PROTECTING SENIORS: A REVIEW OF THE FHA'S HOME EQUITY CONVERSION MORTGAGE (HECM) PROGRAM

HEARING

BEFORE THE

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COMMUNITY DEVELOPMENT,
AND INSURANCE

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CONTENTS

PROTECTING SENIORS: A REVIEW OF THE FHA'S HOME EQUITY CONVERSION MORTGAGE (HECM) PROGRAM

Wednesday, September 25, 2019

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT,
AND INSURANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:02 p.m., in room 2128, Rayburn Office Building, Hon. Wm. Lacy Clay, [chairman of the subcommittee] presiding.

Members present: Representatives Clay, Cleaver, Sherman, Beatty, Gonzalez of Texas, Maloney, Heck, Lawson, Tlaib, Axne; Luetkemeyer, Tipton, Zeldin, Gonzalez of Ohio, Rose, Steil, and Gooden.

Ex officio present: Representative Waters.

Chairman CLAY. The Subcommittee on Housing, Community Development, and Insurance will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Today's hearing is entitled, "Protecting Seniors: A Review of the FHA's Home Equity Conversion Mortgage (HECM) Program. And at this time, I will recognize myself for 4 minutes for an opening statement.

In today's hearing, we will explore the racial wealth gap in the context of reverse mortgages, and in particular, the program insured by the government called the Home Equity Conversion Mortgage, or HECM program, which officially came on the books in 1988. I intend to aggressively continue to point out problems that exist in the broad world of housing, such as a lack of affordable housing, the assault on the disparity impact route by the Trump Administration, and the decreasing value of homes in Black communities like mine in St. Louis, many of which stem from unsound policies and business practices that we may be able to turn or forge ahead with viable solutions on.

HECMs can help make a difference in the lives of seniors, providing personal and financial stability, a flow of income, and most importantly, peace of mind. Unfortunately, in many communities nationwide, a significant number of reverse mortgage loans are now in foreclosure, putting elderly homeowners at risk of eviction and homelessness. Some of the testimony today will provide an 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.

A recent USA Today news article sheds light on some of the problems that persist with foreclosures of reverse mortgages despite attempts by Congress and HUD to improve the program. According to the article, nearly 100,000 reverse mortgages have failed, with urban African-American neighborhoods feeling a disproportionate impact. Specifically, in the article, USA Today's investigation found that reverse mortgages end in foreclosure 6 times more often in predominantly Black neighborhoods than in neighborhoods that are 80 percent white, and even with counseling, seniors in St. Louis and across the nation have found themselves burdened with mountains of paperwork as they try to title after a spouse has passed, dealing with complicated disclosures, and in some of the worst cases, trying to stop foreclosures.

And from these problems with HECM, the racial wealth gap is exacerbated as countless families in the Black and Latino communities are deprived of the chance to pass on their homes and other property to their children and other heirs, leading to increased gentrification, gutted city blocks, and less overall wealth. As such, I look forward to hearing from the witnesses today on ways to continue to improve HECM and help protect our most precious assets, seniors. At this time, I would give 30 seconds to my friend and colleague from Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you, Mr. Chairman. It is indeed my honor today to recognize Mr. Willis Brown, who is an area commissioner in my congressional district. He hails from New York to Ohio. It is special for him to be here today because he is an agriculturalist specialist, domestic and international, with a specialty, Mr. Chairman, in housing and protecting our seniors. And I yield back.

Chairman CLAY. I thank the gentlewoman for that introduction, and welcome Mr. Brown to the committee. And at this time, I will yield 5 minutes to Mr. Gooden, the new acting ranking member of the subcommittee.

Mr. GOODEN. Thank you, Chairman Clay. I appreciate that. And on behalf of the Republicans on the committee, I would like to wish the Democratic Member Services Director, Clement, a happy birthday.

Again, thank you, Chairman Clay, and thank you to our witnesses for being here today. Before we hear from them, I would like to take a moment to acknowledge the importance of reverse mortgages in general, and specifically HUD's Home Equity Conversion Mortgage program, for our aging population. The HECM program was created to allow seniors to access their real estate equity while making it possible to stay in their homes. Even today, its primary goal is guided by the good intention of allowing seniors to age in place, and protect a post-retirement lifestyle without the need of selling their home.

While the HECM program is a good way to provide this opportunity to our elderly, I believe there is still some more room for improvement. Recently, several concerns have been raised about the program. Concerns about HUD servicing procedures, problematic foreclosures, and the issue of non-borrowing spouses all lead me to believe that this program needs some measure of reform. Simply put, we need to figure out a solution to these problems, working closely with HUD, and if necessary, working out a greater reform plan, whether it be through legislation in this committee or otherwise.

On that note, I would like to acknowledge Chairman Clay's bill to tie the HECM maximum loan amount loan limit to the area of maximum loan limits for FHA's forward mortgages. This is an interesting idea and we should always welcome ideas that could make a product better. I look forward to hearing from our witnesses today about their thoughts on this program, and I thank you again for being here with us. I yield back.

Chairman CLAY. Today, we welcome the testimony of: Sarah Bolling Mancini, staff attorney for the National Consumer Law Center; Alicia Puente Cackley, Director of Financial Markets and Community Investment at the U.S. Government Accountability Office; Peter H. Bell, president and chief executive officer of the National Reverse Mortgage Lenders Association; and Laurie Goodman, vice president of housing financial policy at the Urban Institute.

Welcome to all of you, and let me remind the witnesses that your oral testimony will be limited to 5 minutes. And without objection, your written statements will be made a part of the record.

Ms. Mancini, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF SARAH BOLLING MANCINI, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER (NCLC)

Ms. MANCINI. Chairman Clay, Ranking Member Gooden, and members of the subcommittee, thank you for the opportunity to testify today. I am an attorney with the National Consumer Law Center, where I provide training and technical assistance to advocates around the country, helping homeowners in reverse mortgage foreclosure. I also work for Atlanta Legal Aid, where I represent struggling homeowners, and I testify here today on behalf of the National Consumer Law Center's low-income clients.

Charlotte Lowe was struggling. After working a lifetime, she was now living off of Social Security benefits and a little extra money from babysitting. She and her husband had bought their home in the 1960s. In 2003, at 68 years old, she was faced with the need to make significant modifications and repairs to her home. She had no other savings, but the mortgage on her home of 38 years was paid off. Congress authorized HUD to create the HECM program to help seniors like Ms. Lowe tap into their home equity without the risk of displacement.

Borrowers aged 62 and up can obtain the loan proceeds either as a lump sum, a line of credit, or a stream of monthly payments, and are not required to pay back principal or interest on the loan while they live in the home. The balance grows over time and the loan is paid off when the borrower dies or moves out. Without this option, many seniors would have to either sell their home, leading to higher housing costs, or take out a regular mortgage which is often not affordable and can lead to foreclosure. The HECM program makes a huge difference in the lives of older adults, allowing them to remain stable in their homes. Unfortunately, a significant number of reverse mortgage loans are now in foreclosure, putting older borrowers at risk of eviction and homelessness.

We want to thank Chairwoman Waters for her leadership on these issues and for the discussion draft of her bill, the Preventing Foreclosures on Seniors Act, which would provide significant relief for older homeowners. On Monday, HUD announced a new policy on reverse mortgage non-borrowing spouses. HUD has now removed the problematic deadlines for the mortgagee optional election, or MOE, which allows the spouse to remain in the home. This change will help many struggling widows and widowers, and we want to thank HUD for addressing those problems. I want to focus on a significant unresolved problem: property charge defaults.

According to HUD data, as of 2016, roughly 90,000 reverse mortgages were in default on property charges. Out of 600,000 active HECM loans, having close to 100,000 in default is staggering. Why are so many HECMs in default on property charges? A significant factor is the aggressive marketing of reverse mortgages by silver-haired celebrities often misrepresenting that this is a payment-free and risk-free loan. In my written testimony, I describe the enforcement actions as recent as 2016 of this very kind of false advertising. Many HECM borrowers did not understand that they were obligated to pay the property taxes and homeowners' insurance. If they had a forward mortgage in the past, those charges had been escrowed as part of their monthly payments.

For years, HUD did not require lenders to foreclose when borrowers defaulted on property charges. Borrowers sunk deeper into default without even knowing it. And in 2015, HUD abruptly changed its policy and began requiring lenders to foreclose quickly on these borrowers. HUD tells lenders that they can offer the borrower a home retention option like a repayment plan, but any such review is optional, and if the lender doesn't foreclose within the required timeframes, HUD imposes a financial penalty known as interest curtailment. The lenders' incentive is to foreclose quickly and not bother with loss mitigation.

HUD should address these problems by: number one, making loss mitigation mandatory for new HECM loans; number two, expanding the available loss mitigation options; and number three, providing servicers with a clear extension of foreclosure deadlines to evaluate loss mitigation. Chairwoman Waters' draft bill would require all of these changes. The impact of the reverse mortgage foreclosure crisis is being felt primarily and disproportionately in communities of color, where the rates of reverse mortgage foreclosure are 6 times higher than the rates in majority white neighborhoods.

Many HECM borrowers are losing homes that have been in their families for generations. And of course, every foreclosure impacts home values in the whole community. The best way to address this problem for these communities and all reverse mortgage borrowers at risk is to require effective loss mitigation and servicing of HECM loans.

Thank you, and I will be happy to answer any questions from the committee members.

[The prepared statement of Ms. Mancini can be found on page 75 of the appendix.]

Chairman CLAY. Thank you for your testimony. Ms. Cackley, you are recognized for 5 minutes.

STATEMENT OF ALICIA PUENTE CACKLEY, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO)

Ms. CACKLEY. Chairman Clay, Ranking Member Gooden, and members of the subcommittee, I am pleased to be here today to discuss oversight of reverse mortgages made under the Home Equity Conversion Mortgage (HECM) program administered by the Federal Housing Administration (FHA). Reverse mortgages, or HECMs, are loans that allow seniors to convert part of their home equity into payments from a lender while still living in their homes.

While reverse mortgages can help senior homeowners meet financial needs, they also can present risks to borrowers and their spouses. My testimony summarizes findings from our report on the HECM program, which is being released today. I will address three main topics. First, our analysis of FHA data on HECM loan outcomes, including terminations and the use of foreclosure prevention options, as well as the extent to which FHA monitors these indicators. Second, FHA's oversight of companies that service HECMs. And third, FHA's collection and use of consumer complaint data for oversight of the HECM program.

According to our analysis, in recent years, a growing percentage of HECMs have ended because borrowers defaulted on their loans. Terminations due to borrower defaults increased from 2 percent in Fiscal Year 2014 to 18 percent in Fiscal Year 2018. Most HECM defaults were due to borrowers not meeting occupancy requirements or failing to pay property charges, such as property taxes or homeowners' insurance. Since 2015, FHA has allowed HECM servicers to put borrowers who are behind on property charges into repayment plans to help prevent foreclosures. However, as of Fiscal Year-end 2018, only about 22 percent of these borrowers had received this option.

We found that FHA's monitoring of performance assessment and reporting for the HECM program all have weaknesses. For example, FHA loan data do not currently capture the reason for about 30 percent of HECM loan terminations. FHA also has not established comprehensive performance indicators for the HECM portfolio and has not regularly tracked key performance metrics. That is metrics such as the percentage of HECM terminations due to borrower defaults, the proportion of active HECMs with delinquent property charges, or the percentage of distressed borrowers who have received foreclosure prevention options.

In our report being released today, we recommend that FHA take steps to improve the quality and accuracy of HECM termination data, and that it establish, periodically review, and report on performance indicators for the HECM program and examine the impact of foreclosure prevention options in future program evaluations. Additionally, FHA has not developed internal reports to comprehensively monitor patterns and trends in loan outcomes. As a result, FHA does not know how well the HECM program is serving its purpose of helping meet the financial needs of elderly homeowners.

We recommend that FHA develop analytic tools such as dashboards or watch lists to better monitor outcomes for the HECM portfolio. These tools could help FHA more easily track and monitor useful metrics such as termination reasons, defaults, use of foreclosure prevention options, or advances paid by servicers on behalf of HECM borrowers for unpaid property charges. With respect to FHA's oversight of HECM servicers, we found that oversight has been limited in recent years. FHA has not performed comprehensive on-site reviews of HECM servicers' compliance with program requirements since Fiscal Year 2013.

We also recommend that FHA develop and implement procedures for conducting on-site reviews of HECM servicers, including a risk rating system for prioritizing and determining the frequency of reviews. With respect to FHA's collection and use of complaint data, FHA collects and records inquiries and complaints about HECM, and it has access to the Consumer Financial Protection Bureau's (CFPB's) data on reverse mortgage complaints. However, FHA does not use its inquiry and complaint data to help inform HECM program policies and oversight, and the way data are collected does not produce quality information for these purposes.

We also found that FHA has not leveraged CFPB complaint data for HECM program oversight. We recommend that FHA collect and record consumer inquiries and complaints in a manner that facilitates analysis of the type and frequency of issues raised. We also recommend that FHA periodically analyze available internal and external consumer complaint data about reverse mortgages to help inform management and oversight of the HECM program. These actions could improve FHA's ability to detect and respond to emerging consumer protection issues regarding HECMs.

Chairman Clay, Ranking Member Gooden, and members of the subcommittee, this completes my statement. I would be pleased to respond to any questions you may have at this time.

[The prepared statement of Ms. Cackley can be found on page 45 of the appendix.]

Chairman CLAY. Thank you very much for your testimony. Mr. Bell, you are recognized for 5 minutes.

STATEMENT OF PETER H. BELL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL REVERSE MORTGAGE LENDERS ASSOCIATION

Mr. BELL. Chairman Clay, Ranking Member Gooden, and members of the subcommittee, thank you for convening this hearing. Several issues regarding reverse mortgages have been discussed by this committee in the past, and that has always resulted in steps being taken to strengthen the program. By and large, the HECM program has been largely successful helping over a million households deploy their housing wealth to live a more comfortable retirement. We should not lose sight of that fact. Nevertheless, whenever a new program concept is implemented, there is always a learning curve and room for improvement.

The Congress and several Administrations have taken steps over the years to improve the FHA Reverse Mortgage Program, including enhancing counseling to include financial assessment and benefits checkup, requiring set-asides for taxes and insurance, reducing principal limit factors, creating higher mortgage insurance premiums, limiting the amount of equity that can be withdrawn in the first year of HECM, implementing loss mitigation tools for borrowers in default, and creating protections for non-borrowing spouses. Each time, the program has emerged stronger, consumers have been given better safeguards, and the FHA fund has been further protected. I am sure that will be the outcome of the discussion today.

In fact, earlier this week HUD issued a mortgagee letter improvising revised procedures for non-borrowing spouses, which I believe will address several of the concerns voiced here today. The Waters-Heck bill would make similar changes to HUD's initiative, and it goes a little further. One important change is it would extend the so-called non-borrowing spouse provisions to cases where the borrower is not yet deceased but has left the home permanently and is living in a care facility.

The HECM is a highly misunderstood financial instrument. There is a lot of angst about it. There is also a widespread notion that lenders are looking to take advantage of borrowers. This is misguided. Lenders are in the business of making loans, not owning real estate. No lender ever wants to foreclose if it can be avoided. Foreclosure, however, is often the routine manner of terminating a reverse mortgage. When a borrower passes away and the loan balance exceeds the value of the home, there is little incentive for the heirs to take any action.

In other cases, there is no next of kin available to step in and handle a property in this position. Lenders must act within HUD's specified timeframes, inhibiting their ability to work with borrowers in default. HUD's mortgagee letter issued this week now provides some greater flexibility.

To prepare for this hearing, we collected data from two servicers with significant HECM portfolios. The first servicer looked at a portfolio of 329,000 loans. Of these, 18 percent went to foreclosure. However, over 75 percent of those were due to death of the borrower or non-occupancy. Only 5 percent of the loans in this portfolio ended up in foreclosure due to tax and insurance default while someone was living in the home.

The second servicer, who reported on 179,000 loans, found that 22 percent went to foreclosure, but over half of those, 50.3 percent, were due to death, and another 15.3 percent to non-occupancy. Only 7.5 percent of the foreclosures in this portfolio were due to tax and insurance default with an occupant in the home. I do not believe that these percentages differ and might actually be lower than experienced with mortgages overall.

HECMs get blamed for a lot of things, foreclosure due to nonpayment of taxes is one example, but is this really a HECM issue? If someone with a forward mortgage or even someone who owns a home free and clear fails to pay taxes, what happens? They face a tax foreclosure. In fact, with a HECM, the servicer advances funds on the borrower's behalf and then works out a repayment plan that could be spread out over several years. This is a safeguard for HECM borrowers that is not generally available to other homeowners. A fair assessment of reverse mortgages would look not only at the end results but also the circumstances faced at the time of loan origination.

In many cases, borrowers have been overburdened with mortgage payments that they cannot meet on their current income. The HECM enabled them to get rid of these monthly payments, providing an opportunity to focus on other expenses and reorganize their finances. The elimination of monthly payments, coupled with information that borrowers gained from benefits checkups and other topics discussed during the mandatory counseling session, are often enough to get homeowners back on track and preserve their ability to remain in their homes. In fact, the large majority of HECM borrowers remain in their homes until they pass away.

In closing, I would like to reiterate that the HECM program has been largely successful over the years in helping most borrowers sustain themselves in their homes for the balance of their lives. We should not lose sight of this and we should work together to figure out how to make the program better and safer and more responsive to the needs of today. In my written statement, I addressed all of the seven questions asked in the subcommittee's invitation.

I am prepared to address any of those or any other questions during the balance of the hearing. Thank you again for the opportunity to participate today and thank you for the sincere interest in this topic expressed by members of the committee. It is always a pleasure to work with you and your staffs.

[The prepared statement of Mr. Bell can be found on page 35 of the appendix.]

Chairman CLAY. Thank you, Mr. Bell. Ms. Goodman, you are recognized for 5 minutes.

STATEMENT OF LAURIE GOODMAN, VICE PRESIDENT, HOUSING FINANCE POLICY, THE URBAN INSTITUTE

Ms. GOODMAN. Thank you. Chairman Clay, Ranking Member Gooden, and members of the subcommittee. Thank you for the opportunity to testify today. My name is Laurie Goodman and I am the vice president for housing finance policy at the nonprofit Urban Institute. I spent close to 30 years as a Wall Street mortgage-backed securities analyst, and I left to found the Housing Finance Policy Center about 6 years ago. The views I express are my own and should not be attributed to the Urban Institute, its trustees, or its funders. My comments today will focus on why FHA's HECM program is so valuable and offer suggestions for how the program can be improved.

Many retired and soon-to-be-retired Americans lack the financial assets for a comfortable retirement. Enter the American home, the most commonly held, invaluable asset for most American families. Seniors are more likely to be homeowners and are more apt to have more home equity than younger Americans. Seniors have a home ownership rate of close to 80 percent versus 64 percent for all households.

In 2016, they had median home equity of $143,400, 43 percent more home equity than homeowners of all ages. Home equity plays an even larger role in the net worth of Black and Hispanic seniors, constituting 64 and 70 percent of the median net worth for these houses compared to just 40 percent for whites.

There are five main vehicles for extracting home equity. In order of popularity, there are HELOCs, cash-out refinancing, selling your home, second mortgages, and reverse mortgages. These programs are not being used extensively and reverse mortgages are being used the least, but HECMs are the only form of home equity extraction available to many lower-income and credit constrained homeowners.

Reverse mortgage borrowers have the lowest income and the lowest credit scores in all equity extraction products. This is because lower-income borrowers have trouble qualifying for forward mortgage products that require monthly payments. In addition, until 2015, the HECM program had no real credit underwriting, and now the financial assessment is used only to evaluate if seniors can pay taxes and insurance. If not, there is a tax and insurance set-aside.

The importance of tapping into home equity will grow as the senior population surges in the next decade from 22 percent of the population in 2016, to 30 percent by 2030. Moreover, younger seniors are more apt to enter retirement with a mortgage than older seniors, making reverse mortgages an even more valuable product.

So how do we increase the use of, and fix the concerns about, reverse mortgages? We need to focus on three things. First, we need to improve financial literacy about reverse mortgages overall. This will cut the scope for scammers. This could include incorporating information about tapping into home equity in the financial planner certification process with accompanying rules about what financial planners can say and how they can be compensated—right now, they cannot.

As a short-term fix, the Social Security Administration could provide education and outreach to seniors about reverse mortgages. We should also get borrowers into reverse mortgage counseling earlier in the process and provide more targeted counseling. It would be beneficial for reverse mortgage servicers to check in with the borrower right after closing, to ensure that they understand the program's benefits and obligations, and how to contact the servicer.

Second, we need to simplify reverse mortgage product design, lower costs, and encourage innovation. This should include eliminating infrequently used options that just muddy up the world of reverse mortgages, as well as streamlining the process of converting a forward mortgage into a reverse product.

HUD should also reintroduce a modified version of its HECM Saver program. We should also encourage the development of proprietary, non-HUD alternatives, which is a small but growing market, by reducing loan limits for the HECM program: $726,525 nationwide is just too high.

Finally, we need to redesign existing programs to reduce foreclosure frequency and loss severity. Foreclosures can be significantly reduced by making the escrow of tax and insurance funds to default for reverse mortgages. We can also require that servicers provide regular reminders to borrowers about their tax and insurance obligations.

Loss severity can be reduced through improvements in the Cash for Keys program and by allowing existing servicers to continue their role after assignment. The HECM program is a valuable vehicle to tap into home equity, and is the sole option for many low-income senior households. It will become even more valuable and more necessary as the senior population grows, and the proportion of those seniors with a mortgage and limited retirement savings also increases. Helping more seniors age comfortably in their home is an issue that should generate bipartisan support, as the alternative for many would be a nursing home or another facility paid for with taxpayer dollars.

There are ways to improve this valuable product to both better meet the needs of senior borrowers and to be more cost-effective. I urge the committee to focus on these areas for improvement and to help ensure that this valuable program can realize its full potential.

Thank you.

[The prepared statement of Ms. Goodman can be found on page 58 of the appendix.]

Chairman CLAY. Thank you, Ms. Goodman. And thank you to the entire panel for your testimony. Mr. Gooden, you are now recognized for a unanimous consent request.

Mr. GOODEN. Thank you, Mr. Chairman. I ask unanimous consent to insert the ranking member of the Full Committee, Mr. McHenry's statement into the record.

Chairman CLAY. Without objection, it is so ordered.

I now recognize myself for 5 minutes for questions, and let me start with Ms. Mancini. The National Consumer Law Center has done some groundbreaking work in the area of reverse mortgages and HECMs, and your testimony today speaks to that. Can you talk about some of the problems with pre-loan counseling and how we can work to fix that?

Ms. MANCINI. Thank you, Mr. Chairman. The pre-loan counseling is a very important piece of the puzzle for safeguarding consumers as they enter into this very complex financial product. Unfortunately, there is not enough funding for HECM pre-loan counseling, and oftentimes, the counseling has to be done over the phone and in a very short-form format.

Sometimes, it is no longer than 30 or 45 minutes, which is really not enough time to cover all of the issues that have to be covered in that pre-loan counseling. So, the pre-loan counseling, while it is very important, could be more effective if there was better funding for housing counselors to be able to devote more time and go into more detail.

Chairman CLAY. I see. And are there any current practices or stipulations now that are in the contracts that should just be outlawed? Are there any things that raise your antenna?

Ms. MANCINI. Mr. Chairman, the issues with respect to non-borrowing spouses had been a major concern for many years. And unfortunately, we are not sure why HUD delayed so much in actually fixing that problem. It took two lawsuits to get HUD to create a program to help borrowers' non-borrowing spouses who were stuck in this situation.

And then, even after 2015, there were these deadlines that were blocking access to help for these widows and widowers. But now, with the new policy that was announced on Monday, we think that non-borrowing spouses are in a much better situation. The only two issues that we see that remain to be addressed for non-borrowing spouses are, first, to extend the foreclosure deferral to situations where the borrower has moved out of the home for health reasons but has not yet passed away. And second, for loans that were originated after 2014, HUD should make the same change that it made for pre-2014 loans to eliminate the requirement to show good and marketable title or legal right to remain. With those additional fixes, we would be in very good shape.

Chairman CLAY. Thank you for your response. And let me ask Ms. Goodman and Mr. Bell, do you agree with Ms. Mancini's recommendations about how we protect the surviving spouse?

Mr. BELL. Yes. I think that it is a very, very good idea to extend the non-borrowing spouse provisions that exist when the borrowing spouse passes away, in cases where the actual borrower is permanently out of the home in a care facility. And I believe that the draft bill, the Waters-Heck bill addresses that.

Chairman CLAY. I see. Ms. Goodman?

Ms. GOODMAN. I agree, as well.

Chairman CLAY. Thank you. Let me ask Ms. Cackley, there was a USA Today article that talked about how HECM loans were targeted to minority borrowers in a way that led to disproportionate rates of foreclosures in minority communities. Based on GAO's investigation, is HUD appropriately monitoring these fair housing concerns? And specifically, does HUD collect sufficient data to determine if foreclosures are disproportionately affecting minorities?

Ms. CACKLEY. Mr. Chairman, I think that is correct. HUD does not really have the data that it needs to, or is not looking at the data that it has in a way that would allow them to make those kinds of determinations. We do not look specifically at the issue of differences across minority populations.

We did look a little bit at just differences in default rates across States, and that information is in our report, but just the lack of quality data that HUD has looked at and made use of is not enough for them to be—

Chairman CLAY. And have you all made recommendations to HUD?

Ms. CACKLEY. Yes, sir, we made recommendations to HUD that they improve the quality of their data.

Chairman CLAY. I see, thank you. Mr. Bell, your industry has worked to improve the image of reverse mortgage lenders, who have, over the years, been accused of taking advantage of unsuspecting seniors. While unfortunately, I think you would be the first to agree that some of this has been self-inflicted, can you quickly tell us some of the reforms that you all have taken up?

Mr. BELL. There have been a lot of reforms over the years. Strengthening counseling, I think is an important one. Adding the financial assessment component to counseling is very important.

We try to do that on a voluntary basis initially within the industry, but we do not represent 100 percent of the industry.

So instead, we look to HUD to implement it, which they ultimately did, and that has made a big difference. You see that the books of business, the post-financial assessment performed much better because part of the financial assessment is looking at the likelihood of success for that borrower. Do they have enough income to sustain themselves in the home? And if they do not, then we require a set-aside of some of the available loan proceeds to be lopped off from what is available to them, and held aside to be able to pay taxes and insurance.

That is a very significant one. Certainly, the non-borrowing spouse provisions have been helpful. And as of earlier this week, as has been said, they are going to be more helpful. There has been some reduction in some of the ongoing mortgage insurance premiums and that has been helpful as well.

Chairman CLAY. Thank you for your responses. And the distinguished gentleman from Texas, Mr. Gooden, is now recognized for 5 minutes.

Mr. GOODEN. Thank you, Chairman Clay. Ms. Goodman, you mentioned in your research that loans assigned by the FHA to HUD have a loss rate of roughly 42 percent, compared to 12 percent when they remain with the original servicer, and some of those reasons you mentioned in your research were that FHA policies do not maximize the value of properties and servicers' incentives in combination with their specialized knowledge reduce losses apart from the confusion caused to the borrowers.

Part of your solution was to allow the original servicers to continue servicing the loans, and I was hoping you could expand upon that, and also what you would require to make those changes?

Ms. GOODMAN. I would actually suggest that you allow the original servicer to sign the loan to HUD as you currently do, but basically, HUD pays the current servicer on a fee-for-service or another negotiated basis to just continue to service the loan. I think actually, some of Peter's numbers were very, very interesting. HUD has a policy of not foreclosing, but a huge percentage of those homes that it does not foreclose on are actually people who have died or moved out of the home.

What that does is, basically, the home is just sitting there deteriorating. So, HUD clearly doesn't maximize. The servicers do. The current servicers do a much, much better job, so just let them continue to service the loan and pay the fees on a negotiated basis.

Mr. GOODEN. Thank you. And your three points to improve the program, the last one, your third point, was to redesign programs to reduce foreclosure frequency and loss severity. And in that, you talked about paying the taxes and the insurance. Could you expand upon that?

Ms. GOODMAN. Yes, and this actually goes to the heart of some of the issues that my colleagues mentioned as well. Right now, you have tax and insurance. So actually, FHA made a big step forward when they did the financial assessment where, if you do not qualify, you actually have to do a tax and insurance set-aside. Why not just make that the default? Why not say, no financial assessment is required if you are going to agree to the tax and insurance set-aside? If you want to go through a financial assessment, then we can waive it. So, just change what the default is.

And I thought that was one very valuable option. A second very valuable option would be—there is a study by Stephanie Moulton and some colleagues at the Ohio State University that basically showed that you can cut defaults by as much as 50 percent if the servicers simply sent out reminders to the borrowers, "Hey, remember to pay your tax and insurance payments." In terms of cutting loss severity, we just talked about allowing the original servicer to continue the service, and then also improving the Cash for Keys program could make a big difference.

Mr. GOODEN. And Mr. Bell—thank you by the way. Mr. Bell, I may have misheard you, but you were kind of talking about how everyone is in the same boat. Everyone has to pay taxes and insurance, whether you are in this program or not. Do you all support those changes that she listed?

Mr. BELL. Yes. This is the first I have heard of the idea of doing away with the financial assessment of people who agree to the set-aside. I would have to think that one through a little bit more. I think the financial assessment is a useful exercise for a prospective borrower to go through because it forces them to sit down and look ahead and think about what resources they have and what might happen in future years. So I am not sure that I am ready to commit yet to that idea, but I think it is definitely worthy of thinking through.

Mr. GOODEN. Thank you. I appreciate it, and I yield back.

Chairman CLAY. I thank the gentleman, and I recognize the gentlewoman from Ohio, Mrs. Beatty, who is also the Chair of our Subcommittee on Diversity and Inclusion. You are recognized for 5 minutes.

Mrs. BEATTY. Thank you, Mr. Chairman, and thank you to our witnesses for being here today. I take great pride in being a housing expert, spending more than 20 years working in public housing, Section 8, and trying to locate affordable housing for families and seniors. I have two questions I am going to try to get through briefly to allow each of you to have an answer.

The first question is on foreclosures due to property taxes. Last month, I held an affordable housing hearing in my district with some 400 people who attended, many elected officials, many people like the area commissioner, Mr. Brown. Our county treasurer stood up and said that 30 percent of the seniors who were losing their homes were not losing them because they did not pay their mortgages. They had done everything right for the American Dream, but the problem became the escalating property taxes on those homes, that they were losing the homes because they were being priced out of their neighborhoods.

So when I hear of people losing their homes for not paying their taxes, the question becomes, and Ms. Cackley, maybe I will start with you—based on your investigation, is there any way to know the amount of money that was owed, that resulted in HECM termination, in the case of a borrower's default?

Ms. CACKLEY. Yes, it is possible. In the data that FHA has in their system, we did some looking at the number of defaults that were due to less than $2,000 deficit of taxes owed. So it is possible to look at the data and find especially those people whose amount of default is low enough that they could take advantage of some of the programs that HUD does have.

Mrs. BEATTY. So based on that—I'm sorry, but for the sake of my time, why are so few borrowers receiving the option to be put on a payment plan prior to the default?

Ms. CACKLEY. Because HUD does not look at the data enough to know and identify that those—

Mrs. BEATTY. So what is the result that we should have for these seniors? As part of our hearing today to have experts, what do I go back and say to those individuals?

Ms. CACKLEY. I think one thing you can say is to let them know that these repayment programs and low-cost extension programs exist, so that they can ask for them. But I think we also have to make sure that the HUD program does what they need to do to find those people and offer it.

Mrs. BEATTY. Thank you. Second question, in the FHA's most recent report to Congress on the financial status of the mutual mortgage insurance fund (MMIF), they reported that the MMIF had a capital ratio of 2.76, well above the mandate of 2.0. The capital ratio for the forward mortgage portfolio—which is overwhelmingly used by first-time homebuyers and minorities, African-American households in my district, they just want to achieve the American Dream—was 3.93 percent, while the capital ratio for the reverse mortgage portfolio was negative -18.3—I want the American people to hear that.

Back in January of 2017, I wrote to Secretary Carson urging him to follow through on the previous Administration's decision to lower the mortgage insurance premiums for FHA loans, which would lower the cost of the mortgage insurance for FHA borrowers. This could have saved people hundreds and hundreds of dollars a year. So as we know, Secretary Carson overturned the Obama Administration's decision citing the financial status of the MMIF. My question is, are borrowers who receive a 30-year mortgage from FHA effectively subsidizing the FHA's reverse mortgage program? Ms. Goodman, I want you to answer that. And then, Mr. Bell, you are next. You have 10 seconds Ms. Goodman, because have to get to Mr. Bell.

Ms. GOODMAN. So basically—

Mrs. BEATTY. Yes or no, are they or not?

Ms. GOODMAN. I think they should be moved out of the MMIF. Leaving them in does a disservice to both programs, as you point out. They are very, very different and each program should be evaluated, and we should separate the funds.

Mrs. BEATTY. So we should separate the funds?

Ms. GOODMAN. We should separate the funds.

Mrs. BEATTY. Yes or no, Mr. Bell, should we separate the funds?

Mr. BELL. Not simple enough for yes or no. Historically—

Mrs. BEATTY. It is my time. Should we separate the funds?

Mr. BELL. It is not a yes-or-no question.

Mrs. BEATTY. Okay. I'm sorry, my time is up. Maybe somebody will yield me some time.

Chairman CLAY. I thank the gentlewoman for her line of questioning. At this time, I recognize the gentleman from Colorado, Mr. Tipton, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. I appreciate you all taking the time to be here. When we are talking about statistics, we do often talk a out urban areas. I'm a little interested in, and Mr. Bell, maybe you could answer this, how many of the HECM loans are made in rural America where we have an older, poorer population?

Mr. BELL. I don't know that offhand.

Mr. TIPTON. Okay. Can you maybe educate me a little bit on this, what type of loan value is made on the HECM? Let us say, I paid my house completely off. It is worth $100,000. What type of loan value would be made on something like that?

Mr. BELL. Okay. I will try to explain this in the time that you have available. But essentially, the concept of a HECM is that you get an amount of money that is based on your age, the value of the home cost, and the interest rate. It is a percentage of the value based on your age. A younger borrower gets a lower percentage of value than an older borrower, the reason being because it is presumed that the younger borrower will occupy the home longer so, therefore, more of the value needs to be reserved for the interest that will accrue.

That being said, the amount available probably ranges from the high 40s percent for a younger borrower at 62 years old to probably approaching the high 60 percent for a borrower in their 80s.

Mr. TIPTON. All right. I would appreciate some explanation on that. And Mr. Chairman, just to let you know, I did read some of your slides that you put up and noted that 9 percent of these are repaid totally that are going in, but for loans that do not end in a default, how many transactions—if someone can answer this—does FHA end up paying in insurance claim on to the originating lender? Does anyone know that, when we were talking about, maybe some statistics might be something that we might want to be able to have as well when we are looking at it.

And I am a little curious, Ms. Goodman, and maybe Mr. Bell, you might be able to speak to this, but the HECM program lender competition is not very active. We saw Wells Fargo and Bank of America drop out, I think about 10 years ago. They never have returned. What can we as policymakers do to spur greater innovation and consumer choice in the reverse mortgage market space?

Mr. BELL. I think the major banks dropping out of the reverse mortgage business is no different than many of the major banks dropping out of the mortgage business generally. The mortgage business has moved over the past several years to be much more dominated by specialty finance companies and non-bank lenders. Our side of the industry is no different than the rest of the industry in that regard. The reasons that the major banks, which were MetLife, Wells Fargo, and Bank of America, exited the business are different in each case, but they are for reasons external to their reverse mortgage activity.

Ms. GOODMAN. Just to pick up on one additional point, one addition to what Peter said. Yes, they have cut back on both forward mortgage programs with FHA and the reverse mortgage programs.

But I think with the reverse mortgage programs, they perceived a great deal of reputational risk in terms of loans to senior borrowers. I think you have to realize that the HECM program is enormously complex. If I take out a forward mortgage, I have two choices: I can choose a fixed or adjustable mortgage; and I can choose a mortgage term of 15 or 30 years, and that is it.

In contrast, the HECM offers many more options. I can do a fixed or adjustable rate. I can do a lump sum, distribution line of credit, term annuity, tenure annuity, or combination of payment options, and I could determine the timing and pace at which the funds can be withdrawn. So this plethora of options makes the product more difficult for the borrower to comprehend and puts the institution making loans at more risk. And I actually think that program simplification, getting rid of some of the less used options, would make a big difference.

Mr. TIPTON. Good. Any other comments? Okay, and I guess one other area I'm a little bit concerned about is that if housing prices dip, and we are in kind of a sweet spot pretty much nationwide right now in the housing market, but if those housing prices dip, just how resilient will the fund be and specifically, how will the home equity conversion mortgage market program within the fund operate? Mr. Bell, do you have any knowledge on that?

Mr. BELL. That is the reason for the actuarial analysis that is done because HUD has levers it can operate to make the program pencil out properly. They can reduce the loan to values, we call them principal limit factors. They could raise mortgage insurance premiums. So the concept of this is that they do make adjustments along the way and certainly they have over the years to try and keep the program in check.

Mr. TIPTON. Yes, I think there are certainly some concerns that we can have on that when we saw the housing crash before and in terms of some of those tables to be able to look at the windshield to make sure that we are not putting people in a bad position. Mr. Chairman, I thank you for the leniency on time, and I yield back.

Chairman CLAY. Thank you. I now recognize the gentleman from Washington, Mr. Heck, for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman. Indeed, I would like to thank you very much for your willingness to hold this hearing on what I think is a very important issue. I would also like to express my appreciation to Chairwoman Waters for her encouragement of us taking up this issue again. I would like to thank in particular Ms. Mancini, Mr. Bell, and Ms. Goodman for all of your remarks. And in particular, I cannot help but note that each of you uses a predicate, the value of this program to some people being really important.

The reasons for that have been alluded to, and Ms. Goodman, you did a particularly good job of this, it is about retirement security and it is about living in a world in which the number of defined benefit programs has fallen off the table. It is about living in a world in which 46 percent of households don't have $400 savings even to replace the tires on their car should they need to be replaced. It is about living in a world in which the average retirement account is $60,000, which, combined with Social Security, does not provide much of a retirement standard of living. And you all said it is a good program and here are some things we need to do better.

But I want to contrast that positive predicate with what we went through several years ago, when I had the privilege to lead the effort to modernize the second program in which there was a lot of the debate around the issue of or the question of whether or not we should even have a reverse mortgage program. We have come a long way, and we have come a long way, I think, because more broadly, people recognize its value in part due to some of the changes that we made, in part due to your willingness to advocate for it and bring forth additional changes.

And Ms. Cackley, I want to thank you as well. I hope you will be pleased to know that virtually every one of the recommendations in the GAO report, I will incorporate into the next draft of the bill, and we are in the process of doing that, as we said.

Ms. CACKLEY. I thank you very much. I definitely am happy to hear that.

Mr. HECK. Your work was of value. Now, Mr. Bell, I guess I want to start with you because I think it is important to remind us of the basics here. This is obviously an important financial tool for people who are asset-rich but cash-poor. You yourself called it a highly misunderstood instrument in your testimony, as I recall. So, I want you to give more color to talking about how a HECM loan is distinct from other products like home equity lines of credit. And focus on an example of someone for whom this particular financial product has benefits others don't, and how that might play a role in their life if you would please, sir?

Mr. BELL. I'm sorry, Congressman. I missed part of what you said towards the end there but—

Mr. HECK. You were basking in the glory of my compliments of all your—

[laughter]

Mr. BELL. The idea of a reverse mortgage versus the other types of products like a home equity loan is that it is a loan available to people in a time of fixed limited income. And being able to either qualify for a loan that has payments is a challenge for them or they currently have a loan with payments and the challenges are overburdening them. The idea of a reverse mortgage is that the money is patient, meaning that it waits to be repaid. The borrower can withdraw the money today and they could make payments if they want to in order to keep the balance down and keep the interest from accruing, but they also have the option of not making any payments and just deferring those payments until they permanently leave their home.

That has phenomenal impacts on different borrowers in different ways. It allows them to not be worried about missing a payment on their house and facing foreclosure there. It allows them to be able to pay their utilities, pay their taxes, pay for their healthcare needs. It allows them to sustain themselves in the house for a long time. And if they use a HECM with the line-of-credit feature, there is a growth to the line of credit over time, so it actually gives them even a greater amount of money over the long term than it would if they were to draw it all upfront.

The product has tremendous flexibility, and you know behind every HECM, there is a story and a reason why people get it. Nobody wakes up in the morning and says, “Oh, I should get a HECM today”, but people do lie in bed at night wondering, “How am I going to make my payments? How am I going to fix the roof? Where are we going to get the money to visit the family at Christmas?” And the HECM is used as a solution to all of these kinds of things.

Mr. HECK. Well said, sir. I am out of time, unfortunately. I yield back, Mr. Chairman.

Chairman CLAY. I thank my friend from Washington, and I recognize the gentleman from Wisconsin, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you very much. I appreciate the Chair holding today’s hearing on this important issue. A reverse mortgage can be really helpful to allow seniors to live comfortably in their homes, in the communities where they have built their lives. At the same time, we have a responsibility to ensure that people who have worked hard their whole lives are not taken advantage of and misled through steps to secure their retirement. My district has roughly 113,000 seniors, 16 percent of the population. I think we owe it to them and to seniors across the country to conduct proper oversight of this program and to implement forms to continually make it better.

Dr. Goodman, among other requirements under the Federal Housing Administration guidelines for HECM loans, borrowers must demonstrate the ability to pay property taxes and insurance and participate in counseling. I would like to focus a little bit on what is done on the front end to make sure seniors who participate in this program are able to meet all of their obligations to remain in their homes. I recognize that some of these requirements began to be implemented in 2015. Can you comment if there has been a noticeable difference in performance since that time?

Ms. GOODMAN. Yes, there has actually been a huge, huge difference in performance as a result of the financial assessment. There has been a study that basically showed that the tax and insurance defaults for mortgages that were 37 to 45 months old have declined from 6.9 percent before the financial assessment to 2.1 percent. It has made a tremendous difference and it was a very, very positive change.

Mr. STEIL. Can you provide a little color for those of us on the committee as to what this counseling looks like, how it is conducted, is it intensive, are there follow-up sessions? Can you provide a little color to that?

Ms. GOODMAN. Basically, there is a counseling session. The counseling could be improved, and I think that suggestion has come up, and then there is also a financial assessment where you look at the borrower’s ability to pay the tax and insurance, and make a determination as to whether or not there should be a set-aside. I think the power is in that financial assessment test. And I would actually go a step further, and I would actually require I no financial assessment, automatic set-aside. That is the default, and if you want to opt-out of the financials—if you want to go through a financial assessment, then you can possibly get that feature waived.

Mr. STEIL. But let me go back to the counseling session. Could you just describe what that would look like or the amount of time or how intensive that is for individuals who go through this counseling?

Ms. GOODMAN. I am going to actually—

Mr. STEIL. Or somebody who has color—

Ms. MANCINI. I am happy to chime in on this.

Mr. STEIL. Thank you very much.

Ms. MANCINI. For the counseling session, the amount of time varies. Unfortunately, sometimes there are only 30 or 45 minutes allotted, but it really requires at least an hour and a half. The counselors are supposed to walk through with the homeowner alternatives that they should consider such as energy assistance, and other programs that are available to help low-income homeowners, and then explain how a reverse mortgage works, which is pretty complicated in itself, the different options for how to receive the proceeds of the loan, the property charge set-aside now that is involved. So, there are many things they have to cover.

Mr. STEIL. There is an opportunity to really expand the amount of time and intensity in these counseling sessions for seniors to make sure that they are making the best decision in their own best financial interest and a reasonably complicated financial product that has real significance in their lives.

Ms. MANCINI. Yes, Congressman. We think that would be very helpful.

Mr. STEIL. Thank you. I would like to go back to Dr. Goodman. In your testimony, you recommended streamlining the process for converting a forward mortgage into a reverse product. Can you discuss some of the regulatory hurdles that would make that conversion unnecessarily complex?

Ms. GOODMAN. If it is an existing FHA mortgage, it should be a little bit easier to deal with. And if it is outside the FHA market, you clearly need a new appraisal and all that. The advantage is that it would be a much simpler structure, it would be a one-time draw, which investors should like, and it would save on sort of marketing costs. Look at the number of younger seniors who have mortgages, and it is just so different from what used to be the case.

Mr. STEIL. I appreciate that. I appreciate everyone's testimony here today, and I yield back.

Chairman CLAY. I thank the gentleman from Wisconsin. And at this time, the Chair of the full Financial Services Committee, the gentlewoman from California, Chairwoman Waters, is recognized for 5 minutes.

Chairwoman WATERS. Thank you very much, Mr. Chairman. This is a very important hearing you are leading here today, and I have to tell you there have been years when I have been ambivalent about the program, knowing full well that we needed something to deal with the safety and security of our seniors, and their ability to stay in their homes and age in their homes, and recognizing that there is a great need and there is a possibility for achieving those goals.

And at the same time, I have heard many stories about problems that have arisen in the program, and that may have been discussed already. I am sorry that I was a little late coming in, but I want to ask about foreclosures and how seniors end up with foreclosures in the HECM program? I basically want to know why this program that was intended to help the elderly stay in their homes, stay in their place, why do we have these ongoing concerns about default and foreclosure rates that leave seniors vulnerable to foreclosure and housing instability?

The GAO report released earlier today found that foreclosures due to barred default increased by 16 percent between funding year 2014 and 2018. And I need someone, perhaps Ms. Mancini, to describe some of the reverse mortgage cases you witnessed when you worked with NCLC and the Atlanta Legal Aid Society, that will help us understand why foreclosures are increasing in a program that is intended to promote housing stability for seniors? Can you help me with that?

Ms. MANCINI. Thank you, Chairwoman Waters, and thank you for your leadership on these issues and for the discussion draft of your bill, the Preventing Foreclosures on Seniors Act, which would be extremely helpful. And I also want to thank Congressman Heck for his co-sponsorship of that bill. It is, as I mentioned, extremely important.

What I see in my work with low-income homeowners is that unfortunately, many of the reverse mortgage borrowers who are facing a foreclosure based on property charges are not able to get a repayment plan or other loss mitigation options because servicers say we are not going to consider loss mitigation because we are not required to do so, and we are worried about being financially penalized if we do not foreclose fast enough. So, making loss mitigation mandatory is critical.

And unfortunately, many elderly homeowners are being forced into bankruptcy, or worse, losing their home altogether because they cannot access a repayment plan.

Chairwoman WATERS. I thank you for that explanation, and I want you to know that Mr. Heck has been working on this issue for a long time in different ways. I believe that it was one of his first bills when he came into the House, working on this issue. I am so pleased to be working with him to deal with this.

There is one other thing that I would like to say. In addition to the work that we are doing to ensure that, whether it is taxes or other kinds of fees or amounts that are needed, sometimes we have—and this happens too often—seniors in this program and one dies, and usually, it is men because women live longer, and the mate is left who now may be entering into dementia. They don't know, they cannot keep up, and sometimes they do not have the help, they do not have the assistance. We have yet to have the resources that we need to deal with our aging seniors who are entering into this part of their lives.

And of course, those sums are going to back up, and I am hoping that we can prevent that in the way that we are approaching this, but I am still worried about whether or not we have programs in place to be sure that we can give assistance to aging seniors who may be suffering from Alzheimer's or dementia. So, it is a worry that we have.

Ms. MANCINI. Chairwoman Waters, I think that is a very important issue and it relates to the servicing of these reverse mortgages. Unfortunately, currently, the servicing practices are not clear enough. The letters are written in language that is so opaque and difficult to understand, even for someone who is not experiencing cognitive decline or other mental health issues. Many seniors do start to experience cognitive decline or other disabilities as they age and so we need a servicing approach to reverse mortgages that addresses that problem, and it is very important.

Chairwoman WATERS. I do not know if our bill covers that problem. I think that goes beyond what we had envisioned certainly, and what we are attempting to do. I think we would have to think further and try and think about, if a servicer is able to identify that there is a problem, and we had some way to check on that rather than going into foreclosure, maybe we need to think about that even more and see what we can do.

Otherwise, like I said, there have been years when I have been concerned about the program and wondering whether or not it was doing what it was supposed to do. And again, let me reiterate that I do recognize that it has value, and it has value that must be protected and value that must be extended so that we make sure that we are providing the kind of safety and security that our seniors need and deserve. Thank you. Thank you, Madam Chairwoman, and I yield back the balance of my time.

Ms. TLAIB. [presiding]. Thank you. Thank you, Madam Chairwoman. The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Madam Chairwoman. One of the concerns I have is that in Congress we tend to wait until there is a crisis to act. I worry that we are not doing enough now, when times are relatively good, to address some structural problems with major programs because we have been lured into a false sense of security. Dr. Cackley and Dr. Goodman, should Congress, and HUD for that matter, be concerned with the general health of the FHA's Mutual Mortgage Insurance Fund if the economy wasn't as strong as it currently is? Could you each address that?

Ms. CACKLEY. It is always important to pay attention to the fund and to be—I think Mr. Bell had referred earlier to the fact that there are things, changes that can be made in order to be forward-thinking and pay attention to how the fund changes as the economy changes, especially as the housing market changes. So, that is absolutely a part of what both Congress and HUD need to do.

Ms. GOODMAN. I actually believe very strongly that the forward fund and the reverse fund should be separated, and that is something that Congress should be able to do. They were not together until 2009. They are two very, very different programs. The reverse program helps seniors tap into home equity. The forward program provides financing to millions, primarily first-time homebuyers.

The reverse program is very, very volatile. It is very difficult to estimate the value. Small changes in assumptions about interest rates or in terms of home price depreciation can make a huge difference in the value. I would actually suggest that the programs be separated and that the reverse program be a program with mandatory Appropriations and not part of the MMIF.

Mr. ROSE. If housing prices dip, how resilient is the fund and the products placed within the fund, and maybe you have already spoken to that, Dr. Goodman, and what recommendations, aside from the one that you have already made, would you make to Congress to improve the resiliency of the fund?

Ms. GOODMAN. I am not sure, when you look at the numbers now, they oftentimes don't make sense for this fund, so I am not actually sure that we have the baseline right now to even estimate what the effect of home price depreciation would be. I think it is just a very difficult set of problems because I am not sure we have the baseline right, I am not sure we have the information—we certainly have not tabulated the information. There are a lot of program improvements that could cut losses substantially and we have not implemented those. So, I am not sure I know how to answer your question.

Mr. ROSE. I am thinking about an ad shown during one of the TV shows I enjoy, with an actor who made shows back in the 1980s, and he says, "Our reverse mortgage is too good to be true." From the standpoint of the Federal Government, they may be too good to be true. Is that a fair assessment, Dr. Goodman?

Ms. GOODMAN. I am not sure what you mean by "too good to be true."

Mr. ROSE. So, what you are telling me is the program is not working? It is not working for taxpayers presently. Is that—

Ms. GOODMAN. I think we do not know how well or how poorly it is working for taxpayers because I think it is so assumption-driven and there is a wide range of estimates and minor differences in interest rates for 30 years or home price depreciation for 30 years, or how much less home prices on homes for seniors depreciate versus the general population can make huge, huge differences in evaluations. So, I am not convinced that we have a handle completely on the base case. That said, there are a lot of program improvements that we have talked about that can cut losses substantially, and I think you are supposed to look at those. I think it is a great program and it should be improved.

Mr. ROSE. Another issue with HECM that concerns me is that I am not sure borrowers fully understand what they have signed up for when they take on a reverse mortgage, and I think we have already heard you speak to that. Dr. Goodman, this past May you published a blog post in which you said that when servicers keep the loans that cannot be assigned, the losses are much lower than those incurred on assigned loans. Why is that?

Ms. GOODMAN. In large part, it is because HUD does not foreclose, and in a very large percentage of the cases, it does not foreclose. The borrower is gone or moves from the property, so the property is just sitting there deteriorating.

Mr. ROSE. Thank you. I yield back.

Ms. TLAIB. The gentleman from Florida, Mr. Lawson, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Madam Chairwoman. It is a privilege to see you sitting in the chair. I welcome the witnesses to the committee and I am really glad to have you all here to educate me because you are all knowledgeable about this. And I ask this question based on several things: Which value do they use to give loans for these houses? Is it the assessed value or the market value?

Ms. MANCINI. Congressman Lawson, the value is based on an appraisal that has to be done at the time the loan is made.

Mr. LAWSON. Okay, because most of the time, this is a loan that the homeowner wants so that they can pay a little tax thing, but the houses in the area might be at a higher value. When they are doing the appraisal, do they look at what the houses are valued in the area or do they go specifically back and say, this is what the assessed value has been for the last couple of years?

Ms. MANCINI. It is supposed to be a fair market value based on comparable sales in the area. So, it is not related to the tax assessed value.

Mr. LAWSON. Okay. Since there is a high degree of foreclosures in communities of color, I received a call some time ago where, and I don't know whether I can explain it appropriately to you, but time had run out in terms of the amount of funding that person had because I guess the person lived longer than the mortality tables stated that they were going to live. And the family was worried about them being put out of the residence because there were no more resources coming in. How is that really handled? Does it make sense, what I am saying?

Ms. MANCINI. I think I understand, Congressman. When a person exhausts what is available in the line of credit of the loan proceeds, they can still continue to remain in the home. As long as the borrower is living in the home, there may be an issue if it is a non-borrowing spouse, but I think that has been addressed but they can still remain in the home. As long as they pay the property charges, they should not have to leave, if I understand the question.

Mr. LAWSON. Would anyone else care to comment on this?

Ms. MANCINI. I think the only concern would be if the person really has run out of resources, then paying those property charges could be a problem, and I think that is actually part of the issue with the default that you see. It is that people on a fixed income may not be able to continue to pay property charges as they age.

Mr. LAWSON. The other question would be, who takes advantage of the interest deduction through the IRS? Mr. Bell?

Mr. BELL. There are interest deductions—well, let me back up, an individual taxpayer is a cash basis for purposes of taxes. So when the interest is actually paid, is when you could take that interest deduction. If a reverse mortgage borrower chooses to make payments on a current basis, if they decide at the end of each year, I am going to pay down the interest that has accrued on the loan this year, then the taxpayer would be able to take that interest deduction at that time. If they defer the payment and say, I am just going to draw it down, the interest will accrue, and I am not going to pay it back until I leave the house, then that interest deduction would be available at the time that it is paid.

For instance, if a taxpayer has a lot of interest accrued over time because they live in the house with a reverse mortgage, then they sell it and move, the year that they sell and move, they would be able to take that deduction. If they pass away, that interest deduction would be a State issue, and I am not that familiar with the State handling of the individual mortgage interest deduction.

Mr. LAWSON. Okay. And I am going to try to get in one other question to Ms. Goodman. Ms. Goodman, there are a lot of commercials on television about reverse mortgages, and earlier you talked about all of the companies like Metropolitan, all of these companies that pulled out of the market. Could you tell me again why they pulled out of the market?

Ms. BELL. Why the banks pulled out of the market?

Mr. LAWSON. Right.

Ms. BELL. Yes. MetLife is an insurance company, it acquired a bank and operated a bank for a while, and it is a global insurance company, and they found that they were becoming subject to Federal Reserve requirements that would have had them make disclosures in a different time schedule than they would as a company that wasn't a bank because of the Federal Reserve requirements. So, they basically spun off their bank and exited mortgage banking in the U.S. entirely, and reverse mortgages and all of that.

Bank of America made a strategic decision at one point to shed a number of lines of business that were not their major areas of business, and they shed the reverse mortgage business along with that. They are still engaged in the secondary marketing side, on the securitization side, they are just not originating reverse mortgages.

Mr. LAWSON. My time has expired, so I yield back.

Ms. TLAIB. The gentleman from Missouri, Mr. Luetkemeyer, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman. By the time we get to me, a lot of questions have already been asked, so I have some questions to sort of fill in the blanks for me with regards to issues that you brought up, but I would like some more information, so bear with me for a moment. With regards to the losses that are sustained by the Federal program—I see here that the maximum claim amount is $111 billion, and the losses last year totaled about $5.6 billion, which is roughly 5.1 percent.

Is that roughly what the program lost last year, do any of you know? Nobody knows? Okay. Quick question for you here, with regards to when somebody takes out a loan, I assume that we do an appraisal on it. What is the maximum loan-to-value that somebody can get on a loan? In other words, I am assuming that you cannot loan 100 percent or borrow 100 percent alone.

Mr. BELL. I explained this earlier.

Mr. LUETKEMEYER. I was here, but I did not hear it, sorry.

Mr. BELL. In any case, you get a percentage of the value based on your age, and the concept is that you extended a percentage of value with the balance being reserved to cover the future interest accrual. So if you are younger, you would get a lower amount, because presumably, you would occupy the home longer so interest would accrue over time.

Mr. LUETKEMEYER. Yes, I got that part. Knowing that you appraise it that way, is there a built-in fudge factor though, just like any other home loan that you would get so that you would have 5 percent, 10 percent, or 20 percent down. And what you are trying to do is go to this—my question is that, when you figure out the amount that somebody could get, borrow up to, is there a fudge factor in there that doesn't include your interest that goes up to this factor? If you play the market, in other words, if the market goes down or a home deteriorates because nobody is living in it, you have some space there.

Mr. BELL. First of all, lenders do not determine how much money they make available to borrow, FHA does. FHA publishes a table called the Principal Limit Factor table and it has for every age and every possible interest rate a percentage of value that would be advanced, that would be able to be advanced to that borrower.

Mr. LUETKEMEYER. So we don't put in a buffer there?

Mr. BELL. No, I believe FHA does in that. The idea is that you are trying to, if I had a blackboard I maybe could show you easier—

Mr. LUETKEMEYER. But what you are trying to tell me is that they can borrow enough money up to a certain point that they believe as a person ages, they will be able to max out to a certain point. My point is, is there a fudge factor there that plays in? At some point, that you would go up to this point, but there would still be some equity left to cover the mortgage holder in case the market goes down or the home deteriorates. Your answer apparently is, there is not, though, is that correct?

Mr. BELL. No, I didn't say that.

Ms. MANCINI. Congressman, may I contribute here? I think that FHA tries to set the loan limits conservatively enough to allow for the issue that you are discussing. They are trying to factor in the way people will age, but they are assuming home price depreciation over time, understanding there may be some dips.

Mr. LUETKEMEYER. Okay. Thank you. With regards to disclosures, what kind of disclosures are made? When a person takes out a normal home loan, you literally have a package that is this thick. We had a gentleman here one time who was from the credit union folks and he actually had a loan packet that was 7 inches tall. He said, "Congressman, we no longer measure by the inch, we measure by the pound." What kind of disclosures are involved with regards to reverse mortgages for the borrower?

Ms. MANCINI. There is a pretty big stack of documents that have to be signed at closing.

Mr. LUETKEMEYER. The same amount of documents as somebody taking out—

Ms. MANCINI. I would say it is probably pretty similar to a forward mortgage.

Mr. LUETKEMEYER. Okay, so you have truth in lending and all that sort of stuff?

Ms. MANCINI. Yes, Congressman, truth in lending applies.

Mr. LUETKEMEYER. Okay, very good. A while ago, we were talking about the percentage of loans—I think, Mr. Bell, you commented that there were different reverse mortgage lenders who got out of the business. And so my question is, what percentage of the loans are made now by non-bank or non-FHA borrowers?

Mr. BELL. The large majority of the business, the loans originated by non-banks, I don't know the exact percentage.

Mr. LUETKEMEYER. Okay. What kind of oversight do we have over those folks? If it is made by non-banks, do they hold those in, or do they still go to FHA with them?

Mr. BELL. Typically, the loans made are FHA-insured and then they are sold in the secondary market via Ginnie Mae—

Mr. LUETKEMEYER. Even by non-bank folks?

Mr. BELL. There are issuers that have been approved by Ginnie Mae to issue what we call HECM Mortgage-Backed Securities (HMBS), and the large majority of HECMs are now sold in the secondary market in a—

Mr. LUETKEMEYER. For their non-bank entities out there that hold themselves?

Mr. BELL. They are non-bank entities that issue the HMBS securities, and it is the purchasers of those securities that are basically the owners of the loans.

Mr. LUETKEMEYER. Okay, my time has expired. Thank you.

Ms. TLAIB. Thank you. I now recognize myself for 5 minutes. Thank you all so much for being here and for your credible advocacy. One of the things I think is really critical is just representing a community where we have seen so much more—I think we are the State that lost more Black home ownership than any other in the country. We have seen a shift in the City of Detroit—I was born and raised in Detroit—from more homeowners to renters and so forth, and I think it is a result of a lot of combinations of things that you guys put forward. I do appreciate you all educating us, but also continuing your effort and putting good policy proposals forward.

I want to tell a story from my district, because I think it is important to kind of re-center us with what is at stake. Ella Mae at Edmondson Purnell is a senior in my district who is on Social Security income. She gets $988 a month. In 1999, she took out a Federal loan, a reverse mortgage, with a company called Financial Freedom. She needed repairs to her home, literally, rain was coming into her bedroom, and no qualifications were really necessary. I am not sure what kind of disclosures, but she had no idea that part of the agreement that she signed was that when she dies, instead of it going to her family members as an inheritance, that they would foreclose on it and take complete ownership of the home.

Again, without fully understanding, but she is just devastated. Across the nation, I think our seniors are facing foreclosures after taking out reverse mortgages, as we have been hearing about today, either because they fell behind in property taxes, as is the case in my district, or they failed to meet the requirements of very complex mortgage loans, yet HUD lacks detailed data on how many homeowners have actually lost their homes or are facing foreclosure. We have seen like $200,000 homes being foreclosed for small $500 property tax bills, again, in my district. So, Ms. Mancini, can you talk about the kinds of cases that your organization deals with all the time, and why it is so crucial that HUD changes its policy to require loss mitigation?

Ms. MANCINI. Thank you, Congresswoman. The issues are very serious, as you have pointed out, and I think that the number of older borrowers who are facing foreclosure on a reverse mortgage because of a property charges default has grown to the point where we need critical attention on this issue. I see in my office on a daily basis, people who are struggling to get a repayment plan or an extension of the foreclosure deadline for health circumstances, and oftentimes, the servicers refuse to offer those options because they are not required to, and they are just worried about being penalized by HUD for not for closing fast enough. We need HUD to make loss mitigation mandatory. We also need them to allow for more flexibility in the different loss mitigation options so that older homeowners are not forced into bankruptcy or the loss of their home.

Ms. TLAIB. Thank you. According to the Grand Valley State University in Wayne County—I am literally the only Member of Congress, I think, who has all of her communities in one county, I believe, which has 12 different communities—we have the highest reverse mortgage foreclosure rates that we have ever seen between 2013 and 2017.

Today, Detroit, for instance, has 5 ZIP Codes that are amongst the top 17 ZIP Codes across the country, and this is a majority-Black city, a total of 85 percent. Ms. Goodman, do you believe that these organizations aggressively market to communities like mine, including the impact of using celebrity endorsers to target minority borrowers?

Ms. GOODMAN. The answer is, we don't know. And let me actually give you a more complete answer. Basically, reverse mortgage borrowers tend to have lower incomes, less than half of those who take advantage of equity extraction vehicles. They tend to have much, much lower credit scores by more than 50 points. They have more debt that is more than 60 days past due. So, it is basically that these are borrowers who have no other options, and unfortunately a disproportionate number of Black and Hispanic households are in that category. In addition, Black and Hispanic borrowers tend to have a larger proportion of their net worth in their home, making them more apt to be reverse mortgage borrowers.

Home equity plays a much larger role in the net worth of Black and Hispanic households at 64 percent and 70 percent respectively, than it does for white households. I have not seen a study that adequately differentiates the reality that minority borrowers are more apt to be disproportionate users and target those who are apt to benefit from the program to explicitly targeting minorities for the program.

Ms. TLAIB. Last question: How could you apply disparate impact and create better policies that would help our seniors?

Ms. GOODMAN. I think you really need to figure out what is going on here and better data would help a lot.

Ms. TLAIB. Thank you. The gentleman from Ohio, Mr. Gonzalez, is recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman, and thank you, everybody, for your testimony and attention to this important issue. Reverse mortgages are an important financial product for many of our seniors, including many in my district. So I want to make sure the product works well and how it is supposed to work but also that the liability on the American taxpayers is well understood. Ms. Goodman suggests separating the funds, which makes no sense to me, and I think shores up the financial integrity of the system, and I think the better data component could add to the operational side, which I think is very important.

Ms. Goodman, I will start with you. I understand that HUD does not collect a significant amount of data on this program and that to me seems essential to judge its worth. If HUD were to collect more data on the front end, as well as the termination of foreclosure of a reverse mortgage, which do you think would be most useful?

Ms. GOODMAN. I actually think HUD collects a fair amount of origination data. And I think I would defer to the GAO on exactly what additional information is needed. What is totally lacking is performance data. They actually used to produce performance data until about 2011 and then abruptly stopped.

The performance data should include exactly what was foreclosed upon, how it was resolved, what the resolution was, how to link with the property to the tax and insurance tax and insurance. But actually releasing that performance data, and I don't know what they collect and what they don't collect, but releasing it would be just extremely helpful.

Mr. GONZALEZ OF OHIO. Thank you. And then, Ms. Cackley, in your testimony you highlighted that the FHA does not analyze data for purposes such as determining which HECM servicers and lenders received the most complaints, targeting entities for on-site review, or identifying topics that may need additional borrower education. Can you discuss, in your opinion, how FHA could go about better collecting consumer complaints and how the data could be used to improve service?

Ms. CACKLEY. Certainly. FHA does collect some complaint data, but they don't do very much with it. They do not collect it in a way that allows them to analyze it. So, the first thing is to better organize and collect data that is most useful. They also should have—they have access to complaint data from the Consumer Financial Protection Bureau (CFPB), but they do not leverage that data, and that is also information that could be very useful to them.

Mr. GONZALEZ OF OHIO. So, better organization, and be more thoughtful about their data. And my last question, Ms. Goodman is, in July 2019, you and your co-authors at the Urban Institute published a paper entitled, "FinTech Innovation in the Home Purchase and Financing Market", in which you made the argument that FinTech innovation is changing the way households buy and sell homes, obtain and manage mortgage debt, and monetize housing wealth. You also argued that housing is also a huge source of untapped wealth for U.S. homeowners, and that companies such as EasyKnock, Figure Home, and Tap and Patch Homes have made it easier to cash out home equity to help households smooth their consumption, figuring to offer a reverse mortgage alternative where borrowers can sell the home, receive cash proceeds, and stay in the home as renters.

These FinTech innovations offer great potential options to seniors looking for options above and beyond HUD's HECM program, but they are nascent developments in a market dominated by the government-insured product. What has so far held back the development of a private technology-based reverse mortgage market, and what more can be done by HUD and policymakers to encourage more innovation development and private sector competition?

Ms. GOODMAN. With the products that we talked about, fairly niche products, you can rent your home until you can basically sell your home now, or you can live there for the rest of your life, but they are fairly niche products that don't have a lot of traction. One thing that is gaining a fair amount of traction is private reverse mortgage products. Although they are very, very, very small, certainly lowering the loan limits from the current level of $726,525 nationwide would make a big difference in terms of the development of the proprietary reverse mortgage products, which are actually filling a unique niche right now.

Right now, for example, condos are disproportionally—are almost entirely proprietary products. Issues of, first, loan limits for the HECM program are very, very high, and second, some State laws actually prohibit or make it very difficult for priority reverse mortgage products. I think if the loan limits were reduced, these States would be forced to revise their laws.

Mr. GONZALEZ OF OHIO. Thank you very much for your time, and I yield back.

Ms. TLAIB. The gentleman from Missouri, Mr. Cleaver, who is also the Chair of our Subcommittee on National Security, International Development and Monetary Policy is recognized for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman, and I really think this is an important hearing. I think there are probably nine of us on this committee who were here on the day that we were informed by Ben Bernanke, Henry Paulson, and Sheila Bair, and it was one of the most awful days of my political career. And I am always paranoid about what could happen afterward and one of the fears is of course what we have been talking about, and that is what happened to minorities. We had individuals who publicly, right in this committee, said that there was great intentionality in targeting Brown and Black individuals to victimize.

And these were people in the lending community who acknowledged what happened with a lot of these exotic products and telling people you could buy a $100,000 house, even if you were working for a yellow bus company making $15,000 a year. And that is a real example. So, you know where we are today, trying to figure out how to handle the reverse mortgages and what is happening also again in predominantly minority communities that have been targeted. And USA Today says foreclosures of reverse mortgages disproportionately impact these minority communities. What is it that is being done that would allow this targeting to occur? Can any of you respond, please?

Ms. MANCINI. Congressman, I think that the USA Today article you referred to does suggest that there may have been some deliberate targeting of communities of color, but I think another factor that we believe is at play is that the history of disinvestment from those communities, the lack of access to good mortgage credit, followed by targeting of abusive subprime mortgages that you referred to earlier then made those homeowners more likely to need reverse mortgages. A lot of older homeowners refinanced into a reverse mortgage to get out of trouble on a bad subprime loan.

We believe that is one of the factors that has led to a large number of reverse mortgages in communities of color because of the abuse of subprime practices that were targeted.

Mr. CLEAVER. One of the things I will be eternally angry about—my youngest son saw the movie about what happened, I forgot the name of the movie about the collapse, and they had all of this in the movie. My son went to see the movie, and he came out and said, "I hate all of you. You know what is going to happen." And I had to look him in the eye and say nothing, because as of today, nobody has been prosecuted. If you steal some potato chips from 7-Eleven, you go to jail. If you steal $20 billion from the public and send people to the poor house, you go to Bermuda to play golf.

I am telling you things you already know, but what can we do to prevent this from continuing? In minority communities, the house is the most valuable product you have, and no savings. This is it. This is my wealth built into this house. What can we do to stop this, make sure it doesn't happen again?

Ms. GOODMAN. Let me take the first stab at it, if you don't mind, and that is, right now we do a financial assessment of the borrower, and at the end, if the borrower can't afford tax and insurance payments, which is one reason for default, then there is a tax and insurance set-aside. I would actually not have a financial assessment. I would make that the default. There is a tax and insurance set-aside unless you opt for a financial assessment, and you pass, in which case you can choose not to have that set-aside. But what that would do is make sure that the tax and insurance payments are escrowed and taken care of.

Mr. CLEAVER. Ms. Cackley?

Ms. CACKLEY. I would just add that that that is a solution going forward, but right now you have a lot of reverse mortgages that are in effect, so FHA needs to have oversight of this program. They need to have oversight of the servicers. They need to be making sure that the servicers are offering the kinds of repayment plans and extensions that are available in the way the program is designed but they are not necessarily making it to the people who can benefit from them. And that is something that FHA can do.

Mr. CLEAVER. Thank you, Madam Chairwoman.

Ms. TLAIB. Thank you. I would like to thank all of our witnesses for their testimony today.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

The hearing is adjourned.

[Whereupon, at 3:41 p.m., the hearing was adjourned.]

A P P E N D I X

September 25, 2019

UC'd FOR THE RECORD BY REP. GOODEN

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

Date: September 25, 2019

Congressman: Patrick McHenry (NC-10)

Time: Approx. 1.5 Mins (234 Words)

Thank you, Chairman Clay, for holding this hearing, and thank you to our witnesses for testifying today.

According to the National Reverse Mortgage Lenders Association, who are with us today, seniors in our country currently have accumulated more than $7 trillion in housing wealth.

The homeownership rate for seniors is almost 80%. This equity is a tool that can be put to use to help our seniors "age in place" after retirement.

Yet, like other types of financial tools focused on retirement, reverse mortgages are not always the right tool in all situations. Seniors deserve flexibility to determine what retirement products fit their individual needs.

HUD's Home Equity Conversion Mortgage (HECM – heck-uhm) program is one of the tools available to seniors. However, there are a few seemingly simple reforms that could result in better for everyone.

It's worth noting, that over the past few years, there's been growth in the private market - outside of the taxpayer-insured HECM program. Congress should be wary not to stifle the growth of this emerging market.

I hope we can work in a bipartisan effort to fix the issues with this program and ensure better outcomes for the elderly in our country.

I yield back the balance of my time.

Testimony

of

Peter H. Bell, President & CEO

National Reverse Mortgage Lenders Association

before the

Subcommittee on Housing, Community Development, and Insurance

House Financial Services Committee

September 25, 2019

2128 Rayburn House Office Building

Statement of

Peter H. Bell, President & CEO

National Reverse Mortgage Lenders Association

In 1988, Congress authorized HUD to insure Home Equity Conversion Mortgages, FHA-insured reverse mortgages, to help meet the financial needs of elderly homeowners. (P.L. 100-242, Sec. 417).

A reverse mortgage is a form of home equity loan that was designed specifically for older homeowners, generally on fixed incomes, to enable them to draw down on their equity currently, but defer repayment until they vacate their home. The underlying concept is that retirees on fixed-incomes often have an asset base of home equity that can help fund their needs, including home maintenance and health care, when their current income and other resources might be insufficient for doing so.

After a thoughtful period of research and analysis, spearheaded by the late Edward Szymanoski, an career economist in the Office of Policy Development & Research at HUD, who dedicated his career to analyzing our nation's housing challenges, the Department initiated the HECM program, as a demonstration program, with the first loans closed in 1990.

Ed had great foresight in developing the HECM, but his crystal ball might not have shown him all the possible scenarios that have evolved. He didn't see the issues of non-traditional households, non-borrowing spouses or many individuals outliving their life expectancies. He didn't see severe drops in home values that forced people into early retirement in a down economy, as we experienced ten years ago. He didn't realize paying real property taxes might become a burden for borrowers down the road. As brilliant as Ed's concept was, it has required tweaking over the years.

Significant changes to the program, implemented by HUD as it learned from experience have included:

- Enhancing counseling to include financial assessment and Benefits Checkup;
- Requiring "set-asides" of reverse mortgage proceeds for borrowers appearing vulnerable in financial assessment;
- Reduced principal limit factors that provide a lower amount of funds to borrowers and preserve more equity for future interest accrual;
- Higher mortgage insurance premiums;
- Limitations on the amount of equity that can be withdrawn in the first year of a HECM;
- Loss mitigation tools for borrowers in default;

- Protections for non-borrowing spouses.

Since the HECM program's inception, over a million homeowners have utilized the program to organize and manage their finances in retirement. Most have been successful; that is the HECM enabled them to remain in their home until they passed away. Others have remained in their homes until it was no longer physically possible for them to do so and then moved in with family or to a care facility.

The HECM is a highly misunderstood instrument. There is a lot of angst and concern about reverse mortgages. There are a lot of misconceptions about the product. There are a lot of misperceptions about the mandatory counseling. There are a lot of misunderstanding of regulatory requirements governing lenders and lender motivations. There are a lot of misconceptions about what HUD has and has not done, and what it could and should do with the HECM program. There is a dearth of publicly available information on loan terminations, an item called for in the Waters-Heck legislation under development, and a step forward NRMLA supports.

Just yesterday, FHA issued two mortgagee letters to address some of the shortcomings in its procedures that had adversely impacted non-borrowing spouses seeking to sustain themselves in their homes. I believe this new guidance will address many of the issues that have led to this hearing.

It is NRMLA's objective to shed light on this subject and share knowledge. The housing wealth of older home owners, the home equity possessed by U.S. homeowners over 62 years old, estimated to be $7.1 trillion, is an essential resource for addressing our nation's looming aging and longevity crisis. The products our members offer seek to make that resource available to homeowners.

<u>Misperception of Lenders' Requirement & Motivations</u>

There is a widespread notion that lenders are looking to take advantage of unsuspecting borrowers. Critics and some consumer advocates express a belief that lenders actually want to foreclose. This is misguided; lenders are in the business of making loans, not owning real estate.

Foreclosure is oftentimes the routine manner of terminating a reverse mortgage transaction. When a borrower passes away and the loan balance exceeds the value of the home, there is little incentive for the heirs to take any other action. In other cases, there is no next of kin able to step in and handle a property disposition or payoff. Lenders must also act within HUD specified time frames in handling foreclosures, inhibiting their flexibility to work with borrowers in default. (A Mortgagee Letter issues earlier this week will now provide flexibility in some case.)

Over half of the foreclosures, according to data we've collected from two major servicers, are attributable to death of the borrower. Another 15% is attributable to non-occupancy, typically due to the borrower moving in with family elsewhere or into a care facility.

Under 7% are due to tax and insurance defaults. In a HECM, when a borrower fails to pay their real estate taxes, property insurance or homeowner association dues, the loan servicer steps in and advances those funds on their behalf. At that point, they are in default on the loan.

To prepare for this hearing NRMLA collected data from two major servicers with significant HECM portfolios. Both are third-party sub-servicers that handle HECMs on behalf of multiple lenders. Both reported on loans that had not yet been eligible for assignment to HUD.

The first servicer looked at a portfolio of 329,752 HECM loans. Of that, 18.1% or 70,220 loans, went to foreclosure. However, over 75% of those were due to death and/or non occupancy of the home by the borrower. Only 5% of the loans in this portfolio ended up in foreclosure due to a tax and insurance default.

The second servicer, reporting on a portfolio of 179,341 HECM loans, found that 22% or 39,431 loans went to foreclosure, but of those 50.3% were due to the death and another 15.3 % to the non-occupancy of the borrower. It appears in the second portfolio that only 7.5% of foreclosures were due to a tax and insurance default.

It is interesting to note for comparison purposes that in looking at research on defaults and foreclosures for other types of purchase and refinance mortgages, 13.6% of loans originated in 2007 ended up in delinquency. Overall, over 73% of those loans ended up in foreclosure or are persistently delinquent and likely to be foreclosed. (Source: What Fueled the Financial Crisis? An Analysis of the Performance of Purchase and Refinance Loans, Laurie Goodman and Jun Zhu, Urban Institute, April 2018)

In a HECM, loan servicers, upon advancing funds on a borrower's behalf will notify the borrower of their default and work with them on a repayment plan for the funds advanced. If the borrower fails to stay current on the repayment plan, the lender must request authorization from FHA before it may call the loan due and payable.

A HECM is occasionally blamed for being the cause of a homeowner's foreclosure for nonpayment of taxes when, in fact, if the homeowner failed to pay real estate taxes with a forward mortgage or even on a home owned free and clear with no mortgage, they would face foreclosure. Furthermore, with the HECM servicer advancing funds on the borrower's behalf and willing to work out a repayment plan that can be spread out over five years (current rule; previously HUD rules limited plans to two years), HECM borrowers actually have an additional safeguard not available to other homeowners who fail to pay their taxes.

In doing a fair assessment of reverse mortgages and their impact on individual borrowers, it is important to look not only at the end results, but also the circumstances they faced at the time of loan origination.

In many cases, particularly HECMs originated before the industry and HUD fully understood the need to include a financial assessment as part of reverse mortgage origination, the borrower was overburdened with mortgage payments and, oftentimes, consumer debt payments, at the time of origination. Falling behind on these obligations, they faced losing their home because their income was insufficient to make all the payments. The reverse mortgage enabled them to get rid of the monthly payments required by their "forward" mortgage, providing an opportunity to focus on their other expenses and needs.

The elimination of a monthly mortgage payment, coupled with the information that prospective borrowers gain from the Benefits Checkup and other topics discussed during the mandatory counseling session, are enough to get homeowners back on track and preserve their ability to remain in their homes. In fact, the large majority of HECM borrowers remain in their homes until they pass away.

Another sizable cohort of HECM borrowers leave their homes before passing away because health conditions or an inability to further maintain the home force them to move in with a family member or enter a care facility. If the balance on the HECM at that point exceeds the market value of the home, borrowers will simply let the home go to foreclosure. Similarly, when there is no next of kin to step in and handle a sale of the home, the loan will go into foreclosure. These are the loans that result in non-occupancy.

As far as loans to borrowers with non-borrowing spouses, much of this practice occurred during the Great Recession ten or eleven years ago. Critics blame it on lenders seeking higher remuneration for larger balances. In reality, it was often requested by borrowers needing to obtain a higher amount of loan proceeds, because that was necessary to pay off their existing indebtedness and sustain them in their home.

It is important, as I stated earlier, to understand the particular circumstances and situation upon origination to determine whether the outcome from a HECM has been beneficial or detrimental to a homeowner. There is a tendency by some to jump to the conclusion that something is wrong with the HECM program or the lenders who participate, but that is a simplistic response that fails to dive deeper into the matter and examine what is truly happening.

In the balance of this testimony, I will try to address the questions raised in the subcommittee's letter of invitation.

(1) What is your assessment of the recent proposed legislative and administrative changes to the HECM program that were included in HUD's recently released housing finance proposal?

Proposal to Eliminate the HECM Single National Limit and Replace it with Area-by-Area Limits

The single national loan limit for HECM borrowers was first introduced in a bill by Chairwoman Waters (HR 1852) in 2007. That bill made several changes to HECM including setting the HECM loan limit at the GSE conforming loan limit. The committee report then noted:

> "Also provides for a uniform nationwide mortgage loan cap on FHA reverse mortgage loans, equal to the GSE conforming loan limit [thus eliminating the local median home price determination otherwise used for Section 203(b) loans]."

This provision was adopted into law as part of the 2008 Housing and Economic Recovery Act (HERA). The Act also raised GSE loan limits in high cost areas up to 115% of the local median home price – not to exceed 150% of the GSE conforming loan limit. Subsequent increases in the GSE limit have raised the HECM single national limit, as well.

There were compelling reasons the change from area-by-area limits to a single national loan limit was made.

A primary reason is that area-by-area limits are a concept that was created for a specific purpose on the FHA "forward" mortgage programs. In the FHA "forward" mortgage program, the goal is to empower middle-income consumers, particularly first-time homebuyers, to purchase an equivalent home in any market across the country. That equivalent home costs more in Los Angeles than it does in St. Louis, for example. Hence, the differential with maximum mortgage amounts for specific areas.

In a HECM, on the other hand, a homeowner is accessing home equity, their own housing wealth that they have accumulated over the years by paying down a mortgage and utilizing those funds, to age in place. The costs of aging, whether they include purchasing durable medical equipment, paying for prescription medicines, covering Medicare supplement premiums, etc. do not differ much from one geography to another.

Area-by-area loan limits penalize homeowners who have improved and maintained their homes over the years and have accumulated more equity as a result of higher home values. For example, at current rates and policies, a 70 year-old homeowner in St. Louis with a home worth the Area Limit for FHA forward mortgages of $317,000, would receive approximately $159,000 from a HECM at today's rates. A 70 year-old owner of a $425,000 home would be able to receive approximately $215,000.

If the area-by-area limits were used for these two homeowners, they both would be able to receive only the $159,000 amount.

With longevity increasing and aging getting ever more expensive, homeowners need to be able to access as much of the accumulated wealth that they have built up (saved, in effect) in their homes as they can.

Applying the forward mortgage concept of "area limits" to a financial resource (HECMs) created for a completely different population at a completely different time of their life would be ill-advised. This discussion took place in the Committee when the single national limit was enacted in 2007-2008 and that provision should remain in place.

Proposal to Eliminate HECM to HECM Refinance Loans

There has been concern that refinancing borrowers from one HECM into a newer HECM with a larger principal limit is problematic. Besides increasing the potential balance that FHA insures, short-term refinancing causes payoffs of existing HECMs quicker than investors expected, diminishing their appetite for purchasing HECM-backed securities.

HUD's response has been to propose simply doing away with such refinances. This is overkill.

There are numerous instances where refinancing a HECM makes sense. There are other ways to address this issue.

As a borrower becomes older, their property gains value and/or interest rates go down, a higher principal limit (the amount that can be borrowed on a HECM) can become available. This is useful in numerous situations.

For example, a borrower who takes out a HECM at age 68, might find that they need more cash available ten years later when their health care costs increase or they need additional funds to pay for real estate taxes or property upkeep. If their property has gone up in value to support a higher loan amount, they should be able to access it. If access to more funds helps avoid a tax or insurance default, or helps a senior receive care at home, that option should be available.

A HECM to HECM refinance could also be a mitigation tool for borrowers in default or for non-borrowing spouses who would like to place themselves into a borrower position. Having this option available, in many cases, can protect the FHA insurance fund from having to pay a claim.

To discourage churning of HECM loans, FHA should implement requirements for seasoning before a loan can be refinanced and deploy a net benefit test to make sure that a homeowner is getting a financial benefit commensurate with the costs of a refinance. The industry has tried to implement these provisions on a voluntary basis, but they will be far more effective if required by HUD.

(2) Why is there a dearth of private reverse mortgage products available?

This is an outdated question. Over the past two years, proprietary reverse mortgages have been brought to market by several major reverse mortgage lenders.

However, these products typically have to be approved by each state in which they will be offered, a process that is expensive and time-consuming for lenders, so the tendency is to offer them in the most active markets first. All offerors of these products are at work seeking approval for additional states.

Proprietary products have typically been utilized on higher value homes than HECMs, with more affluent borrowers. They are now beginning to be used for condominiums that do not meet HUD's requirements.

(3) How has HUD addressed some of the aggressive marketing tactics, including the impact of celebrity endorsers, that have been problematic?

I believe this is more the responsibility of CFPB and FTC than HUD. That being said, HUD does monitor lenders for performance, including their consumer communications. CFPB also audits lenders for compliance and has taken several enforcement actions for wrongful advertising.

As far as celebrity spokespersons, that is a fact of life in how advertising is conducted in America. Having a celebrity in a commercial for reverse mortgages is no different than featuring Dennis Quaid in ads for e-Insurance, Sally Fields for the dietary supplement Boniva, or Julia Roberts for Lincoln-Continental autos. The ads are designed to draw the viewers attention. It is not expected that consumers act because the celebrity told them to.

(4) How diverse is the reverse mortgage industry, and what is being done to promote increased diversity in the industry?

This is not an area in which NRMLA has focused, so my answers can only be observational. Our members come from a variety of ethnic and cultural backgrounds. I only see our members' employees who attend our conferences and participate in our activities, not those working in operational roles at their offices around the country. One observation I would make is that the ratio of women to men participating in this field far exceeds many other areas of commerce.

NRMLA, in an informal manner, does seek to broaden inclusiveness in our industry by attending and speaking at programs offered by other associations, including the Asian Real Estate Association, Latino organizations like National Council of La Raza, and trade associations serving minority professionals, to discuss the opportunities that exist in our field.

(5) How has HUD responded to the issues of nonborrowing spouses?

While it can be argued that HUD has not moved quickly enough on this topic, the rules they put in place to provide the Mortgagee Optional Extension sought to address this situation for the legacy cases that exist. As of earlier this week, HUD has issued a Mortgagee Letter updating those procedures to provide more flexibility for HECM loan servicers and non-borrowing spouses to work together on such cases. This is a major step forward.

Also, HUD has had a policy in place the past few years that enables an eligible non-borrowing spouse to remain in the property after the borrower is deceased.

(6) Can you comment on reports of predatory targeting of minority homeowners in the context of the HECM program?

As in many businesses, there might have been some brokers or originators that have targeted such communities, but they would be the exception, not the norm. In fact, of the companies that appeared to concentrate their marketing on minority neighborhoods as pointed out by the recent USA Today article, few remain in business.

However, on this topic, it is also important to, once again, look at the circumstances of loan origination. It is conceivable that for older homeowners in lower income neighborhoods living on limited fix income, a HECM might have been the best credit option available. Limited, fixed incomes might have rendered some homeowners unacceptable for other credit instruments. Homes that require repairs might be ineligible for other types of financing, whereas the HECM program has mechanisms for carrying out home repairs in conjunction with obtaining the loan.

(7) Can you comment of the financial stability of the HECM loan portfolio and its relation to the FHA's Mutual Mortgage Insurance (MMI) Fund?

The annual scoring of the HECM program in the FHA actuarial report has fluctuated tremendously in recent years. To some extent, this might be because we are using the wrong metrics.

Determining the net present value of cash flows for all outstanding HECMs, as is done in that analysis, requires a high degree of speculation on how long borrowers will remain in their homes, at what pace they will draw down their available funds, how home price appreciation will perform, what will interest rates be and what will the federal cost of funds be? All these factors must be projected out for thirty years, a highly speculative process.

Just to look at one factor, for instance, if interest rates don't rise at a rate as projected (which has been the experience in recent years), the projected compounding of higher rates will distort the actual bottom line adversely.

Furthermore, the consultants that have developed reports for HUD have not always taken into account the impact of programmatic changes that HUD has undertaken and have had a positive effect on the program. They are working with outdated information and projecting new losses on historical losses, failing to recognize the impact of changes. For example, financial assessment has had a beneficial effect in lessening defaults for property charges, but that has not necessarily been reflected in the actuarial analyses. HUD's appraisal review requirements will also have an impact that it is too soon to quantify.

Finally, the costs of resolving loans with defaulted borrowers or where the borrower has vacated the home and it is able to be disposed appear to be much higher for the loans that have been assigned to HUD and are being serviced by HUD's contract servicer when compared to loans being resolved and properties disposed by private lenders prior to assignment. These higher costs are then extrapolated to the entire portfolio, even though losses are less severe in the non-assigned portfolio.

Conclusion

The HECM program is an important financial instrument for helping older homeowners age-in-place. Reverse mortgages are a relatively new concept in the world of personal and residential finance and we are experiencing a learning curve. A partnership of the industry, HUD and various other stakeholders have tried to respond as we learn from experience and readily work together to amend procedures to address the issues that arise.

NRMLA thanks the Subcommittee for hosting this hearing and taking an interest in this topic.

United States Government Accountability Office

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Testimony
Before the Subcommittee on Housing, Community Development, and Insurance, Committee on Financial Services, House of Representatives

For Release on Delivery
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REVERSE MORTGAGES

FHA's Oversight of Loan Outcomes and Servicing Needs Strengthening

Statement of Alicia Puente Cackley, Director,
Financial Markets and Community Investment

Chairman Clay, Ranking Member Duffy, and Members of the Subcommittee:

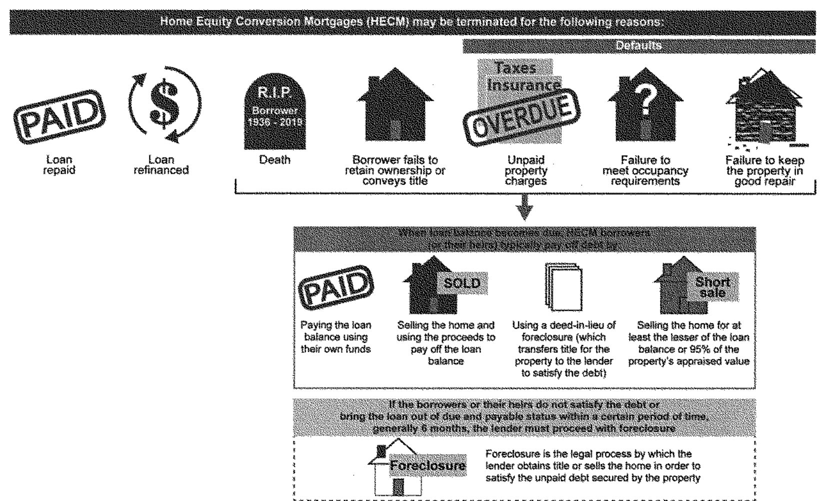
I am pleased to be here today to discuss oversight of reverse mortgages made under the Home Equity Conversion Mortgage (HECM) program, which is administered by the Federal Housing Administration (FHA) within the Department of Housing and Urban Development (HUD).[1] Reverse mortgages are loans that allow seniors to convert part of their home equity into payments from a lender while still living in their homes. While reverse mortgages can help senior homeowners meet financial needs, they also can present risks to borrowers.

The vast majority of reverse mortgages are made under the HECM program. As of the end of fiscal year 2018, FHA had insured more than 1 million HECMs, which included about 630,000 active loans and about 468,000 terminated loans. HECMs are originated and serviced by private FHA-approved lenders and servicers. FHA insures these entities against losses on the loans and charges borrowers premiums to help cover the potential cost of insurance claims. While not involved in administering the HECM program, the Consumer Financial Protection Bureau (CFPB) collects consumer complaints about reverse mortgages and supervises nonbank reverse mortgage lenders and servicers for compliance with, and enforces violations of, federal consumer financial protection laws.

HECMs terminate when a borrower repays or refinances the loan or when the loan becomes due and payable because the borrower died, moved, or defaulted (see fig. 1). Defaults occur when borrowers fail to meet mortgage conditions such as paying property charges (for example, property taxes and homeowners insurance) or meeting occupancy requirements. These borrowers risk foreclosure and loss of their homes if they cannot satisfy the debt or correct the condition that resulted in the default.

[1]Congress authorized HUD to insure reverse mortgages made under the HECM program in 1988 by adding Section 255 to Title II of the National Housing Act. *See* Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 417 (1988) (codified as amended at 12 U.S.C. § 1715z-20).

Figure 1: HECM Termination Reasons and Repayment Alternatives



Source: GAO analysis of Federal Housing Administration (FHA) information. | GAO-19-721T

Certain features of the HECM program can help borrowers delay and, in some cases, avoid foreclosure. If a borrower falls behind on property charges, servicers must generally temporarily advance property charges on a borrower's behalf (known as servicer advances). However, servicers may initiate foreclosure proceedings if the borrower does not catch up. Additionally, since 2015, FHA has made program changes to allow servicers to offer foreclosure prevention options to distressed HECM borrowers and nonborrowing spouses of deceased borrowers.[2]

[2]FHA defines a nonborrowing spouse as the spouse, as determined by the law of the state in which the borrower and spouse reside or the state of celebration, at the time of closing and who is not listed on the mortgage as a borrower.

My testimony summarizes findings from our report on the HECM program, which is being released today.[3] Specifically, I will discuss (1) what FHA data show about HECM terminations and the use of foreclosure prevention options; (2) FHA's assessment and monitoring of HECM portfolio performance and foreclosure prevention options; (3) FHA's and CFPB's oversight of HECM servicers; and (4) FHA's and CFPB's collection, analysis, and response to consumer complaints about HECMs. For this work, we analyzed FHA loan data and reviewed FHA and CFPB documents on HECM servicer oversight. We also reviewed FHA and CFPB data on consumer complaints related to reverse mortgages. We interviewed agency officials, the five largest HECM servicers (representing 99 percent of the market), and legal aid organizations representing HECM borrowers. We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. More details on our methodology can be found in the issued report.

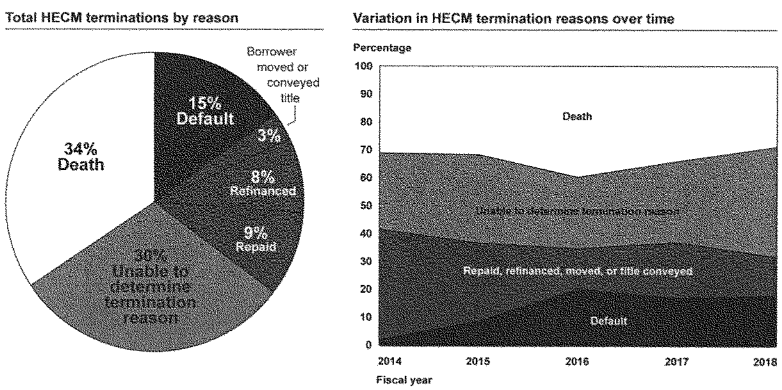
HECM Defaults Have Increased, and Use of Foreclosure Prevention Options Is Limited

Our analysis of FHA data found that 272,155 HECMs terminated from fiscal years 2014 through 2018. The number of terminations rose from about 24,000 in fiscal year 2014 to a peak of roughly 82,000 in fiscal year 2016, before declining to about 60,000 in fiscal year 2018.

In recent years, a growing percentage of HECMs have terminated because borrowers defaulted on their loans. While death of the borrower is the most commonly reported reason why HECMs terminated, the percentage of terminations due to defaults increased from 2 percent in fiscal year 2014 to 18 percent in fiscal year 2018 (see fig. 2). Most defaults were due to borrowers not meeting occupancy requirements or failing to pay property charges. For about 30 percent of terminations, we were unable to readily determine a termination reason from FHA's data.

[3] GAO, *Reverse Mortgages: FHA Needs to Improve Monitoring and Oversight of Loan Outcomes and Servicing*, GAO-19-702 (Washington, D.C.: Sept. 25, 2019).

Figure 2: Reported HECM Termination Reasons, Fiscal Years 2014–2018



Source: GAO analysis of Federal Housing Administration data for the Home Equity Conversion Mortgage (HECM) program. | GAO-19-721T

Note: Due to rounding, figures may not sum to 100 percent.

We also found that servicers' use of foreclosure prevention options for HECM borrowers was limited or FHA did not have readily available data to assess the extent of use. For example, since 2015, FHA has allowed HECM servicers to offer borrowers who are behind on property charges repayment plans to help prevent foreclosures, but as of the end of fiscal year 2018, only about 22 percent of these borrowers had received this option. Also, while FHA created a low-balance extension in 2016—which allows HECM servicers to delay calling a HECM due and payable if the borrower owes less than $2,000 in unpaid property taxes or hazard insurance—FHA officials told us they do not track how often servicers use this option. Our analysis of FHA data found that approximately 8,800 HECMs that terminated in fiscal years 2014 through 2018 had unpaid property charges of less than $2,000 at the time of termination. Some of these HECMs may have been eligible for a low-balance extension when they terminated.

Additionally, we found that it is difficult to estimate the universe of HECMs potentially eligible for mortgagee optional election assignments—an option to help nonborrowing spouses stay in their homes after a borrowing spouse dies. Under this option, if required conditions and time frames are met, the servicer can assign the HECM to FHA.[4] The assignment defers repayment of the HECM as long as the nonborrowing spouse fulfills certain conditions. According to information generated by FHA, HECM servicers submitted 1,445 requests for mortgagee optional election assignments from June 2015 (when FHA made this option available) through September 2018. In total, FHA approved roughly 70 percent of the requests and denied the remaining 30 percent. However, nonborrowing spouses were not listed on loan documentation for HECMs originated prior to August 4, 2014. As a result, FHA does not know how many eligible nonborrowing spouses could have, but did not, apply for the mortgagee optional election assignment, or how many are potentially eligible to apply for it in the future. FHA has begun reaching out to HECM borrowers to inform them of the mortgagee optional election process and ask them to self-identify whether there is a nonborrowing spouse associated with their loan.

Weaknesses Exist in HECM Termination Data, Performance Assessment, and Portfolio Monitoring

FHA's monitoring, performance assessment, and reporting for the HECM program have weaknesses. Since fiscal year 2013, FHA has used the Home Equity Reverse Mortgage Information Technology (HERMIT) system to collect data on the servicing of HECMs, but the system does not contain comprehensive and accurate data about the reasons why HECMs terminate, a key servicing event. According to the HERMIT User Guide, servicers should provide a reason in HERMIT when they terminate a HECM. However, as noted previously, for about 30 percent of the HECMs that terminated in fiscal years 2014 through 2018, we were unable to determine the reason for termination. FHA officials told us termination reasons are available on an individual loan basis in HERMIT but not in an extractable form. FHA does not regularly track and report on HECM termination reasons, due partly to this system limitation.

In the report being released today, we are recommending that FHA take steps to improve the quality and accuracy of HECM termination data. These steps may include updating the termination reasons in the

[4] Under the HECM program, lenders can "assign" a loan to FHA under certain circumstances and file a claim for the full amount of the loan balance, at which point FHA continues to service the assigned loan using a contractor. Lenders assign loans to FHA primarily when the loan balance reaches 98 percent of the maximum claim amount (the lesser of the appraised value of the home at origination or FHA's loan limit). However, lenders can also assign loans to FHA under a mortgagee optional election assignment.

HERMIT system for recording these data or updating the HERMIT User Guide to more clearly instruct servicers how to record termination reasons. FHA agreed with this recommendation. Comprehensive and accurate data on HECM terminations would provide FHA with a better understanding of loan outcomes—information FHA and Congress need in order to know how well the program is helping seniors age in place.

FHA also has not established comprehensive performance indicators for the HECM portfolio and has not regularly tracked key performance metrics, such as the percentage of HECM terminations due to borrower defaults, the proportion of active HECMs with delinquent property charges, or the percentage of distressed borrowers who have received foreclosure prevention options. For example, HUD's most recent strategic plan and corresponding performance report do not include HECM-specific performance indicators, and the last comprehensive evaluation of the HECM program was done in 2000. FHA officials told us they were in the planning phase for a new evaluation of the program but had not set a start date and did not expect the evaluation to include an analysis of the reasons for HECM terminations or the use of foreclosure prevention options for borrowers in default. We are recommending that FHA establish, periodically review, and report on performance indicators for the HECM program and examine the impact of foreclosure prevention options in the forthcoming HECM program evaluation. FHA agreed with this recommendation. Better performance assessment could provide FHA important information about how well the HECM program is working.

Additionally, we found shortcomings in FHA's internal reporting and analysis for the HECM program. For example, FHA has not developed internal reports to comprehensively monitor patterns and trends in loan outcomes, such as the percentage of HECM terminations due to borrower defaults. FHA has generated some reports from HERMIT to help oversee the HECM portfolio, but it has been slow to develop regular and comprehensive reporting mechanisms. FHA officials told us that while data on defaults and foreclosure prevention options have generally been available in HERMIT since 2015, FHA was unable to obtain reports on these topics until 2018 because of funding limitations with their HERMIT system contractor. Our review of the regular and ad hoc reports FHA has received from its HERMIT system contractor found that many are lists of loans that meet criteria and do not provide summary statistics that could be used to readily identify patterns or trends in metrics. Further, we found the reports required additional analysis to generate meaningful management information. In the report being released today, we recommend that FHA develop analytic tools, such as dashboards or watch lists, to better monitor outcomes for the HECM portfolio, such as reasons for terminations, defaults, use of foreclosure prevention options, or advances paid by servicers on behalf of HECM borrowers. FHA agreed with this recommendation. With more robust program analysis and internal reporting, FHA would be better positioned to detect and respond to emerging issues and trends in the HECM portfolio.

Finally, we found that FHA has not fully analyzed the implications of how it prioritizes foreclosures for HECMs that servicers have assigned to FHA. FHA officials told us the agency generally does not foreclose on borrowers whose HECMs have been assigned to FHA and who are in default due to unpaid property charges. As a result, defaulted borrowers whose loans have not been assigned to FHA face a greater risk of foreclosure than defaulted borrowers with FHA-assigned loans. In addition, FHA's process may create a financial incentive for HECM borrowers with assigned loans to not pay their property charges. Therefore, we are recommending that FHA analyze the implications of its prioritization process. FHA agreed with our recommendation. Such analysis would help FHA to better understand how its process for prioritizing foreclosures for assigned loans affects the HECM portfolio, HECM borrowers, neighborhoods, and FHA's insurance fund.

FHA's Oversight of Servicers and Collaboration on Oversight between FHA and CFPB Are Limited

FHA's oversight of HECM servicers has been limited in recent years. FHA has not performed comprehensive on-site reviews of HECM servicers' compliance with program requirements since fiscal year 2013 and does not have current procedures for conducting these reviews. FHA officials said they planned to resume the HECM servicer reviews in fiscal year 2020, starting with three servicers that account for most of the market. However, as of August 2019, FHA had not developed updated review procedures (they were last updated in 2009) and did not have a risk-based method for prioritizing reviews. In the report being released today, we recommend that FHA develop and implement procedures for conducting on-site reviews of HECM servicers, including a risk-rating system for prioritizing and determining the frequency of reviews. FHA agreed with this recommendation. By resuming HECM servicer on-site reviews and adopting a risk-rating system, FHA would be better positioned to ensure that servicers are following program requirements, including those designed to help protect borrowers.

Additionally, we found that while CFPB has examined reverse mortgage servicers and plans to continue doing so, according to CFPB officials the bureau does not share results with FHA because the agencies do not have an agreement in place to share supervisory information.[5] CFPB officials said CFPB and FHA had taken initial steps in 2017 toward developing an information-sharing agreement. However, as of August 2019, an information-sharing agreement had not been completed. Accordingly, we are recommending that FHA and CFPB work together to complete an agreement for sharing the results of CFPB's examinations of HECM servicers with FHA. CFPB generally agreed with this recommendation, and FHA neither agreed nor disagreed. Sharing these results could aid FHA's oversight of HECM servicers by providing additional information about the servicers' performance and operations.

CFPB Collects and Analyzes Consumer Complaints on Reverse Mortgages, but FHA Does Not Use All Available Data

CFPB began collecting reverse mortgage consumer complaints in December 2011 and has collected about 3,600 complaints since then.[6] CFPB officials told us they use consumer complaints as part of their criteria for selecting entities to examine, including reverse mortgage servicers, and to inform CFPB's educational publications. We conducted a detailed analysis of a random, generalizable sample of 100 consumer complaint narratives drawn from all the reverse mortgage complaints CFPB received in calendar years 2015 through 2018.[7] Based on our review of complaint narratives, we found that some of the issues consumers cited most commonly were foreclosures, poor communication from lenders or servicers, problems at loan origination, estate management, and unfair interest rates, fees, or costs.

FHA collects and records inquiries and complaints about HECMs, and it has access to CFPB data on reverse mortgage complaints. However,

[5]CFPB oversees reverse mortgage servicers through examinations designed, among other things, to identify whether servicers engage in acts or practices that violate federal consumer financial laws. CFPB issued its Reverse Mortgage Examination Procedures in 2016 and began conducting examinations in 2017. Consumer Financial Protection Bureau, *Reverse Mortgage Servicing Examination Procedures* (Washington, D.C.: October 2016). CFPB's oversight of reverse mortgage servicers is not limited to those participating in the HECM program.

[6]CFPB's Consumer Complaint Database is available through its website at https://www.consumerfinance.gov/data-research/consumer-complaints/. In addition to this online forum, CFPB collects complaints via email, mail, phone, fax, or referral from another agency.

[7]CFPB issued a report on reverse mortgage consumer complaints it received from December 2011 through December 2014; see Consumer Financial Protection Bureau, Office of Older Americans, *Snapshot of Reverse Mortgage Complaints: December 2011–December 2014* (Washington, D.C.: February 2015).

FHA does not use its inquiry and complaint data to help inform HECM program policies and oversight, and the way data are collected does not produce quality information for these purposes. Additionally, we found that FHA has not leveraged CFPB complaint data for HECM program oversight.

According to FHA officials, FHA's two main methods for collecting customer inquiries and complaints are hotlines operated by the agency's National Servicing Center and the FHA Resource Center.[8] From calendar years 2015 through 2018, the National Servicing Center received about 105,000 HECM-related calls.[9] During this same period, the FHA Resource Center received 147 HECM-related calls. In April 2019, the FHA Resource Center became the primary entity for collecting, recording, and responding to all HECM-related calls. FHA officials told us they transferred these responsibilities from the National Servicing Center to the FHA Resource Center to help improve call management.

While this change could help improve customer service, it does not fully resolve limitations we found in FHA's approach to collecting and recording HECM inquiries and complaints that diminish the usefulness of the information for program oversight. For example, both the National Servicing Center and the FHA Resource Center do not collect call information in a way that would allow FHA to readily analyze the data for themes. Specifically, both centers do not reliably differentiate between inquiries and complaints—a potentially important distinction for determining appropriate agency-level responses. Additionally, while both the centers collect data on the reason for calls, neither does so in a systematic way that would allow FHA to readily determine how frequently issues are being raised. For example, neither center's data systems contain standardized categories or menus with options for recording reasons for calls.

[8]The National Servicing Center is a customer assistance center that works with FHA homeowners and their lenders or servicers to avoid foreclosure. Customers can submit their inquiries and complaints via telephone, email, postal mail, or fax. In addition to its two main methods, FHA receives complaints and inquiries through congressional and White House correspondence. FHA officials said complaints received through these channels were less frequent than complaints received through other methods and sometimes involved prospective borrowers who did not meet HECM eligibility requirements.

[9]We use the term "calls" to refer to any inquiry or complaint submitted to FHA and logged through its two main collection methods.

FHA officials said the agency uses complaint and inquiry data to improve customer service. However, FHA does not analyze data for other purposes that could enhance program oversight, such as determining which HECM servicers and lenders receive the most complaints, targeting entities for on-site reviews, or identifying topics that may need additional borrower education. In the report being released today, we recommend that FHA collect and record consumer inquiries and complaints in a manner that facilitates analysis of the type and frequency of the issues raised. FHA neither agreed nor disagreed with our recommendation. We also recommend that FHA periodically analyze available internal and external consumer complaint data about reverse mortgages to help inform management and oversight of the HECM program. FHA agreed with this recommendation. By improving the collection and use of consumer complaint data and better monitoring its own and CFPB's complaint data, FHA could improve its ability to detect and respond to emerging consumer protection issues regarding HECMs.

Chairman Clay, Ranking Member Duffy, and Members of the Subcommittee, this completes my statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Alicia Puente Cackley, Director, Financial Markets and Community Investment at (202) 512-8678 or cackleya@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Beth Faraguna and Steve Westley (Assistant Directors), Holly Hobbs (Analyst in Charge), Steven Campbell, William Chatlos, John Karikari, Matthew Levie, Marc Molino, Jennifer Schwartz, and Tyler Spunaugle.

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Statement of

Laurie S. Goodman*

Vice President for Housing Finance Policy, Urban Institute

before the

Subcommittee on Housing, Community Development, and Insurance

Committee on Financial Services

United States House of Representatives

PROTECTING SENIORS: A REVIEW OF THE FHA'S HOME EQUITY CONVERSION MORTGAGE (HECM) PROGRAM

Wednesday, September 25, 2019

*The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

I am grateful to Ed Golding, Karan Kaul, Chris Mayer, Stephanie Moulton, and Sheryl Pardo for helpful comments and discussions; David Hinson for expert editing; and John Walsh for research assistance.

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Chairwoman Waters, Ranking Member McHenry, and members of the subcommittee, thank you for the opportunity to testify today. My name is Laurie Goodman, and I am the vice president for housing finance policy at the nonprofit Urban Institute, a leading research organization dedicated to developing evidence-based, nonpartisan insights that improve people's lives and strengthen communities. Urban's Housing Finance Policy Center provides timely, impartial data and analysis on public policy issues affecting the housing and housing finance markets. The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

I spent close to 30 years as a Wall Street mortgage-backed securities analyst. I left Wall Street to found the Housing Finance Policy Center about six years ago. Although we publish research on a wide range of housing finance issues, we go further to understand how those issues affect key segments of the US population, by age, race or ethnicity, gender, geography, and other characteristics. Over these past six years, we have published a sizeable body of research to examine the housing and housing finance needs of senior homeowners. A key question we have studied is how to make it easier for seniors to responsibly access home equity for a comfortable retirement.

Home equity is the most important asset for most homeowners, and the homeownership rate for seniors ages 65 and older is close to 80 percent. Moreover, in the next decade, the senior population share will grow, and a greater portion of these younger seniors will have forward mortgages, which will consume a large share of their limited retirement income. For these borrowers, tapping into home equity to pay off the forward mortgage will be even more important to ensuring a comfortable retirement, as it removes the burden of a monthly payment. Reverse mortgages are a critical home equity extraction vehicle for such borrowers, particularly less affluent ones. The Federal Housing Administration's (FHA's) Home Equity Conversion Mortgage (HECM) program is the dominant program in this space. In this testimony, I will discuss challenges in retirement financing, quantify the importance of home equity in the net wealth profile of US homeowners, discuss available equity extraction vehicles, and explain the HECM program's role. I will then suggest improvements to the program.

Challenges in Retirement Financing

Retirement has already begun for baby boomers, the largest generation of seniors to date and a generation expected to live longer than previous generations. Yet, many of these retired and soon-to be-retired Americans lack the financial assets for a comfortable retirement. The most commonly held and valuable asset for most American families is their home. For many, home equity may be the only resource that ensures they have food, medicine, and other basics for a comfortable retirement. Tapping into home equity could also allow millions of seniors to age in place, rather than move into senior living facilities paid for by taxpayer dollars.

Older adults are less well set up for retirement than they believe. They overestimate their ability to earn income in retirement. A recent survey by the Employee Benefit Research Institute (EBRI) showed that 8 in 10 workers expect to work in retirement, but in reality, only 28 percent of retirees work for pay. In addition, many adults expect to work until age 65, but the median retirement age is 62. EBRI found that 4 in 10 workers retire earlier than expected because of health or disability issues or a change in the structure of their organization, both of which are impossible to predict and plan for.[1]

In addition to earned income, there are three sources of retirement funding: personal savings, employer-sponsored pensions or retirement savings plans (including individual retirement accounts), and entitlement programs such as Social Security. A 2017 Government Accountability Office study found that 43 percent of seniors would have incomes below the federal poverty level absent Social Security.[2] The personal savings rate is down over the past four decades, from more than 13 percent in the early 1970s to 5.3 percent in 2017, and the shift from defined benefit to defined contribution plans has given workers less certainty about how much income they will have in retirement.

Although aging in place may not be optimal for everyone,[3] encouraging this solution—which is less costly than aging in a nursing home or long-term care facility—benefits seniors and taxpayers. A US Department of Housing and Urban Development (HUD) report estimates that nursing homes are more than three times as expensive as noninstitutional long-term care.[4] Tapping into home equity to make home repairs or pay off a forward mortgage can allow seniors to age in place.

Home Equity Is the Largest Component of Net Worth for Most Families

More US households own their home than own financial assets such as retirement accounts, life insurance, stocks, and bonds. According to the Federal Reserve's 2016 Survey of Consumer Finances, 63.7 percent of households owned their primary residence, but only 52.1 percent had retirement accounts, 19.4 percent had cash-value life insurance policies, 13.9 percent had stocks, and 8.6 percent had savings bonds.[5] For most Americans, their principal residence is their most valuable asset, dwarfing the value of other assets. Per the 2016 Survey of Consumer Finances, the median value of the primary residence for homeowners was $185,000. In contrast, the median value was $60,000 for retirement accounts, $8,500 for cash-value life insurance, $25,000 for stocks, and $1,000 for savings bonds.

Moreover, home equity is the largest source of net worth (assets minus debt) for most homeowners. According to the 2016 Survey of Consumer Finances, the median value of total assets (including housing) owned by homeowners of all ages was $341,580. Median net worth was $231,420. Net worth is a better measure of household financial health because it considers debt. Median home equity for homeowners was $100,000 and was the largest component of median net worth. This reflects the fact that home prices have risen. Nationwide, even borrowers who purchased a home at the 2006 peak,

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[1] Employee Benefit Research Institute (EBRI), *2019 Retirement Confidence Survey Summary Report* (Washington, DC: EBRI, 2019).

[2] Government Accountability Office (GAO), *The Nation's Retirement System: A Comprehensive Reevaluation Is Needed to Better Promote Future Retirement Security* (Washington, DC: GAO, 2017).

[3] Karan Kaul, "American Seniors Prefer to 'Age in Place'—But What's the Right Place?" *Urban Wire* (blog), Urban Institute, June 3, 2019, https://www.urban.org/urban-wire/american-seniors-prefer-age-place-whats-right-place.

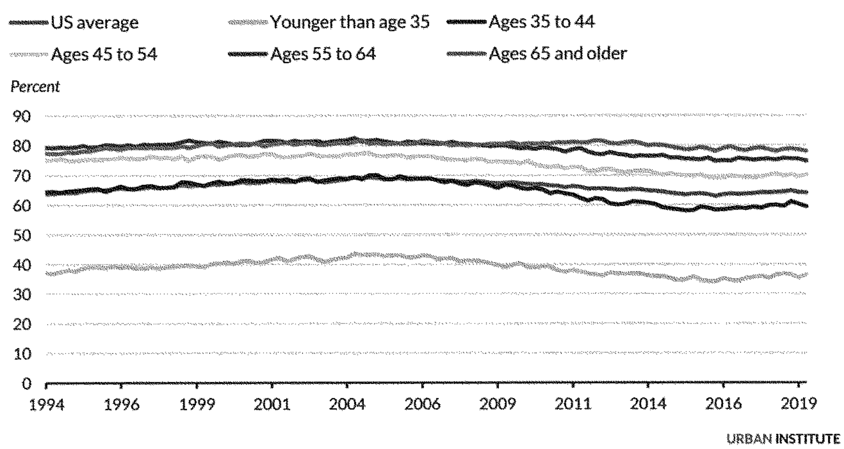
[4] "Measuring the Costs and Savings of Aging in Place," US Department of Housing and Urban Development, Office of Policy Research and Development, accessed September 20, 2019, https://www.huduser.gov/portal/periodicals/em/fall13/highlight2.html.

[5] Jessee Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Lindsay Jacobs, Kevin B. Moore, Sarah Pack, John Sabelhaus, Jeffrey Thompson, and Richard A. Windle, *Changes in US Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances* (Washington, DC: Board of Governors of the Federal Reserve System, 2017).

before the financial crisis, have seen a 14.9 percent increase in home prices. And mortgages amortize over time, allowing homeowners to build equity by paying down principal.

Seniors are apt to have more home equity than younger people, in part because their homeownership rate is higher (figure 1). The homeownership rate in the second quarter of 2019 was 78 percent for seniors and 59.4 percent for 35-to-44-year-olds. Moreover, over the past 15 years, the homeownership rate has declined substantially for everyone younger than 65 but has declined only marginally for seniors. The homeownership rate is down 3.1 percent for seniors but is down 10 percent for 35-to-44-year-olds. And, on average, senior homeowners have more home equity than the rest of the population (figure 2), as they have benefited from home price appreciation and have built equity by paying down their mortgage for a longer time. Senior homeowners have a median net worth of $319,250, 38 percent higher than the $231,400 for all homeowners, and the median home equity for senior homeowners was $143,400, 43 percent higher than the $100,000 for all homeowners.

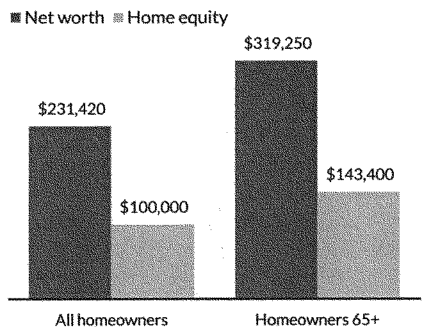
FIGURE 1
Homeownership Rates, by Age



Source: US Census Bureau.
Note: Data as of the second quarter of 2019.

FIGURE 2

Net Worth for Homeowners

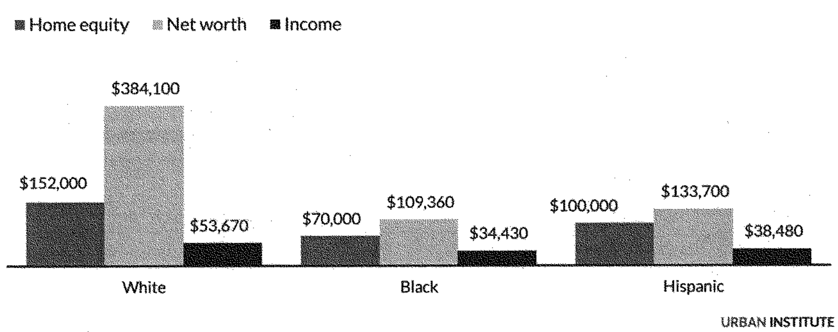


Source: Urban Institute calculations based on the 2016 Survey of Consumer Finances.
Note: Renters have a net worth of $5,200.

Home equity accounts for a larger share of net worth among black and Hispanic seniors than among white seniors.[6] Figure 3 shows median home equity, net worth, and income, by race or ethnicity, among seniors. Black and Hispanic households are behind on all three measures, but median home equity is a larger share of median net worth than it is for white households. The ratio of median home equity to median net worth is 40 percent for white households but is 64 percent for black households and 70 percent for Hispanic households.

FIGURE 3

2016 Wealth Measures for Senior Households, by Race or Ethnicity



Source: Urban Institute calculations based on the 2016 Survey of Consumer Finances.

[6] In this analysis, "white" refers to non-Hispanic white and "black" refers to non-Hispanic black.

The Importance of Tapping into Home Equity

We estimate that 2.5 million to 4.5 million senior households, or 10 to 17 percent of the 26 million senior homeowning households, could benefit from a reverse mortgage or other vehicle to tap into home equity.[7] We assume that households with the greatest need to extract equity would be those with limited incomes and limited liquid assets but sizeable home equity. We further assume that before extracting equity, homeowners would spend down their liquid net worth.[8] Collectively, 3.3 million households (or 13 percent of the 26 million senior households) earn up to $60,000 a year and have liquid net worth of less than $50,000 and home equity of more than $100,000. The combined home equity wealth of these households is more than $775 billion. Even if we assume that households earning $40,000 to $60,000 a year are less likely to need to tap into home equity, that still leaves 2.5 million homeowning households earning less than $40,000 (or 10 percent of the 26 million senior households), with a combined home equity wealth of more than $600 billion. And if we assume only $50,000 of home equity rather than $100,000, the number of potential borrowers increases to 4.5 million (table 1).

TABLE 1

Estimating the Number of Senior Households with Home Equity but Limited Income

Number of households

	Home Equity		
Income	**> 100,000**	**> $50,000**	**> $25,000**
≤ $20,000	920,580	1,897,676	2,376,474
≤ $40,000	2,482,032	4,546,126	5,992,042
≤ $60,000	3,292,709	5,716,358	7,495,296

Aggregate home equity in billions of dollars

	Home Equity		
Income	**> 100,000**	**> $50,000**	**> $25,000**
≤ $20,000	$208	$283	$303
≤ $40,000	$562	$724	$781
≤ $60,000	$773	$964	$1,034

Source: Urban Institute calculations based on the 2016 Survey of Consumer Finances.

Even if the numbers in table 1 were adjusted downward for borrowing limits under the HECM program, which limits borrowing to 50 to 60 percent of a home's value, extracting this home equity could make a big difference in retirement quality for many seniors.

[7] This analysis was taken from Laurie Goodman, Karan Kaul, and Jun Zhu, *What the 2016 Survey of Consumer Finances Tells Us about Senior Homeowners* (Washington, DC: Urban Institute, 2017).

[8] Liquid net worth is a measure of on-hand cash or savings that can be converted to cash quickly. Liquid net worth is financial assets minus student loans, installment loans, credit card debt, and other debt.

Vehicles to Tap Into Home Equity

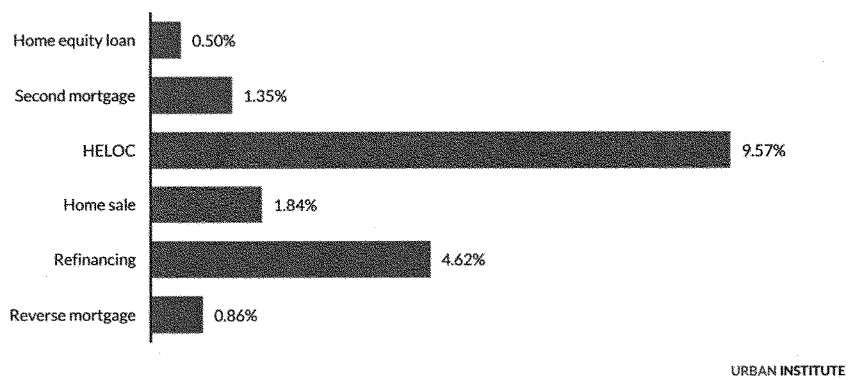
The five main vehicles for extracting home equity, in order of popularity, are as follows:

- **A home equity line of credit, or HELOC,** is a line of credit, collateralized by the home, that the borrower draws as needed up to a set limit. The interest rate is generally adjustable rate, indexed to market interest rates.
- **A cash-out refinance** is a forward mortgage taken out on a home with an existing mortgage that replaces the existing mortgage and is larger than the remaining balance on the mortgage, so the borrower receives a cash payout of the difference between the old and new mortgages.
- **A home sale.**
- **A second mortgage** is a mortgage subordinated to the first mortgage. The money is taken out in a lump sum and repaid each month.
- **A reverse mortgage** is a loan in which the borrower has borrowed against the home's value. The borrower can receive a single up-front payment, a fixed monthly payment, or a line of credit. Unlike a forward mortgage, the borrower does not make monthly payments.

Despite the potential for home equity extraction to help millions of seniors in retirement, home equity extraction rates are low. According to the 2014 Health and Retirement Study, a biennial study of Americans ages 51 and older conducted by the University of Michigan, only 11.4 percent of owner-occupied households ages 65 and older had an active home equity loan, second mortgage, or HELOC at the time of the survey. In addition, during the two years before the 2014 survey, only 4.6 percent tapped into home equity by refinancing their mortgage (cash-out refinance), 1.8 percent accessed equity by selling their home, and 0.9 percent extracted equity through a reverse mortgage.

FIGURE 4

Share of Homeowners Ages 65 and Older Who Extracted Home Equity, by Strategy



Source: 2014 Health and Retirement Study.

Notes: HELOC = home equity line of credit. For home equity loans, home equity lines of credit, and second mortgages, the shares correspond to respondents reporting having one of these three products active at the time of the survey. For the other categories, this period of coverage was the prior two years.

The financial characteristics of borrowers in the Survey of Consumer Finances dataset who extracted home equity indicate that HELOC borrowers are more affluent than borrowers who extract equity through a cash-out refinance or a second mortgage. The average net worth of a HELOC borrower age 65 or older is $561,450, versus $142,750 for a borrower who uses a cash-out refinance or a second mortgage. The annual income of a HELOC borrower is $73,922 versus $39,493 for a borrower using cash-out refinancing and $47,594 for a borrower taking out a second or third mortgage.

The financial characteristics of borrowers taking out HECMs are weaker than those of borrowers who use any of the other equity extraction vehicles. Moulton and coauthors do a deep dive into the characteristics of borrowers taking advantage of HECMs, HELOCs, cash-out refinances, and home equity loans. They show that reverse mortgage borrowers tend have much lower incomes, less than half of those who took advantage of other equity extraction vehicles. HECM borrowers have considerably lower credit scores, more credit card debt, and more debt more than 60 days past due.[9]

Low-income borrowers rarely qualify for HELOCs or other loans that require a monthly payment. Moreover, HECMs were historically not underwritten from a credit perspective. In 2015, a financial assessment was introduced for the first time, and its purpose was to determine whether the borrower had the "willingness and ability" to meet the loan's financial obligations, specifically the obligations to make tax and insurance payments. Borrowers who do not meet the minimum credit requirements are not turned away from the program, but they are required to have a set-aside to meet these tax and insurance payments.

Tapping Into Home Equity Will Become More Important Going Forward

The importance of tapping into home equity will grow because of large increases in the number of seniors and the higher share of younger seniors who will have a mortgage at retirement.

Thus far, I have focused on the finances of today's seniors (and relied heavily on 2016 data). Demographic trends suggest that the number of seniors will grow considerably over the next decade. The 2017 Census Bureau population projections has the number of seniors increasing from 71 million in 2016 to 106 million by 2030.[10] The senior population share will rise from 22 percent in 2016 to 30 percent by 2030. If we look only at adults, ages 20 and older, the senior population share rises from 29 percent in 2016 to 39 percent in 2030. These are individual projections, not household projections, and include both homeowners and renters, but they illustrate a massive increase in the number of seniors. In earlier projections, Rolf Pendall, Jun Zhu, and I show that seniors should make up 33 percent of total

[9] See Stephanie Moulton, Donald R. Haurin, Samuel Dodini, and Maximilian Schmeiser, "How Home Equity Extraction and Reverse Mortgages Affect the Credit Outcomes of Senior Households," Working Paper 2016-351 (Ann Arbor: Michigan Retirement Research Center, 2016).

[10] "2017 National Population Projections Tables, Table 3: Detailed Age and Sex Composition of the Population," US Census Bureau, last updated September 6, 2018, https://census.gov/data/tables/2017/demo/popproj/2017-summary-tables.html.

households by 2030, up from 22 percent in 2010. They will make up about 39 percent of all homeowning households by 2039, up from 26 percent in 2010.[11]

In addition to the increased number of seniors and the increased senior population share, younger seniors are more apt to enter retirement with a mortgage than older seniors. In 2016, 41 percent of homeowners ages 65 and older had a mortgage on their primary residence, compared with 21 percent in 1989. The median outstanding debt has risen from $16,793 to $72,000, adjusted for inflation. Figure 5 shows the breakdown by age for these metrics. Many households carrying mortgage debt into retirement will likely not be able to afford monthly payments and could access liquidity and smooth consumption with a reverse mortgage.

FIGURE 5A

Share of Senior Homeowners with a Mortgage

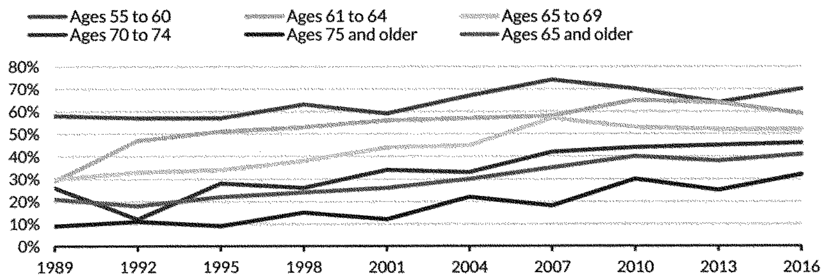
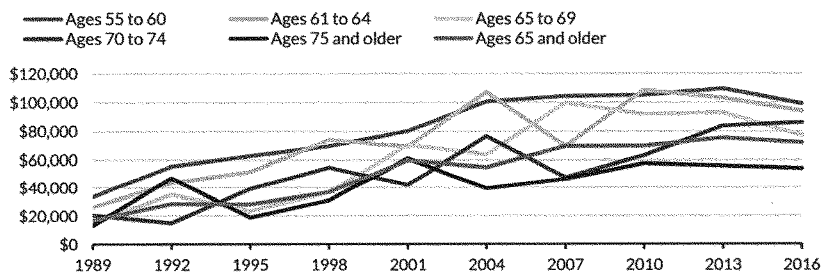


FIGURE 5B

Median Mortgage Amount for Senior Homeowners with a Mortgage



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Source: Urban Institute calculations based on the 2016 Survey of Consumer Finances.
Note: Data are in 2016 constant dollars.

[11] Laurie Goodman, Rolf Pendall, and Jun Zhu, *Headship and Homeownership: What Does the Future Hold?* (Washington, DC: Urban Institute, 2015).

Insights from Fannie Mae Survey Data

With so many low- and moderate-income households retiring with mortgage debt and limited savings, one would expect reverse mortgage products to be used more frequently. Why is this not the case? In the second quarter of 2016, the Fannie Mae National Housing Survey surveyed seniors ages 55 and older on familiarity and willingness to use various methods to tap into home equity. The nearly 1,000 respondents were 55 and older, and responses were weighted to make them reflective of census population data by gender, race or ethnicity, income, and education.

Thirty-seven percent of respondents were very concerned or somewhat concerned about their personal financial situation in retirement. This share was 43 percent among homeowners with a mortgage. Fifty-two percent of 55-to-64-year-olds with a mortgage were concerned about their personal financial situation in retirement.

Even so, close to 90 percent said they we not very interested or not at all interested in taking equity out of their home. Nineteen percent wanted to save it to give to their children or heirs, 10 percent wanted to save it for an emergency, 30 percent did not need the money, 36 percent did not want to have debt, and 7 percent did not have enough income to quality for additional debt.

When asked what home equity extraction methods people are familiar with, 49 percent said they were familiar with a reverse mortgage, 62 percent were familiar with a home equity loan or line of credit, 36 percent were familiar with a cash-out refinance, and 23 percent were familiar with none of these.

When asked what method they would use if they were going to extract equity, 35 percent said they would sell their home and purchase a less expensive one, and 16 percent said they would take out a home equity loan or home equity line of credit. Only 6 percent said they would use a reverse mortgage.

When those familiar with reverse mortgages were asked about their concerns, 20 percent said they were afraid of getting scammed, 12 percent thought they were too costly, 11 percent were worried their family would not be able to stay in the home, and 9 percent thought reverse mortgages were too difficult to understand.

Recommendations to Improve the HECM Program

Given the financial shortfall many will experience in retirement and the enormous amount of existing home equity, increasing the use of and addressing concerns about reverse mortgages is important. Our policy recommendations fall into three categories:

- improve reverse mortgage financial literacy
- simplify reverse mortgage product design, lower costs for safer products, and encourage innovation
- redesign programs to reduce foreclosure frequency and loss severity

Improve Reverse Mortgage Financial Literacy

Reverse mortgages are complex, but so are many other financial products, such as stocks, bonds, and insurance. These other financial instruments do not suffer the same financial literacy issues that reverse mortgages do. Why?

First, the complexity of reverse mortgages has been exacerbated by fraud and misinformation. A Consumer Financial Protection Bureau review of reverse mortgage advertisements and focus group impressions of those advertisements revealed that consumers did not even know that reverse mortgages were loans because ads either did not include interest rates and repayment terms or included them in the fine print. Other consumers pointed out that such phrases as "government insured" and "government-backed program" led them to believe reverse mortgages are a federal government benefit (similar to Medicare).[12] And in the Fannie Mae survey cited above, the top answer for avoiding reverse mortgages was a fear of being scammed.

Second, consumers typically do not think about tapping into home equity in general, or reverse mortgages in particular, until retirement or later. As a result, the level of knowledge about these products is low before retirement. In contrast, the public is more familiar with banking, investment, and insurance products, as they have been exposed to them from a younger age.

Suggestion 1: Include Home Equity in Financial Planning
Financial planning has historically included only financial wealth and ignored housing wealth, even though most people have more of their assets in housing wealth than in financial assets. Financial planners and advisers are not trained in and often do not know much about products that allow the client to tap into home equity, making them more reluctant to endorse them. In addition, financial advisers cannot be legally compensated for recommending reverse mortgages because the Real Estate Settlement Procedures Act prohibits people without a mortgage license from being paid on a mortgage transaction.[13] Even if financial advisers know about reverse mortgages, it does not make sense for them to take the risk that one of their associates uses a client's home equity inappropriately when there is no compensation.

Addressing this is complicated. We certainly do not want financial planners getting compensated to put seniors into inappropriate products. But if information about tapping into home equity were included in the financial planning certification procedure, rules were put in place about what the financial planner can and cannot say, and compensation were limited, it would be advantageous to the customer. First, the information would help people think more holistically about retirement. Reverse mortgages could be an alternative to selling stocks in a bad market. They could be more favorable than incurring penalties on withdrawing assets from individual retirement accounts. If an older adult is selling one home and buying another, financing the new home partially with a reverse mortgage can free up cash for daily living expenses. Moreover, the more homeowners know about their options, the less susceptible they are to scams.

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[12] Consumer Financial Protection Bureau (CFPB), "A Closer Look at Reverse Mortgage Advertisements and Consumer Risks" (Washington, DC: CFPB, 2015).

[13] Real Estate Settlement Procedures Act, 12 U.S.C. §2601–617 (1974).

A short-term fix may be for the Social Security Administration to provide education and outreach to seniors. The Social Security Administration, which touches most seniors and retirees, could disseminate information on how reverse mortgages could work with Social Security benefits to improve financial security. For example, for a person who would elect early Social Security benefits, tap into home equity at age 62, and elect a later Social Security draw could be better off in the long run.

Suggestion 2: Improve Reverse Mortgage Counseling
Currently, counseling by an independent third-party counselor approved by HUD must be completed before a lender processes a reverse mortgage application. The counseling includes information about how reverse mortgages work, including payment options, benefits and drawbacks, and tax implications. But the counseling happens late in the process, after the homeowner has decided to obtain a reverse mortgage. Mandatory counseling could be enhanced by requiring lenders to refer borrowers to HECM counseling as their first step after initial contact.

In addition, counseling could be targeted to allow for different types of counseling for different types of borrowers. Borrowers could be sent down one of several tracks depending on their creditworthiness, needs, income, and assets. For instance, a borrower with a high credit score and significant household wealth may be better suited for a forward home equity product such as a HELOC. These borrowers might benefit from counseling that compares the pros and cons of HECMs with the forward equity extraction products. On the other hand, low-income borrowers with limited means could benefit from counseling that focuses more on appropriate use of HECMs and how to select the amount they need to borrow. A few different counseling tracks would make the counseling more valuable to the diverse customer base.

Finally, HUD could require that the reverse mortgage servicer provide a follow-up phone call after closing, reenforcing the program's functionality and reviewing the amount the borrower would receive each month and their unused line of credit. During this onboarding call, the borrower could ask any questions and receive the servicer's contact information.

Simplify Reverse Mortgage Program Design, Lower Costs for Safer Products, and Encourage Innovation

There are several ways to simplify the reverse mortgage program structure, and there is potential to introduce streamlined programs for specific purposes.

Suggestion 3: Eliminate Infrequently Used Options
Simplifying the number of reverse mortgage choices could reduce borrower expense and make the product less confusing. In a forward mortgage, borrowers have two choices: they can choose a fixed- or adjustable-rate mortgage and they can choose the mortgage term (30 or 15 years). In contrast, the HECM offers many more options: fixed versus adjustable rate, lump-sum disbursement, line of credit, term annuity, tenure annuity or a combination of payment options, and the timing and pace at which funds will be withdrawn. The plethora of options makes the product more difficult for the borrower to comprehend and more difficult for secondary investors to value.

Eliminating less frequently used features could simplify the product structure. Few borrowers tend to use the HECM annuities. According to the 2018 HUD annual report to Congress, 2 percent of borrowers opted for a term or tenure annuity, and another 4 percent opted to combine a term and tenure annuity with a line of credit.[14] These numbers have been reasonably constant over the past decade. Tenure annuities are particularly problematic for the Mutual Mortgage Insurance Fund, as they combine a life insurance feature (yet another option) with the reverse mortgage, essentially giving the borrower a payment for the rest of his or her life.

Another simplification would be to place a time limit on the line of credit disbursement option. Currently, the borrower can tap into this unused line of credit at any time, and the untapped portion of the line does not accrue interest. The line of credit stays open as long as the borrower remains in the home. Enforcing a time limit, such as 10 years, would provide more certainty to lenders (who must maintain liquidity) and to investors and the FHA.[15]

Proprietary reverse mortgage products—which serve borrowers who have home prices above FHA loan limits, or near the high end of these limits, suggesting they capture a more affluent market sector—have a simpler structure than the HECM product. Most are single draw or have a fixed draw for four years, although the lines of credit are starting to grow. In the proprietary programs, the lines of credit have a 10-year draw period.

Suggestion 4: Streamline the Conversion of a Forward Mortgage into a Reverse Product

More older adults have a mortgage in retirement and are making monthly payments on the forward mortgage. HECM rules require that borrowers pay off a forward mortgage if they have one, and more than 60 percent of HECM borrowers use at least a portion of their proceeds to pay off a forward mortgage.[16] Allowing for a program to convert the forward mortgage into a reverse mortgage in a streamlined fashion makes sense for many but not all of these borrowers.[17] It may not make sense for a borrower with a small outstanding balance on a first mortgage who wants to borrow an additional amount. But the one-time draw would make for a simpler structure with a fixed interest rate, potentially making the product more attractive to investors and, in a competitive market, reducing the rate charged to borrowers. It could also save on sales and marketing costs, which are the largest HECM cost after the up-front mortgage insurance premium. If the borrower already has an FHA forward mortgage, the process could be further expedited.

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[14] US Department of Housing and Urban Development (HUD), *Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund* (Washington, DC: HUD, 2018).

[15] Putting a term limit on the line of credit disbursement option would also protect HUD from a "ruthless strategy" under which a borrower obtains a line of credit that opportunistically draws funds only if the value of the house falls below the approved line. In other words, borrowers can theoretically use the HECM as an insurance policy against falling home prices, creating losses for HUD. See Deborah Lucas, "Hacking Reserve Mortgage" (unpublished paper, Massachusetts Institute of Technology, 2015) for a description of the "ruthless strategy" and estimates of the impact. Thomas Davidoff and Jake Wetzel (unpublished manuscript, University of British Columbia, Sauder School of Business, 2014) show this strategy is rarely used.

[16] Stephanie Moulton and Donald Haurin, "Unlocking Housing Wealth for Older Americans: Strategies to Improve Reverse Mortgages," in *New Approaches to Retirement Security* (Washington, DC: Brookings Institution; Evanston, IL: Northwestern University, Kellogg School of Management, forthcoming).

[17] Moulton and Haurin, "Unlocking Housing Wealth."

Suggestion 5: Reintroduce a Modified Version of the HECM Saver Program
In September 2010, HUD introduced the HECM Saver program as a low-cost vehicle for seniors who wanted a small disbursement and found the standard HECM premiums too expensive. This program eliminated the up-front premium, but the annual premium was the same as the standard HECM. Despite its low up-front cost, this program was discontinued in 2013 because of low demand. Reintroducing a version of this, with both lower up-front costs and lower annual fees, makes sense. Product features would include only an up-front draw and a strict cap on the loan-to-value ratio, which eliminates the risk to the Mutual Mortgage Insurance Fund. The underwriting could be streamlined to include an automated valuation model rather than a full home appraisal, further lowering expenses.

This is a simplified version of the tiered pricing recommendation suggested in the recent housing finance reform plan HUD presented to President Trump in September 2019, pursuant to the March 27, 2019, directive.[18]

Suggestion 6: Encourage the Development of Proprietary (non-HUD) Alternatives
The market for proprietary products is small but growing. The development of the market, however, has been limited by two obstacles. First, most borrowers qualify for the government program; loan limits are $726,525 nationwide.[19] Second, some states have rules that do not allow nongovernmental alternatives. These states are Iowa, Massachusetts, Maryland, Minnesota, Tennessee, Wisconsin, and West Virginia.

Reducing loan limits from the current level of $726,525 would encourage the development of alternative products, promoting competition and innovation. These non-HECM products will not offer borrowers the same flexibility as the government products, but they may do a better job meeting the needs of this segment of the market. And if HECM loan limits were reduced, it would likely force states who do not allow proprietary products to reevaluate their rules. Over time, the importance of the second obstacle would recede.

But a policy change like this should be made with eyes wide open. HUD should calculate if and by how much these high-balance mortgages cross-subsidize the lower-balance loans and make sure the financial impact is manageable.

Redesign Programs to Reduce Foreclosure Frequency and Loss Severity

There are several changes that can lower foreclosure frequency and loss severity. We examine two apiece in suggestions 7 and 8.

Suggestion 7: Implement Changes That Reduce Foreclosure Frequency
Reverse mortgages can enter into foreclosure if a borrower fails to pay taxes and insurance. Borrowers who skip a tax or insurance payment have two years to bring it current before the loan can be foreclosed upon; meanwhile, the servicer advances the funds, adding the amount advanced to the

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[18] US Department of Housing and Urban Development (HUD), *Housing Finance Reform Plan: Pursuant to the Presidential Memorandum Issued March 27, 2019* (Washington, DC: HUD, 2019).

[19] This is derived as 150 percent of the Federal Housing Finance Agency's conforming loan limit of $484,350; Fannie Mae and Freddie Mac can lend up to $726,525 in a limited number of high-cost areas.

borrower's HECM balance. The simplest way to avoid tax and insurance defaults is to escrow the funds. There are several opportunities for program improvements that would result in lower foreclosure frequencies and lower loss severities.

This is hardly a new insight. In April 2015, HUD changed the program to include a borrower financial assessment. If the borrower's financial condition falls below a certain level, taxes and insurance must be escrowed. This has reduced the default rate. Research by NewView Advisors shows that the tax and insurance default rates, at 37 to 45 months, have declined from 6.9 percent before the financial assessment was implemented to 2.1 percent after the assessment was implemented.[20]

This process can be improved further by making an escrow account the default through the inclusion of a life expectancy set-aside (LESA). For fiscal year 2018, about 14 percent of HECM borrowers have fully funded LESAs. In a fully funded LESA, the servicer pays the property taxes and insurance.[21] The borrower could ask for a waiver of this requirement by completing a detailed financial assessment (currently required for all borrowers). Meeting the hurdle in this assessment would waive the LESA requirement.

Second, if the taxes and insurance are not escrowed, reminding borrowers of their obligations can reduce foreclosure frequency. Moulton and coauthors showed that simple automated quarterly mail reminders to HECM borrowers about future property tax and insurance payments reduced tax and insurance default rates by as much as half.[22] Requiring this of servicers is an easy change.

Suggestion 8: Implement Program Changes to Reduce Loss Severity

In the forward market, foreclosure is the worst alternative for both the borrower and the holder of the risk. Foreclosure alternatives (e.g., short sales, deed in lieu of foreclosure) are preferable. The Cash for Keys program, announced in 2017, was an attempt to transfer this process to the reverse market.[23] Currently, the servicer can pay a borrower (and be reimbursed by HUD) for relocation expenses up to $3,000, in exchange for the borrower granting the servicer the legal right to dispose of the property via a deed in lieu of foreclosure. But this applies only to HECMs originated after September 2017. This program could be improved by (1) allowing the servicer to use Cash for Keys on HECMs originated before 2017 and (2) giving the servicer the flexibility to make a payment greater than $3,000. In many states, particularly judicial foreclosure states, it takes years to foreclose, during which time the property deteriorates. Allowing for a larger payment would be cost-effective. In addition, servicers should have the flexibility to make larger payments if the servicer can show it is in HUD's financial interest.

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[20] "Financial Assessment Is Working (Part V)," NewView Advisors blog, June 27, 2019, https://www.newviewadvisors.com/commentary/financial-assessment-is-working-part-v/.

[21] Cheryl Walker, Kasey Watson, and John Olmstead, "HECM Update," presentation given at the 2018 National Reverse Mortgage Lending Association Annual Conference and Expo, San Diego, CA, October 29, 2018, https://www.nrmlaonline.org/wp-content/uploads/2018/10/FHA-HECM-Update.pdf.

[22] Stephanie Moulton, J. Michael Collins, Cäzilia Loibl, Donald R. Haurin, and Julia Brown, *Reminders to Pay Property Tax Payments: A Field Experiment of Older Adults with Reverse Mortgages* (New York: SSRN, 2019).

[23] Dana T. Wade (general deputy assistant secretary for housing), "Implementation of HUD's January 2017 Home Equity Conversion Mortgage (HECM) Final Rule," mortgagee letter to all FHA-approved mortgagees and all HUD-approved housing counselors, August 24, 2017, https://www.hud.gov/sites/documents/17-11ML.PDF.

Finally, changing servicing protocol could make a big difference. HECM loans are generally pooled into Ginnie Mae securities and sold to investors. Currently, when the value of the loan reaches 98 percent of the initial claim amount, the servicer must pull the loan out of the Ginnie Mae pool; the loan is either (1) assigned to the FHA or (2) held by the reverse mortgage servicer on the servicer's balance sheet. Loans that qualify are generally assigned, as holding these loans on the servicer's balance sheet is expensive.

A loan cannot be assigned (it does not qualify) if it has tax or insurance delinquencies or if the servicer is working with the borrower on loss mitigation, the home is being foreclosed upon, the borrower is in bankruptcy, or the loan is inactive because the borrower has died or has moved out. If the loan cannot be assigned to the FHA, the servicer will hold and service the loan through resolution. Actuarial studies indicate that close to 60 percent of the loans are not assigned because they do not meet the FHA's assignment eligibility criteria.[24]

It is evident when comparing the losses on loans that are assigned versus those that are not assigned that the loss severity is higher on the loans that are assigned. Assigned loans have a loss rate of roughly 42 percent—which includes the difference between the estimated value and the sales price, the costs of the sale, and the costs of maintaining the property until it is sold—versus 12 percent on loans that are not assigned.[25]

The fact that loss severities are so much lower on unassigned loans reflects two realities:

- FHA policies do not maximize the value of the properties
- servicer incentives, in combination with their specialized knowledge, reduces losses

For example, the FHA does not foreclose on properties with tax and insurance defaults, even though it is entitled to do so. If servicers are not paying taxes and insurance, they might not be maintaining the home, resulting in the need for more proactive servicing to mitigate losses. Moreover, in many cases, the taxes and insurance are unpaid, as the home is vacant, which can be detrimental to its value. It is not clear how closely the FHA monitors vacancies.

Servicers are better at monitoring the properties, often reminding the borrower to make the tax and insurance payments to avoid foreclosure. They also dispose of properties faster, as servicers usually lose money if the house is vacant and deteriorating. In contrast, contractors employed by HUD are often less experienced than the original servicers. The contract terms they operate under often lack strong performance measures, positive incentives for positive outcomes, and penalties for negative outcomes, which hamper the FHA's ability to take action for poor execution.

Losses can be reduced in several ways. First, HUD could continue to accept assignment of the HECM loans but allow servicing to be performed by the current servicers. That is, the FHA would hold

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[24] Integrated Financial Engineering, *Actuarial Review of the Federal Housing Administration Mutual Mortgage Insurance Fund HECM Loans for Fiscal Year 2016* (Washington, DC: US Department of Housing and Urban Development, 2016).

[25] For more on the loss calculations, see Laurie Goodman and Edward Golding. "The FHA Can Improve Its Reverse Mortgage Program by Changing Servicing Protocol," *Urban Wire* (blog), Urban Institute, May 31, 2019, https://www.urban.org/urban-wire/fha-can-improve-its-reverse-mortgage-program-changing-servicing-protocol.

the mortgage in its portfolio and pay the current servicer to continue to service the loan. Servicer performance could be monitored by comparing the loss severities on the loans assigned by the servicers with those that are not assigned. Servicers could be compensated on a fee-for-service basis or a negotiated servicing fee. The compensation should include incentives that minimize loss severity.

If HUD chooses to go a different route, it should find an experienced servicer, compensate that servicer in a way that encourages cost-effective loss mitigation, and allow the servicer to follow program rules. There may be circumstances in which HUD decides not to enforce foreclosure rules, but it should be done on a case-by-case basis rather than as a matter of policy. Anecdotal evidence suggests the most common cause of tax and insurance defaults is death or a move into a senior living facility, not a 95-year-old simply forgetting to pay.

Finally, continued program improvements should be every program's goal in both the government and private sectors. Providing data on HECM performance would be helpful to this process. Origination data are available from both HUD and the Home Mortgage Disclosure Act, but performance information is not. Performance data used to be available but were discontinued in 2011.[26] Restoring and enhancing these data would make the program more transparent and provide the evidence to guide future program enhancements.

Summary

The HECM program is a valuable vehicle to tap into home equity and is the sole option for many low-income senior households to extract equity. It will become even more valuable and more necessary as the senior population increases and the proportion of those seniors with a mortgage (and limited retirement savings) increases. Helping more seniors age comfortably in their homes is an issue that should generate bipartisan support, as the alternative for many would be a nursing home or other facility paid for with taxpayer dollars.

But there are ways to improve the HECM program to better meet the needs of senior borrowers and to be more cost-effective. I have made seven suggestions in three areas:

- improve reverse mortgage financial literacy
- simplify reverse mortgage product design, lower costs for safer products, and encourage innovation
- redesign programs to reduce foreclosure frequency and loss severity

I hope the committee focuses on these suggestions for improvement and allows this valuable program to realize its full potential.

[26] To see the discontinued data, see "Home Equity Conversion Mortgage Data," US Department of Housing and Urban Development, accessed September 20, 2019, https://www.hud.gov/program_offices/housing/rmra/oe/rpts/hecmdata/hecmdatamenu.

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).[1] 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;

[1] 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.[2] Advocates were concerned about the financial plight of older adults who were struggling to meet daily expenses, including housing and health related expenses.[3] 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.[4]

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.[5] Under the program, HUD-approved private lenders originate HECM loans that are FHA-insured, subject to the agency's regulations.[6]

[2] 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.
[3] 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=purl.32754066676069;view=1up;seq=18.
[4] 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).
[5] 12 U.S.C. § 1715z-20.
[6] 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.[7] 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.[8] 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.[9] A home is the most common financial asset owned by most Americans, eclipsing ownership of retirement accounts and other forms of savings and assets.[10] Moreover, for most homeowners, the home is their most valuable asset.[11] 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.[12] 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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[7] 12 U.S.C. § 1715z-20(b)(1); 24 C.F.R. § 206.33.

[8] 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.

[9] 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.

[10] 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%)).

[11] *See id.*

[12] *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.[13] For younger borrowers, reducing household debt, typically by paying off a forward mortgage, was the primary motivation for obtaining a reverse mortgage.[14]

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.[15] Older adults are also carrying more non-mortgage debt, including credit card and student loan debt, into retirement than in past decades.[16] 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.[17]

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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[13] *Id.*

[14] *See id. See also* Stephanie Moulton, Căzilia 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.

[15] 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 [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).

[16] 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 sevety-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).

[17] *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.[18] That was triple the number for 2014, according to HUD.[19] 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.[20] This represents roughly 14% of outstanding HECM loans.[21]

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.[22] 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%.[23] 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-side 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.[24] 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.[25] This represents about 14% of

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[18] 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/.
[19] *Id.*
[20] 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].
[21] *Id.*
[22] 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).
[23] *Id.* (citing a study that found that homeowners within approximately 600 feet experience a reduction in value of 1% per foreclosure).
[24] Email with attached data analysis from Rachel Labush, Community Legal Services of Philadelphia, September 18, 2019.
[25] FY 2016 Actuarial Review, at D-6.

HECM loans.[26] The report projected that roughly 18% of HECMs currently outstanding would experience a property charge default at some point in time.[27] 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.[28]

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

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

[27] FY 2016 Actuarial Review, at D-7 (Nov. 15, 2016).

[28] 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.[29] 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.[30] Older adults being solicited for a reverse mortgage are often told that this loan is "payment free."[31] 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.[32] 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.[33] 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.[34]

Required pre-loan counseling has been inconsistent at informing borrowers of the requirement to pay property charges.[35] Concerns have been raised periodically about the overall effectiveness of required pre-loan counseling.[36] 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.[37] 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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[29] This problem appears to have been significantly curtailed by the Financial Assessment, discussed *infra*.

[30] *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].

[31] 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."

[32] *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).

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

[34] 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/.

[35] *See* CFPB Report to Congress 2012, at 123 (explaining that confusion about taxes and insurance persisted after pre-loan counseling).

[36] *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.

[37] *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.[38] 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.[39]

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.[40] 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.[41]

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.[42] 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.[43] 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.[44] 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.[45] 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.[46]

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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[38] Email from Sarah White, Connecticut Fair Housing Center, Feb. 9, 2018.
[39] 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).
[40] CFPB Report to Congress 2012, at 129.
[41] *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].
[42] U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2011-01 (Jan. 3, 2011).
[43] *Id.* at 2.
[44] *Id.*
[45] *Id.* at 3.
[46] *Id.* at 4.

days of a property charge default.[47] 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.[48] In addition, HUD barred servicers from offering permissive loss mitigation options to HECM borrowers once foreclosure had been initiated.[49] Although the latter policy was later reversed by HUD, confusion persisted about whether loss mitigation could be offered after a foreclosure referral.[50] 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.[51]

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.[52] 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.[53] 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.[54] 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.[55] 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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[47] U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2015-11 (Apr. 23, 2015).
[48] *Id.* at 3.
[49] *Id.*
[50] *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.
[51] *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 [hereinafter, NCLC Examples of HECM Servicing Problems].
[52] 24 C.F.R. § 206.125(d).
[53] 24 C.F.R. § 206.129(d)(3)(x).
[54] *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).
[55] *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.[56] 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.[57]

[56] U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2015-11 (Apr. 23, 2015).
[57] 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.[58]

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

[58] 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.[59] 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.[60] 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.[61]

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.[62] 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

[59] 12 U.S.C. § 1715z-20(j).
[60] 24 C.F.R. § 206.27(c); *see also* Plunkett v. Castro, 67 F. Supp. 3d 1 (D.D.C. 2014).
[61] In some circumstances, the borrower or heirs may satisfy the loan by paying 95% of the appraised value of the home.
[62] 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.[63] 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.[64] 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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[63] Dept. Housing and Urban Dev't, Mortgagee Letter 2015-15 (June 12, 2015).
[64] 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.[65] 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.[66] 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.[67]

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

[65] 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/.
[66] 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.
[67] 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.[68]

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

[68] *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.

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.[69] 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.[70] 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.[71] HUD received a number of public comments in its most recent public rulemaking regarding difficulties communicating with servicers and obtaining loss mitigation.[72] In addition, many HECM borrowers begin to experience cognitive

[69] *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.
[70] *See id.*
[71] 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.
[72] 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.[73]

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.[74] 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.[75] 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.[76]

These servicing problems were also documented by the CFPB in its *Snapshot of Reverse Mortgage Complaints: December 2011-December 2014*.[77] 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.[78] Borrowers and heirs complained that servicers often delay and impede attempts to cure HECM defaults and avoid foreclosure.[79] 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).

[73] 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).

[74] *See* NCLC Examples of HECM Servicing Problems.

[75] *Id.*

[76] *Id.*

[77] 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.

[78] *See id.* at 12-14.

[79] *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.[80] Further, servicers have assumed they can only approve a payment plan if it consumes no more than 25% of the borrower's surplus income.[81] 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

[80] Mortgagee Letter 2015-11 (Apr. 23, 2015) at 8.
[81] 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.