understanding has been compounded for some borrowers who received HECM loan proceeds through a line of credit, in which the loan proceeds were held in an account the borrower could draw from at will. In these situations, if the borrowers failed to pay property charges, servicers were directed to pay the charges out of the line of credit.<sup>40</sup> Some borrowers in this situation never realized that they were supposed to be paying the property charges themselves. When the credit line was exhausted and servicers began to advance the funds to pay these charges, many of these borrowers did not understand that their loans had gone into default. Under HUD's policy from 2007 through 2011, these borrowers went deeper and deeper into default without being referred to foreclosure or realizing there was any problem.<sup>41</sup>

In 2011, in response to an OIG report revealing a significant rate of default on property charges, HUD significantly shifted its policy regarding property charge defaults.<sup>42</sup> First, HUD required mortgagees to immediately report any property charge delinquencies and to report future delinquencies on a monthly basis. Servicers were directed to notify HECM borrowers of property charge defaults within thirty days and offer loss mitigation options to such borrowers to cure the default.<sup>43</sup> HUD established the following loss mitigation options to be considered: establishing "a realistic repayment plan," contacting a housing counseling agency to seek out local resources to help cure the default, and refinancing into a new HECM if there is sufficient equity to do so.<sup>44</sup> Repayment plans that servicers could offer to HECM borrowers varied in length depending on the amount of money owed, but could not extend beyond twenty-four months.<sup>45</sup> If the borrower failed to cure the delinquency and loss mitigation options had been exhausted, HUD instructed servicers to request permission to accelerate the loan and foreclose. Upon approval, servicers were required to initiate foreclosure.<sup>46</sup>

In April 2015, HUD made another significant change in its policy on property charge defaults. It announced that mortgagees must make a request to accelerate the loan within thirty

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<sup>38</sup> Email from Sarah White, Connecticut Fair Housing Center, Feb. 9, 2018.

<sup>39</sup> Rates of cognitive disability increase with age. Over twenty percent of the population of people over age eighty have a cognitive disability. See *Housing America's Older Adults*, JOINT CTR. FOR HOUSING STUD. OF HARV. U. 3 (2011).

<sup>40</sup> CFPB Report to Congress 2012, at 129.

<sup>41</sup> *Id.* at 130. See also U.S. Dep't of Hous. & Urban Dev., Office of Inspector General Audit Report, HUD Was Not Tracking Almost 13,000 Defaulted HECM Loans With Maximum Claim Amounts of Potentially More Than \$2.5 Billion, at 6, 7 (Aug. 25, 2010) [hereinafter HUD OIG Audit Report].

<sup>42</sup> U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2011-01 (Jan. 3, 2011).

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 3.

<sup>46</sup> *Id.* at 4.

days of a property charge default.<sup>47</sup> In contrast to HUD's previous policy, servicers were no longer required to exhaust all loss mitigation options before proceeding to accelerate and foreclose. HUD's new position was that servicers may offer loss mitigation, but would have to seek an extension of the foreclosure timeframes in order to do so.<sup>48</sup> In addition, HUD barred servicers from offering permissive loss mitigation options to HECM borrowers once foreclosure had been initiated.<sup>49</sup> Although the latter policy was later reversed by HUD, confusion persisted about whether loss mitigation could be offered after a foreclosure referral.<sup>50</sup> After HUD clarified that loss mitigation was permissible after the initiation of foreclosure, many servicers still declined to offer it because of HUD's aggressive position on meeting foreclosure deadlines.<sup>51</sup>

Servicers' incentives surrounding loss mitigation are heavily dependent on HUD's policing of the foreclosure timeline. HUD's regulations require that servicers initiate the foreclosure process within a certain time period after a loan becomes eligible to be called due and payable owing to a failure to pay property charges or occupy the property.<sup>52</sup> If servicers do not initiate foreclosure in a timely manner, HUD may impose a financial penalty known as interest curtailment – refusing to allow the mortgagee to include any interest that accrues on the loan after the missed deadline in its eventual insurance claim.<sup>53</sup> For any HECM where the loan balance has grown to exceed the market value of the home, the possibility of losing out on recovery of the interest accruing on the debt is a significant risk. HUD's policy of requiring strict adherence to foreclosure timelines, with the risk of interest curtailment, has been a powerful disincentive to engage in loss mitigation.

Consumer advocates from around the country have reported that HUD's lack of robust loss mitigation policies and strict foreclosure timelines, and servicers' business decisions influenced by these policies, make it extremely difficult for HECM borrowers to cure property charge defaults and avoid foreclosure.<sup>54</sup> Certain servicers refuse to offer repayment plans at all after foreclosure has been initiated, if the arrearage balance exceeds \$5,000, or if other conditions exist.<sup>55</sup> Yet, to date, HUD has failed to seriously consider strengthening its servicing regulations to deal with the significant problem of property charge defaults.

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<sup>47</sup> U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2015-11 (Apr. 23, 2015).

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.*

<sup>50</sup> See U.S. Dep't of Hous. & Urban Dev., 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>.

<sup>51</sup> See Nat'l Consumer Law Ctr., Examples of Senior Homeowners Struggling with Ineffective and Inconsistent Servicing of HECM Loans (Oct. 26, 2017), *available at* [https://www.nclc.org/images/pdf/foreclosure\\_mortgage/reverse-mortgages/ib-hecm-examples-loss-mitigation.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage/reverse-mortgages/ib-hecm-examples-loss-mitigation.pdf) [hereinafter, NCLC Examples of HECM Servicing Problems].

<sup>52</sup> 24 C.F.R. § 206.125(d).

<sup>53</sup> 24 C.F.R. § 206.129(d)(3)(x).

<sup>54</sup> See NCLC Examples of HECM Servicing Problems. See also Courina Yulisa and Caroline Nagy, Protecting Senior Homeowners from Reverse Mortgage Foreclosure, Center for New York City Neighborhoods (Aug. 2017), *available at* <http://cnycn.org/reverse-mortgage-policy-brief/> (revealing that for one company that services 10,000 reverse mortgage loans in New York State, fully one third of their loans were in default; and foreclosure attorneys in New York City and Long Island report that one quarter to one third of their cases now involve reverse mortgage foreclosures).

<sup>55</sup> See NCLC Examples of HECM Servicing Problems.

Because of the high rates of default on property charges, HUD created new rules effective in 2015 that at the outset, lenders must evaluate the borrower's financial capacity to pay property charges. If there is a lack of sufficient resources, the lender must set up a "life expectancy set-aside" to cover the expected property charges over the borrower's lifespan. Early experience suggests that rates of property charge default will be much lower for HECM loans originated after 2015 because of these new rules. However, HUD still has not adequately dealt with the property charge defaults on pre-2015 loans.

**B. Making loss mitigation mandatory, expanding available loss mitigation options, and giving servicers time to consider loss mitigation would reduce the number of HECM foreclosures.**

Requiring servicers to consider loss mitigation options prior to accelerating the loan or initiating foreclosure would be the most effective way to reduce property charge foreclosures. Servicers are currently *permitted* to offer loss mitigation, such as repayment plans for eligible borrowers and deferrals of foreclosure for borrowers with critical health circumstances.<sup>56</sup> However, because servicers are not *required* to conduct a loss mitigation review, and any delay of the foreclosure process exposes them to financial risk, some HECM servicers exercise their discretion and provide very limited options. HUD has the authority to require servicers to engage in loss mitigation prior to submitting a due and payable request, at least prospectively for new HECM loans. The discussion draft of the Preventing Foreclosures of Seniors Act of 2019 put forward by Chairwoman Waters would make loss mitigation mandatory for HECMs originated after the bill's effective date.

For existing HECMs with property charge defaults, the best way for HUD to decrease the number of foreclosures is to allow servicers a broader range of options and to clearly provide servicers time to review a borrower for loss mitigation without financial penalty. Presently, HUD allows servicers to offer borrowers a repayment plan of up to 60 months, with a number of limitations. Borrowers who default on a repayment plan and owe more than \$5,000 are not able to obtain a second repayment plan. Servicers are told to evaluate the borrower's surplus income, and some have interpreted HUD's policy to bar repayment plans if the required monthly payment exceeds 25% of the borrower's surplus.

Some borrowers have built up an arrearage of property charges, perhaps for many of the reasons cited in this testimony, and cannot afford to cure that arrearage but can afford to start paying property charges prospectively. For borrowers in this situation, HUD should allow for a new loss mitigation option that involves deferring foreclosure contingent on the borrower paying all property charges going forward. This one-time deferral would be similar to a "partial claim" for FHA forward mortgages, but for HECMs HUD could simply allow a servicer to include the past delinquency balance as part of the insurance claim when it is ultimately filed.<sup>57</sup>

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<sup>56</sup> U.S. Dep't of Hous. & Urban Dev., Mortgage Letter 2015-11 (Apr. 23, 2015).

<sup>57</sup> A partial claim is a loss mitigation option made available by HUD on forward mortgages, in which HUD advances the amount of the arrearage and takes a silent second mortgage for the amount advanced. This option is meant to bring the loan current and allow the borrower to perform going forward.

One area where HUD has allowed more flexibility in loss mitigation is that surrounding older borrowers with chronic illnesses. HUD allows an extension of foreclosure timelines for borrowers with critical health circumstances, such as long-term illness, if all borrowers on the loan are over age eighty. The borrower has the burden of reapplying annually to continue the extension. Servicers' procedures for handling this recertification process are confusing and have led to many of the most vulnerable homeowners receiving unnecessary foreclosure notices. The age requirement (for both borrowers) has barred this relief for many with extremely dire health situations. Added flexibility regarding property charges is needed for all HECM borrowers, but it is especially needed for those with critical health circumstances. HUD should consider making available a one-time deferral of past property charges discussed above *at least* for borrowers with chronic illnesses who are under age 80. Further, HUD must address the problems the most infirm borrowers are facing with the annual recertification process for the At-Risk Extension.

HUD's current policies require servicers to initiate foreclosure within six months of a property charge default. HUD's policy is unclear on whether servicers can request a delay of foreclosure timelines only if a loss mitigation option has been approved, or if an extension may be requested to evaluate loss mitigation options.<sup>58</sup>

HUD should expand access to loss mitigation for existing HECM borrowers by:

- Allowing repayment plans longer than 60 months;
- Allowing successive repayment plans even if more than \$5,000 is owed;
- Clarifying or eliminating the 25% of surplus income rule;
- Improving the procedure servicers use to renew at-risk extensions for borrowers with critical health circumstances;
- Creating a property charge deferral option, at least for borrowers under age 80 with critical health circumstances; and
- Providing servicers with a clear extension of the foreclosure deadlines to evaluate and offer loss mitigation.

Chairwoman Waters' discussion draft bill would require HUD to provide the full range of optional loss mitigation for existing HECMs and authorize an extension of the foreclosure timelines for loss mitigation review. Without these changes, too many HECM borrowers are being forced into bankruptcy or worse, losing their homes to foreclosure.

#### **IV. Non-Borrowing Spouses Still Face Foreclosure and Need Relief.**

Another significant problem in the reverse mortgage market relates to non-borrowing spouses of reverse mortgage borrowers. Across the country, widows and widowers are losing their homes because of HUD's failure to implement proper safeguards in reverse mortgages their

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<sup>58</sup> U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2015-11 at 3 (Apr. 23, 2015) (language regarding seeking an extension of foreclosure timeframes is unclear. A mortgagee may seek an extension when a loss mitigation option "is available" and servicer "is willing to offer" the option. If HUD asserts that this language currently allows servicers to extend foreclosure timeframes to evaluate loss mitigation, this should be clarified in an FAQ or other policy announcement).

now-deceased spouses previously obtained. Swift action is needed 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 applicable program, and ensure that the program can work effectively to help non-borrowing spouses stay in their homes.

When Congress authorized HUD to create the HECM program, it mandated protections for 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>59</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 who was not included as a borrower on the loan.<sup>60</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 loan must be paid in full or else the lender has the right to foreclose.<sup>61</sup>

After litigation, HUD addressed the problem prospectively for new HECMs originated after August 4, 2014. It required non-borrowing spouses to be factored into the calculation of initial loan proceeds and automatically allowed to defer foreclosure if they outlive the borrower.<sup>62</sup> The issues facing post-2014 non-borrowing spouses are more manageable, but still require attention. HECM loans originated pre-2014 pose more significant hurdles for non-borrowing spouses, because these spouses were not factored into the loan calculations, and the original loan documents authorize foreclosure upon the death of the borrower. HUD has created a program to help these non-borrowing spouses with pre-2014 loans, but significant issues remain.

#### **A. Non-borrowing Spouses with pre-2014 HECMs are still facing foreclosure due to arbitrary and unreasonable deadlines.**

In response to litigation challenging HUD's failure to comply with the statutory mandate to insure only HECM loans that protect both the borrower and any spouse from displacement, HUD created a program called the Mortgagee Optional Election (MOE). For HECMs originated prior to August 4, 2014, the MOE program allows the servicer to elect to assign the loan to HUD rather than foreclosing, so that HUD can allow the surviving non-borrowing spouse to remain in the home until his or her death or until some other triggering event occurs. Assigning 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

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<sup>59</sup> 12 U.S.C. § 1715z-20(j).

<sup>60</sup> 24 C.F.R. § 206.27(c); *see also* Plunkett v. Castro, 67 F. Supp. 3d 1 (D.D.C. 2014).

<sup>61</sup> In some circumstances, the borrower or heirs may satisfy the loan by paying 95% of the appraised value of the home.

<sup>62</sup> 24 C.F.R. 206.3 (definition of Principal Limit, based on the age of youngest borrower or eligible non-borrowing spouse).

can hold the loan, and the due and payable status of the loan is deferred until the non-borrowing spouse passes away or otherwise fails to maintain the loan obligations.

In order 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.<sup>63</sup> 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>64</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 contact the servicer in time for the servicer to 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.

*Mrs. Peggy Spaulding was 85 years old and was facing foreclosure on her home of 38 years. She and Mr. Spaulding had married in 1957. They purchased their home together in 1980. It is unclear why the lender did not give Mrs. Spaulding the option of being included as a borrower on the HECM with her husband. At the time the loan was originated, she 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. Spaulding passed away in January 2014. Mrs. Spaulding was awarded full title to the property by the Probate Court on August 12, 2014. She continued to maintain the property taxes and homeowner’s insurance on her home. The servicer, RMS, began working with Mrs. Spaulding to assign her loan pursuant to the MOE program. RMS timely made the election to pursue the MOE*

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<sup>63</sup> Dept. Housing and Urban Dev’t, Mortgagee Letter 2015-15 (June 12, 2015).

<sup>64</sup> Dept. Housing and Urban Dev’t, Mortgagee Letter 2015-15 (June 12, 2015).

*Assignment, within 120 days, and then attempted to initiate the MOE assignment to HUD within 120 days from the date of election.*

*HUD rejected the MOE Assignment in Mrs. Spaulding's case. HUD notified RMS just before the second 120-day deadline of a correction that needed to be made to the title insurance policy, but there was no time to do so prior to the assignment deadline. It appears RMS attempted to correct the problem and resubmit the MOE Assignment, but HUD then rejected it as untimely. Mrs. Spaulding was facing imminent foreclosure and the loss of her home of 38 years. Mrs. Spaulding pursued litigation against HUD, represented by Atlanta Legal Aid. Only after her lawsuit was filed did HUD agree to accept the MOE Assignment and allow her to remain in her home.*

Information obtained by the California Reinvestment Coalition under a Freedom of Information Act (FOIA) request shows that as of early 2018, out of 591 loans the servicers had elected to assign the loan to HUD (based on a determination that the spouse met all eligibility criteria), only about half had been approved by HUD. Roughly one fourth had been denied, and roughly another fourth were still under review as of the date of the FOIA response.<sup>65</sup> Many of those long-delayed reviews have now ended in denials based on a combination of incorrect interpretations of the MOE criteria and missing the applicable deadlines.<sup>66</sup> The number one reason for denials, according to HUD, was an MOE election letter sent after the 120 day deadline; the number three reason was “deficient documentation,” which could also be a deadline issue; and the second most common denial reason was alleged to relate to net loan balance and principal limit, which are not relevant criteria under the current version of the MOE.<sup>67</sup>

**B. HUD should address the problems with the Mortgage Optional Election (MOE) by removing arbitrary deadlines, requiring servicers to notify borrowers of the program in advance, and expanding it to cover borrower non-occupancy due to health circumstances.**

HUD must reform its MOE rules to provide reasonable access to the program. 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

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<sup>65</sup> California Reinvestment Coalition, “Federal Reverse Mortgage Program Results in Widows Losing Their Homes After Death of Spouse,” (Mar. 12, 2018), available at <http://calreinvest.org/press-release/federal-reverse-mortgage-program-results-in-widows-losing-their-homes-after-death-of-spouse-2/>.

<sup>66</sup> Many advocates have reached out to NCLC within the past two months stating that loans for which they thought the MOE assignment was long ago approved and completed, based on communications from the servicer, have now resurfaced in looming foreclosures, with the servicer citing a refusal by HUD to accept the assignment.

<sup>67</sup> It is possible this refers to denials that were made under the original version of the MOE, announced in Mortgagee Letter 2015-03. It makes no sense as a denial reason under Mortgagee Letter 2015-15. HUD should clarify that net principal limit has no bearing on eligibility for the MOE under Mortgagee Letter 2015-15.

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.

We recommend 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.
- HUD should clarify the requirement for "good and marketable title" or a legal right to remain in the property until death, to prevent servicers from imposing extra requirements.
- HUD should allow non-borrowing spouses to cure a default on property taxes or insurance, including through reasonable loss mitigation, and still benefit from the MOE.
- HUD should expand the MOE program to allow lenders to elect to assign loans to HUD when the borrower has moved out of the home for health reasons.

Representative Waters' discussion draft of the Preventing Foreclosures of Seniors Act of 2019 removes unnecessary deadlines and requires HUD to take the MOE Assignment if a lender elects to assign the loan. It also expands the MOE to situations where the borrower has moved out of the home due to health reasons.

On September 23, 2019, HUD released Mortgagee Letter 2015-19, which addresses many of these concerns regarding the MOE deadlines and removes the requirement that a non-borrowing spouse establish good and marketable title or a legal right to remain in the home. This new mortgagee letter does not address the issue of borrowers who have moved out of the home for health reasons.

**C. Eligible Non-Borrowing Spouses with post-2014 HECMs are entering foreclosure due to servicer confusion. HUD must clarify that a spouse is not required to submit documentation of ownership or other legal right to remain within 90 days.**

After August 4, 2014, lenders were required to factor in non-borrowing spouses in calculating the loan proceeds, and the loan documents provide that the loan will enter a deferral



period upon the borrower's death, so that foreclosure will not occur until the death of the non-borrowing spouse. Yet, NCLC has recently begun to hear of problems with how servicers are handling the deferral period for eligible non-borrowing spouses on loans originated after August 4, 2014. Although these spouses were identified up front and are entitled to remain in the home automatically, servicers are demanding that they prove ownership of the property within 90 days of the borrower's death or threatening foreclosure. HUD should clarify that documentation of ownership or a legal right to remain in the property is not required within a 90-day window.

As some of the borrowers on these loans are now passing away, advocates have reported to us that some eligible non-borrowing spouses named in the loan documents were not offered the deferral period as contemplated by the contract. In one such case, despite providing numerous responsive documents to the servicer, the non-borrowing spouse was denied the deferral for purported failure to provide documentation of title or the legal right to remain within 90 days of the borrower's death. The documentation requested, and the imposition of a 90-day deadline to provide it, exceeded what the contract or HUD regulations require.<sup>68</sup>

The decision by a servicer to deny a post-2014 non-borrowing spouse a deferral period because he or she did not provide proof of title or the right to remain within 90 days is not consistent with HUD's regulation, 24 CFR § 206.55 (d)(1). The regulation requires that the spouse establish, within 90 days of the borrower's death, legal ownership or other ongoing legal right to remain in the property. It does not require that the spouse provide proof or documentation of that right within that time period. This is an important distinction because in many cases, there may be a delay in the communication between the servicer and the spouse about the necessary information to establish eligibility for the deferral period. In some cases, the servicer's request may not be very clear as to what needs to be submitted to demonstrate ownership or legal right to remain.

Moreover, HUD has made clear that it is not necessary for the non-borrowing spouse to obtain legal title within 90 days – that simply having a legal right to remain in the property is sufficient. In response to public comment to the 2017 Final Rule, HUD stated:

*Comment: Ninety days is insufficient for a grieving spouse to take practical measures to secure her or his right to the property. One commenter stated that the probate process alone can take longer than ninety days for reasons outside of the surviving spouse's control. Commenters suggested that the time frame should be extended to 180 days. Another commenter suggested 120 days would be sufficient. One commenter also suggested that HUD may require that a probate action be opened within a reasonable time after the borrower's death.*

*HUD Response: HUD appreciates the recommendation. HUD would like to remind the public that a NBS does not have to obtain legal title in order to be eligible for a deferral period. A NBS must establish a legal right to remain in the property, which may be accomplished through means other than obtaining legal title to the property. While HUD understands and appreciates that concerns raised about the time required to obtain legal*

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<sup>68</sup> See 24 CFR § 206.55 (d)(1); HECM Fixed Rate Model Note, available at [https://www.hud.gov/sites/documents/HECM\\_MODEL\\_FIXED\\_NOTE.PDF](https://www.hud.gov/sites/documents/HECM_MODEL_FIXED_NOTE.PDF).

title, as it is not the requirement and the NBS has other means in which to establish a legal right to remain, HUD will not adopt this recommendation at this time.

In this particular case, there was a will giving the non-borrowing spouse the legal right to the property as beneficiary. Even in cases where there is not a will, many state laws give the surviving spouse rights in the property as the widow(er) or heir of the borrower.

On September 23, 2019, HUD released Mortgagee Letter 2015-19, which removes the requirement that a non-borrowing spouse establish good and marketable title or a legal right to remain in the home for pre-August 2014 HECMs. HUD should make the same change with respect to post-2014 loans.

## **V. Better servicing and clearer communication would reduce the number of HECM foreclosures.**

Better servicing, including letters written in plain English rather than legal jargon, could go a long way towards stemming the tide of property charge and other HECM foreclosures. HECM defaults have been exacerbated by the fact that when servicers contact borrowers about loan obligations, the notice letters sent are typically confusing and intimidating. In many cases, servicers have improperly initiated foreclosure based on alleged non-occupancy when the borrower was still living in the home. HUD can and should require effective servicing of HECM loans, including clear, frequent communications from loan servicers regarding property charges from the outset, plain English notices of the rights of non-borrowing spouses, and more thorough investigations of alleged non-occupancy.

HECM servicers have not developed effective protocols for communicating with borrowers about the need to repay delinquent property charges or the loss mitigation options available to help them do so. HUD created a model property charge delinquency letter, but the letter is not clear to a lay person.<sup>69</sup> Among other problems, it uses terms like “your loan may be declared due and payable” rather than clearly stating that foreclosure may result, and the option to enter into a repayment plan is buried below a demand to repay the full arrearage amount by a certain date.<sup>70</sup> A review of examples of property charge default letters sent by servicers in recent years reflects many of the same problems – a failure to use plain English, a failure to clearly warn borrowers about the serious consequences that may occur, and a failure to set forth all of the available options for resolving the default.<sup>71</sup> HUD received a number of public comments in its most recent public rulemaking regarding difficulties communicating with servicers and obtaining loss mitigation.<sup>72</sup> In addition, many HECM borrowers begin to experience cognitive

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<sup>69</sup> See U.S. Dep’t of Hous. & Urban Dev., Mortgagee Letter 2011-01, Attachment 2 (Model Property Charge Delinquency Letter) (Jan. 3, 2011), *available at* [https://www.hud.gov/program\\_offices/administration/hudclips/letters/mortgagee/2011ml](https://www.hud.gov/program_offices/administration/hudclips/letters/mortgagee/2011ml).

<sup>70</sup> See *id.*

<sup>71</sup> Letters from servicers submitted to NCLC by consumer advocates from around the country (on file with the author). Some of the letters regarding property charge default do not clearly explain that a repayment plan may be available. Most do not notify borrowers about the At-Risk Extension.

<sup>72</sup> 82 Fed. Reg. at 7102 (the need for proactive communication with non-borrowing spouses), 7111 (difficulty communicating with servicers), 7112 (counseling not sufficient to counteract miscommunications from loan

disabilities or memory loss as they reach their seventies and eighties, and require servicing that accommodates such disabilities.<sup>73</sup>

Poor servicing is rampant in the HECM market. Most reverse mortgage servicing complaints center on the failure to provide adequate loss mitigation options to cure a default prior to initiating foreclosure.<sup>74</sup> Borrowers also complain that servicers institute foreclosure based on alleged non-occupancy of the home even when the elder is still living in the home.<sup>75</sup> Some complaints mirror the frustrations that consumers face with forward mortgages, including servicers providing incorrect and inconsistent information to borrowers and heirs; general poor communication and unresponsiveness; and losing paperwork and other documents submitted to apply for loss mitigation or other options. These servicing problems have resulted in loans being improperly called due and payable and have led to unauthorized foreclosures.<sup>76</sup>

These servicing problems were also documented by the CFPB in its *Snapshot of Reverse Mortgage Complaints: December 2011-December 2014*.<sup>77</sup> The Report highlighted frustrations with loan servicers in the process of 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 documents, including tax records; and servicers who provide inconsistent instruction or are unresponsive.<sup>78</sup> Borrowers and heirs complained that servicers often delay and impede attempts to cure HECM defaults and avoid foreclosure.<sup>79</sup> The unresponsiveness of loan servicers was a particular challenge for grieving family members trying to settle the estate of a loved one.

*Mr. Y, an 82 year old widower in Orange Park, Florida, was facing foreclosure based upon alleged non-occupancy. This allegation was false and the servicer was aware he lived in the property. The servicer had been communicating directly with Mr. Y. regarding his homeowner's insurance payments. Mr. Y and the servicer had sent correspondence back and forth and the servicer even negotiated a repayment plan pursuant to which he sent checks listing and from his home address. He was also served at the home he was alleged to have left. Counsel for Mr. Y. contacted the attorney for the Plaintiff as soon as Mr. Y was served, informing Plaintiff's attorney he was served at this home. The litigation lasted a year longer even though the servicer had proof positive he lived in his home.*

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brokers), 7114 (need for a standard letter informing heirs of repayment options), 7115 (need for improved loss mitigation options).

<sup>73</sup> Rates of cognitive disability increase with age. Over twenty percent of the population of people over age eighty have a cognitive disability. See *Housing America's Older Adults*, JOINT CTR. FOR HOUSING STUD. OF HARV. U. 3 (2011).

<sup>74</sup> See NCLC Examples of HECM Servicing Problems.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Consumer Fin. Prot. Bureau, Office for Older Americans, *Snapshot of Reverse Mortgage Complaints* 15 (Feb. 2015), available at [http://files.consumerfinance.gov/f/201502\\_cfpb\\_report\\_snapshot-reverse-mortgage-complaints-december-2011-2014.pdf](http://files.consumerfinance.gov/f/201502_cfpb_report_snapshot-reverse-mortgage-complaints-december-2011-2014.pdf).

<sup>78</sup> See *id.* at 12-14.

<sup>79</sup> See *id.* at 14.

Recently, the chapter 11 bankruptcy filing by the mortgage servicer Ditech has called attention to the problematic servicing practices of its reverse mortgage servicing arm, Reverse Mortgage Solutions, Inc. (RMS). Consumer advocates had raised significant concerns that RMS would not compensate borrowers with claims against RMS and would transfer the servicing of loans free of any claims or defenses. On August 29th, the federal judge overseeing the bankruptcy denied confirmation of a bankruptcy plan that would have transferred reverse mortgage loans free and clear of any defenses based on RMS's past conduct. Unfortunately, affirmative claims against RMS still will not travel with the loans when they are transferred to a new servicer. However, based on the judge's ruling, RMS will have to propose a plan that provides some compensation to consumers who have raised claims against RMS and preserves the right of homeowners to raise defenses against the successor servicer. HUD should be attentive to the needs of HECM borrowers and non-borrowing spouses whose loans were serviced by RMS and allow extra leeway if needed.

HUD can and should require effective servicing of HECM loans, including clear, frequent communications from loan servicers regarding property charges from the outset, plain English notices of the rights of non-borrowing spouses, and more careful investigation of alleged non-occupancy.

## VI. Policy Recommendations

In summary, in order to preserve the HECM program as a tool to allow older adults to age in place, with stable and affordable housing, certain reforms are needed. Specifically, the following actions are needed to address the current HECM foreclosure crisis and keep older adults in their homes.

1) *Make Loss Mitigation Mandatory.* For new HECM originations, servicers can be required to engage in loss mitigation after a property charge default. Making loss mitigation mandatory would greatly reduce property charge foreclosures on new loans.

2) *Expand Loss Mitigation Options.* HUD's current options for reverse mortgage loss mitigation are far too limited. HUD's repayment plan rules are too restrictive and unclear. Servicers are directed to offer repayment plans that extend no longer than sixty months, or less if the loan is nearing the Maximum Claim Amount. Borrowers who default on a repayment plan and owe more than \$5,000 are not eligible for another repayment plan.<sup>80</sup> Further, servicers have assumed they can only approve a payment plan if it consumes no more than 25% of the borrower's surplus income.<sup>81</sup> HUD needs to make repayment plans more flexible, to clarify the surplus income rule, and to expand the available loss mitigation options. HUD should also improve the process for renewals of the At-Risk Extension for borrowers with critical health circumstances.

3) *Clearly Provide for Extension of Foreclosure Deadlines to Evaluate Loss Mitigation.* HUD should remove the disincentive to engage in loss mitigation by alleviating servicers' concerns about interest curtailment. HUD should make clear that it will grant an extension of

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<sup>80</sup> Mortgagee Letter 2015-11 (Apr. 23, 2015) at 8.

<sup>81</sup> Mortgagee Letter 2015-11 (Apr. 23, 2015) at 6-7.

foreclosure deadlines if a servicer is complying with HUD's requirements and engaging in loss mitigation review. HUD should continue to emphasize that servicers are permitted, even encouraged, to extend loss mitigation after a foreclosure has been initiated.

4) *Remove Unreasonable Deadlines for the MOE Assignment and expand the MOE to Address Borrowers Who Move Out of the Home for Health Reasons.* When a borrower dies and leaves behind a non-borrowing spouse on a pre-2014 HECM, the servicer should be able to make the election to assign the loan to HUD up until a foreclosure sale has been completed. A MOE Assignment should also be permitted when the borrower has moved out of the home for health reasons.

5) *Clarify Procedures for Post-2014 Non-borrowing Spouses.* Post-2014 HECMs should smoothly enter a deferral period. Servicers should not be referring spouses to foreclosure based solely on failure to submit documentation within 90 days of the borrower's death, and should make clear that a legal right to remain in the property is sufficient and a probate court order is not required.

6) *Improve 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. Servicers should reach out to borrowers immediately after closing, to begin to establish a rapport and an expectation of dialogue. As much as possible, written communications should be accompanied by a phone call or in-person communication.

## **VII. Conclusion**

Thank you for the opportunity to testify today. The risks facing reverse mortgage borrowers and their spouses are significant. If we are to preserve a program that serves the important goals that led Congress to authorize the creation of the HECM program, we must address these problems with urgency. Protecting the housing stability and home equity of a great number of older Americans hangs in the balance.