COMMENTS to the Consumer Financial Protection Bureau

On Request for Information Regarding Consumer Use of Reverse Mortgages

77 FR 39222 (July 2, 2012)

Docket No. CFPB-2012-0026

By Consumers Union of the U.S., Inc. (CU)

California Advocates for Nursing Home Reform (CANHR)

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Introduction

Consumers Union, the advocacy and policy division of Consumer Reports (CU)[1] and California Advocates for Nursing Home Reform (CANHR)[2] are pleased to submit these comments in response to the Consumer Financial Protection Bureau (CFPB) request for information concerning reverse mortgages and their use and impact on consumers. We applaud the CFPB's action to look into the reverse mortgage market and to consider ways in which the agency can best protect consumers and others impacted by reverse mortgages.

In December 2010, CU and CANHR published a report on reverse mortgages entitled *Examining Faulty Foundation in Today's Reverse Mortgages*.[3] As stated in our 2010 report, we still believe that the right reverse mortgage may be appropriate for some low-income relatively healthy seniors who lack other retirement assets, do not qualify for lower-cost alternatives, and cannot meet their current mortgage obligation. A reverse mortgage might also be a reasonable alternative for seniors who are in foreclosure and have no other way to pay off the delinquent amount, do not want to sell the home and downsize to a smaller property or do not wish to move into assisted living in the future.[4] Nonetheless, it is critical that the CFPB act to protect homeowners aged 62 or older, whose homes are owned free and clear—or nearly so—from a myriad of vulnerabilities in the reverse mortgage marketplace.

There are many compelling reasons for the CFPB to act. One of the most urgent is the serious market failure evidenced by 54,000 active HUD insured HECM reverse mortgage borrowers whose loans are in default. These borrowers represent 9.4 percent of all of the active HUD insured reverse mortgage borrowers in place today.[5] It is quite troubling that so many reverse mortgage borrowers have

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[1] Consumers Union of United States, Inc., publisher of *Consumer Reports*®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of over 8 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of *Consumer Reports*®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising. Consumers Union does not accept donations from corporations or corporate foundations.

[2] Since 1983, California Advocates for Nursing Home Reform (CANHR), a statewide nonprofit 501(c)(3) advocacy organization, has been dedicated to improving the choices, care and quality of life for California's long term care consumers. Through direct advocacy, community education, legislation and litigation it has been CANHR's goal to educate and support long term care consumers and advocates regarding the rights and remedies under the law, and to create a united voice for long term care reform and humane alternatives to institutionalization.

[3] NORMA PAZ GARCIA, PRESCOTT COLE & SHAWNA REEVES, EXAMINING FAULTY FOUNDATIONS IN TODAY'S REVERSE MORTGAGES (2012), *available at* http://www.consumersunion.org/pdf/reverse-mortgage-report-2010.pdf.

[4] *Id.* at 5.

[5] *Oversight of the FHA Reverse Mortgage Program for Seniors: Hearing Before the Subcomm. on Insurance, Housing and Community Opportunity of the H. Comm. on Financial Services*, 112th Cong. (2012) (Statement of Lori A. Trawinski, Ph.D., CFP©, Senior Strategic Policy Advisor AARP Public Policy Institute at 5), *available* at http://www.aarp.org/content/dam/aarp/politics/advocacy/2012-06/01/written-testimony-lori-tawinski-fha-reverse-mortgage-aarp-5-7-12.pdf. According to data provided by HUD, 54,000—or 9.4 percent of active HECM loans—were in technical default for nonpayment of taxes and/or homeowners insurance as of February 2012. *Id.* The CFPB noted that, quoting from a HUD Presentation of the National Reverse Mortgage Lenders Association Eastern Regional Meeting (Mar. 26, 2012), as of the end of February 2012, 9.4 percent of active HECM loans were in default on taxes and/or insurance. CONSUMER FIN. PROTECTION BUREAU, REVERSE MORTGAGES: REPORT TO CONGRESS 132 (2012), *available at* http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf (hereinafter CFPB). This proportion has increased from 8.1 percent in July 2011 *Id.* at 129.

experienced problems with their loans. However, this cohort of borrowers in default offers the CFPB an opportunity to gather important data from each of the 54,000 defaulted borrowers about what went wrong. The most widely cited explanation for this high number of defaults among reverse mortgage borrowers is that these borrowers did not understand the requirement to keep current on their property taxes and/or homeowners' insurance.[6] However, this high number of defaults may simply be the most obvious manifestation of a deeper problem involving multiple aspects of reverse mortgage borrowing that such a survey could reveal.

The stakes are high for seniors eligible for reverse mortgages; they are homeowners with a lot of equity which for many may be their largest remaining asset. They are typically retirees and are no longer in the workforce. Once their assets are exhausted it would be very difficult or impossible to replenish them. While many elders remain very capable throughout their later years, many others experience a decline in functioning which makes them especially vulnerable to fraudulent and deceptive practices. The reverse mortgage eligible population can be an easy target for unscrupulous actors who seek to take advantage of the borrower's age, health condition, or confusion about the nature and impact of a reverse mortgage product.

In addition to the borrowers themselves, reverse mortgages may have a significant impact on non-borrowers, including spouses not included in the reverse mortgage contract, and others living in the home encumbered with a reverse mortgage. Finally, there are larger societal implications when reverse mortgages fail. With 54,000 failed HUD HECM loans on the government books, taxpayers must pick up any shortfall. This translates into a loss for taxpayers with virtually no corresponding risk for those who sell and originate reverse mortgages, since the HUD mortgage insurance premium guarantees lenders will be reimbursed for any shortfalls, whether or not the loans sold to senior borrowers are suitable for their needs.

We strongly recommend that those considering a reverse mortgage, in addition to any required counseling, seek professional advice from an unbiased professional without ties to the reverse mortgage industry, one who doesn't stand to gain financially if a reverse mortgage is sold to the senior considering the product. Such a professional would be an individual unaffiliated with a reverse mortgage lender or broker who is also an elder law attorney, a Certified Financial Planner, or a Certified Public Accountant. When a reverse mortgage is sold to a senior without this critical layer of scrutiny and before ruling out all other options, the borrower could be worse off with the product rather than choosing another solution. The wrong choice could lead to extreme hardship, distress and in the worst cases, homelessness.

In the current environment, it is unrealistic to expect consumer awareness or industry self-regulation to be the main safeguards against the sale of complex products like reverse mortgages. As long as unsuitable loans can easily be sold to senior borrowers and sellers can operate in a profitable and virtually risk-free environment, the incentive to sell will remain great, and the incentive to sell to anyone who will buy, regardless of whether the product is appropriate for that buyer, is even more immense.

Sellers continue to barrage seniors with reverse mortgage advertisements pitched by people the seniors recognize and want to trust. In the process, reverse mortgages are heavily marketed as the key to alleviate

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[6] OFFICE OF INSPECTOR GENERAL, AUDIT REPORT (AUGUST 25, 2010) , *available at*

any financial woe or as the ticket to the good life long delayed. Consumers need protection to ensure that reverse mortgages are not sold through fraudulent, misleading or deceptive means, and that the products are safe. Providers must be regulated to ensure that they sell only suitable products to suitable borrowers. These steps are essential to ensure security for consumers and protections for taxpayers from failing loans. They are also vital to ensure that reverse mortgage lenders who put consumers first are not at a competitive disadvantage.

We urge the CFPB to consider our findings and include the following categories of reforms in developing strong and comprehensive policies to protect the public against abuses in the reverse mortgage marketplace. The categories for reform include:

- Requiring lenders and brokers to ensure loans are suitable for borrowers
- Establishing a fiduciary responsibility to the potential borrower
- Outlawing deceptive marketing
- Adopting stronger prohibitions on cross promotions
- Strengthening the quality and content of counseling
- Protecting non-borrowing spouses, occupants, and families

A complete list of our Recommendations for the CFPB is included as Appendix I.

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http://www.hud.gov/offices/oig/reports/files/ig1060003.pdf at 1.

Update

Examining Faulty Foundations in Today's Reverse Mortgages

Our comments build on our December 2010 report entitled, *Examining Faulty Foundation in Today's Reverse Mortgages* [7] and contain a discussion about the consumer protection issues and challenges we see in today's reverse mortgage market. These include problems related to the suitability of loans, lender and broker fiduciary duties, misleading marketing, the need for improving counseling, opportunities for increasing lender and broker accountability to borrowers and their families and other areas of importance. We include recommendations for the CFPB to address these areas as the agency works towards protecting all reverse mortgage consumers.

We share the consumer protection concerns raised by the CFPB in the agency's June 2012 *Report to Congress on Reverse Mortgages*. These include the increased risks associated with the complex reverse mortgage product, coupled with misleading marketing to a potentially vulnerable population whose comprehension of the product and its risks may not be fully appreciated.[8] We noted the increasing number of borrowers invited to use reverse mortgages for non-essential purposes and the risks to their homeownership occasioned by this phenomenon.[9] We also discussed how certain product features such as borrowers getting lump-sum payout options in order to get fixed interest rates,[10] market dynamics such as the burgeoning elder homeowner population eligible for reverse mortgages,[11] a difficult economy and rising HECM foreclosure claims[12] and industry practices such as misleading marketing,[13] and selling unsuitable loans to unsuspecting borrowers while operating in a virtually risk-free environment contribute to create unacceptable risks for senior borrowers.[14] Compounding these risks, included in our 2010 report is a list of concerns with the inadequacy of counseling, both in content and process.[15]

Twenty months have passed since we published *Examining Faulty Foundation in Today's Reverse Mortgages* and there have been several important developments in the reverse mortgage marketplace, including:

Reverse mortgage defaults have risen to a significant level, as confirmed by the CFPB.[16] According to an industry source, Reverse Mortgage Daily, in response to a growing number of HUD HECM reverse mortgage defaults, in January 2011, HUD issued a Reverse Mortgage Default guidance "for lenders to

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[7] NORMA PAZ GARCIA, PRESCOTT COLE & SHAWNA REEVES, EXAMINING FAULTY FOUNDATIONS IN TODAY'S REVERSE MORTGAGES (2012), *available at* http://www.consumersunion.org/pdf/reverse-mortgage-report-2010.pdf.
[8] *Id*. at 13-14.
[9] *Id*. at 6-7.
[10] GARCIA, COLE & REEVES, *supra* note 7, at 7.
[11] *Id*. at 1.
[12] *Id.* at 26.
[13] *Id.* at 14-15.
[14] *Id.* at 26.
[15] GARCIA, COLE & REEVES, *supra* note 7, at 33-35.
[16] *See* CFPB, *supra* note 5, at 132. The CFPB noted that, quoting from a HUD Presentation of the National Reverse Mortgage Lenders Association Eastern Regional Meeting (Mar. 26, 2012), as of the end of February 2012, 9.4 percent of active HECM loans were in default on taxes and/or insurance. This proportion has increased from 8.1 percent in July 2011. CFPB, *supra* note 5, at 129.

manage an estimated 13,000 HECM reverse mortgages in default from failure to pay taxes and insurance."[17] The HUD guidance requires reverse mortgage lenders to engage in mitigation efforts before calling the reverse mortgage "due and payable" for failure to reimburse the lender for non-payment of insurance and taxes.[18] We expect this default trend to continue due to the potential for an increased number of borrowers becoming unable to afford maintenance on their reverse mortgaged properties because of an early depletion of assets—a consequence of choosing a lump-sum payout at an early age.

As confirmed by the CFPB, there is a disturbing increase in the number of borrowers taking the full amount for which they qualify in a lump-sum payment at the outset of the loan. Up-front lump-sum payouts now comprise 70 percent of new HECM originations[19] This is an alarming trend for many reasons including the rapid depletion of the borrower's main asset--home equity-- at the beginning of the loan and the rapidly increasing debt due to compounding interest on the loan amount, interest and fees. Seniors who take out reverse mortgages at an early age and with a lump-sum payment are at an increased risk of using up all of their equity which may be needed to cover unexpected costs later in life or even losing their home. That can set seniors up for a big shock after the initial boost of the lump-sum is depleted. As the CEO of Reverse Mortgage of Texas remarked "Nine out of 10 borrowers take the full lump-sum when they take out a reverse mortgage. One reason is that most borrowers still have a mortgage or a home equity credit line. By the time they have that paid with the HECM, there isn't much left."[20]

Some of the larger reverse mortgage lenders have gotten out of the business of making reverse mortgages. Those that have exited the market include Financial Freedom,[21] Met Life, Bank of America Home Loans and Wells Fargo Home Mortgage.[22] Together, Bank of America Home Loans and Wells Fargo Home Mortgage had a significant slice of the reverse mortgage market, a 36 percent market share according to the CFPB[23] and as reported by Time a slightly higher amount, or a 42 percent share.[24] According to Time, Bank of America cited "recessionary market dynamics" as its reason for leaving, while "Franklin Codel, Wells' head of national consumer lending, indicated that the decisive factor for his company's decision was HUD's regulations forcing lenders to work even with borrowers who can't keep up their end of the bargain, which includes paying taxes, homeowners insurance and private mortgage insurance."[25]

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[17] Reverse Mortgage Daily, HUD Issues Reverse Mortgage Default Guidance, http://reversemortgagedaily.com/2011/01/04/hud-issues-reverse-mortgage-default-guidance/.
[18] U.S. Dep't of Housing and Urban Dev. (HUD), Mortgagee Letter 2011-01 2 (2011), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=11-01ml.pdf.
[19] CFPB, *supra* note 5, at 19.
[20] Scott Burns, *Reverse Mortgages Have Their Pluses*, HOUSTON CHRONICLE, June 5, 2012, *available at* http://www.chron.com/business/article/Burns-Reverse-mortgages-have-their-pluses-3611218.php.
[21] Inman News, Another Key Player Exits Reverse Mortgage Business, http://www.inman.com/buyers-sellers/columnists/tomkelly/another-key-player-exits-reverse-mortgage-business
[22] *See* Tara Nicholle-Nelson, *Wells Fargo and Bank of America Opt Out of Reverse Mortgage Business*, TIME, June 20, 2011, *available at* http://moneyland.time.com/2011/06/20/mortgage-giants-wells-fargo-and-bank-of-america-opt-out-of-reverse-mortgage-business/; Zachary Tracer & Andrew Frye, *Met Life Exits Reverse Mortgages in Retreat from Banking*, Bloomberg, Apr. 26, 2012, *available at* http://www.bloomberg.com/news/2012-04-26/metlife-exits-reverse-mortgages-as-ceo-retreats-from-banking.html.
[23] CFPB, *supra* note 5, at 76.
[24] *See* Burns, *supra* note 20.

Reverse mortgage borrowers are getting younger. The average age is now 72 years old. In 1990 the average age was 76.7 and has been declining steadily since then.[26]

Currently, 40.3 percent of borrowers are single females, 38.1 percent of loans are made to multiple borrowers in a household (regardless of gender), 21.6 percent of borrowers are single males.[27]

As of June 30, 2012 HUD has endorsed a total of 767,287 HECM loans since 1990. California leads the nation as the state with the most HECM reverse mortgage originations (137,035), followed by Florida (84,702), Texas (47,697), New York (40,699), and New Jersey (28,389).[28]

The number of reverse mortgages being made is declining, but we believe this is temporary. 2009 was the peak lending year (the most HECM loans made since 1990) with 114,639 loans made during the 2011 federal fiscal year since HECM data. In federal fiscal year 2011, 73,093 HECM reverse mortgages were made. As of June 30, 2012, which includes the first 9 months of the 2012 federal fiscal year, 43,026 reverse mortgages have been originated.[29] Offsetting this decline is the expected surge of new entrants into the reverse mortgage borrowing demographic as the Baby Boom generation matures.

In the future, we predict there will be a surge of defaults due to borrower failure to properly maintain the property. Lenders require that borrowers pay property taxes, insurance, and all property maintenance. Borrowers who fail to keep up with these ongoing financial requirements risk going into default on their reverse mortgage loans. According to HUD, the vast majority of defaults occurred due to the borrower's failure to pay property taxes and/or keep up with their property insurance.[30] We believe that the reason we have not seen many defaults attributable to the borrowers' failure to properly maintain the property is because the vast majority of current reverse mortgages are relatively new loans and were issued when the subject properties were still in an acceptable state of repair. In February 2011, AARP noted, "Since the program began in 1989, more than 660,000 loans have been made—three-quarters (74) percent) of them in the most recent five fiscal years . . . More than half a million HECM loans are still in force."[31]

The developments and expected trends noted above have done little to relieve the concerns expressed in our 2010 report. If anything, the changes in the market and the new information revealed in the CFPB report have heightened our concerns about the need for strong consumer protections in the reverse mortgage market.

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[25] Burns, *supra* note 20.
[26] U.S. Dep't of Housing and Urban Dev. (HUD), HECM Cases Endorsed for Insurance by Fiscal Year also Selected Loan and Borrower Characteristics, June 30, 2012, http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/oe/rpts/hecm/hecmmenu (click on "Summary" tab).
[27] *Id.*
[28] *Id.* (click on "Endorsed Cases_State" tab).
[29] *Id.*
[30] AARP, HOW RECENT CHANGES IN REVERSE MORTGAGES IMPACT OLDER HOMEOWNERS 3 (2011), *available at* http://assets.aarp.org/rgcenter/ppi/ltc/fs211-economic.pdf (citing to U.S. Dep't of Housing and Urban Dev, *supra* note 26).
[31] *Id.* at 1.

THE CURRENT CONSUMER EXPERIENCE—STEP BY STEP

The CFPB requested feedback and information about many aspects of the consumer experience with reverse mortgages. We address many of them below highlighting key areas meriting the CFPB's attention.

STEP ONE: RESPONSIBLE LENDING—A NECESSARY PRIORITY

Brokers and Originators as Fiduciaries

In order for consumers to get the best protection in the marketplace, those selling or servicing reverse mortgages ought to have a legal fiduciary duty to act only in the best interest of the borrower. Those who breach their obligations as a fiduciary must be held liable for violating their duty to reverse mortgage borrowers.

Suitable Loans for Appropriate Borrowers

Directly related to this fiduciary duty, lenders and brokers should be required to consider whether the loans put borrowers at risk of losing their homes, if the borrower understands the complex nature of the contract, and if there are more viable and suitable alternatives available to the borrower. The barriers to entry to a reverse mortgage loan are very low. Just because a borrower can qualify, does not mean that it is in the borrower's best interest to purchase a reverse mortgage.

Consumers have shared with us their personal experiences about how being sold an inappropriate reverse mortgage has had a negative impact on their own life or on the lives of a loved one.

"I feel tricked that I was not advised that if I became disabled this could become a noose, that I could not live my dream anywhere else with this reverse mortgage. I saw commercials that say you have your home for as long as you want it. It is your home. I don't want to trash the program but I want to highlight the problems. Closing fees are so expensive. I ended up paying $11,000 for $57,000. Before the reverse mortgage, my monthly mortgage was $254. Now I pay $235 per month in mortgage insurance and I can't rent out my home. I cannot stay in my home without the care I need, but if I leave I will lose the home."

--Phyllis, Florida

Mother was 80 years old when a salesman got into her front door. The salesman told her all wonderful things. He showed her a CD with James Garner. Mom did not need a reverse mortgage. She had a line of credit that she had for three or four years. She only used $17,000 of it for repairs and other things of that sort. Her house was wholly paid for. She had $300,000 in stocks and bonds."

--California borrower family member

"My parents were sold a reverse mortgage they didn't need in 2005, while my dad was in the last month of his life with terminal cancer on narcotic pain medication. My mom had Alzheimer's and lacked the most basic communication and comprehension skills. Neither of them possessed the requisite capacity to sign any contract, not to mention a complex contract such as a reverse mortgage. The reverse mortgage sold to them cost more than $24,000 in fees and costs and they received a onetime lump-sum payment of $81,000, (15%) of the value of their $530,000 home. They had more than $400,000 in equity in the home, $60,000 in the bank and a $200,000 investment portfolio at the time of the signing of the Reverse Mortgage. Additionally, their mortgage payment was $650.00 and was paid by interest from their investments. My Dad's dying wish and intention was to provide the care my mom needed outside the home as her disease progressed with the money and investments they had accumulated throughout their lives. His dying wish to take care of his wife of more than 60 years was stolen from him by the salesman and lender who sold the reverse mortgage."

--Sandy, California

"My mother was sold a reverse mortgage she didn't need in December 2007. Just two weeks before she signed contract she was diagnosed with the first of the three cancers that she battled from November 2007 to her death on March 9, 2011. Mom was not mentally or physically capable of understanding the complex documents, or the effect it would have on her and her estate. Mom owned her home free and clear and had a line of credit for emergencies she could afford. The reverse mortgage is too complex for the average person to understand. The lender is a big corporation and the average person like me doesn't stand a chance."

--daughter of a reverse mortgage borrower

In addition to these stories consumers have shared with us, we know that 54,000 HUD insured HECM loans have gone into default. This is a huge group of individual consumers who have been impacted by problems with their reverse mortgages. The CFPB should probe into the circumstances surrounding the defaults involving the 54,000 HUD insured loans.

Responsible Lending Recommendations

- **We urge the CFPB to establish a uniform fiduciary obligation** for all reverse mortgage brokers, originators and servicers.

- **The CFPB should establish a suitability standard that promotes long-range solutions** and includes strong consumer protections for violating that standard. As a matter of public policy, a reverse mortgage should be considered suitable only when a senior has no other viable option. The standard should take into account, at a minimum, the negative consequences and potential harm these product could cause the borrower or others living in the home; whether the borrower truly understands the complexities and potential harm of the product being considered and whether the borrower's need for money can be met by other viable alternatives.

- **We urge the CFPB to probe more deeply to gather information directly from these impacted borrowers.** The CFPB should survey each of the 54,000 borrowers who have gone into default to gather this critical information which may reveal more details of the products' failures that could help inform the CFPB's regulatory action. The CFPB could survey the borrowers in at least two ways:

    - Ask borrowers to complete a list of questions that we recommend below for borrowers to complete before their counseling sessions, included as Appendix II. in order to quickly identify any of the usual problem areas for borrowers that may have existed before they bought their loans.

- Survey the borrowers with a list of questions regarding their reverse mortgage marketing and origination experience, the purpose for which the borrower took the loan, the extent and nature of any counseling received, the borrower's understanding and expectations about their reverse mortgage versus what was delivered, details about the borrower's age at origination, the amount received, whether the borrower got a fixed or an adjustable interest rate and the manner in which payment was received, i.e., a lump-sum at origination, monthly payments, a line of credit, or a combination of the last two payment options.

- **The CFPB should require the reverse mortgage lenders associated with each of the active HECM loans which have gone into default to submit complete loan files to the CFPB for a forensic investigation.** Coupled with the surveys from the borrowers' whose loans have gone into default, this information can be extremely helpful in helping the CFPB pinpoint areas for reform.

STEP TWO: OUTLAWING DECEPTIVE MARKETING

Marketing the Good Life; Ignoring Long-Term Implications

In our December 2010 report, we noted that because reverse mortgage proceeds can be used for any purpose, some lenders and those standing to benefit from selling reverse mortgages, pitch these loans as the ticket to the good life. This trend continues.

As home equity is a precious, finite commodity, and reverse mortgages are expensive loans, we believe reverse mortgages should be considered as loans of last resort. Because these loans are complex, costly, non-amortizing loans that rapidly deplete home equity, reverse mortgages are most appropriate for seniors who need ready cash and can't get it elsewhere at a better price. For example, reverse mortgages may be appropriate for low-income seniors in relatively good health who lack other retirement assets, do not qualify for lower cost alternatives, do not wish to downsize to a smaller property, and/or cannot meet their current mortgage obligation. Just because reverse mortgage proceeds can be used for any purpose does not mean they should be.

Reverse mortgage proceeds should never be used to purchase a deferred annuity. Additionally, we strongly caution potential borrowers from using a reverse mortgage to pay for an elaborate vacation, or to make upgrades to the home that could be funded with lower-cost single purpose grants or loans from city or county government. We note that marketing efforts persist to persuade seniors to use a reverse mortgage to fund non-essential purposes, including vacations such as cruises,[32] and "the ultimate travel adventure,"[33] or using the funds to purchase a camper or a trailer or for "shopping sprees." [34] Ultimately, using a reverse mortgage to fund these pursuits could result in an extremely costly way to enjoy a

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[32] iReverse Home Loans, How Can I Use My Reverse Mortgage Funds?, http://www.asksuehaviland.com/using-reverse-mortgage-funds.htm.
[33] HECM World, Staying Connected: The Travel Connection, http://www.reversefortunes.com/reverse-mortgage-news/senior-travel-retirement-reverse-mortgage (touting benefits of reverse mortgages).
[34] Reverse Mortgage Information, List of 25 Ways to Use Your Reverse Mortgage Payment Money, http://www.reversemortgageadviser.com/blog/reverse-mortgages/list-25-ways-reverse-mortgage-payment-money/.

vacation, purchase a vehicle, or splurge on a shopping spree, particularly considering the long-term implications of depleting one's assets while moving through the senior years.

The long-term implications of spending home equity with a reverse mortgage, especially for non-essential purposes, are significant. Unwary borrowers can easily deplete their equity through a reverse mortgage and later find they are unable to pay for the required upkeep of insurance, property taxes and property maintenance. Failure to satisfy any of these reverse mortgage loan conditions can place borrowers in default and at risk of losing their homes to foreclosures. Seniors who have depleted their equity and who can no long thrive independently may find that they are unable to buy their way into an assisted living facility. Seniors who do not have the assets to pay privately for a residential care facility lose the ability to access these services because residential care facilities for the elderly almost exclusively require private payment. Seniors who can not afford to move out of their homes run the risk of being stranded in their homes until their physical or mental conditions require that they be institutionalize in skilled nursing facilities under the Medicaid program; for want of the ability to privately pay. For a senior needing additional living assistance, living in a residential care facility for the elderly (RCFE) would be preferable over a nursing home because most assisted living facilities strive to offer "home like" accommodations, whereas nursing homes more closely replicate hospital environments and provide a heightened level of care that may not yet be necessary. In contrast, unlike a senior with a reverse mortgage, a home-owning senior, even with limited assets, still has an ability to sell his or her home and use the proceeds to move into a residential care facility for the elderly. Many RCFE establishments make accommodations for their residents that can keep them from having to go into a nursing home so there are obvious advantages to keeping this option open.

We believe reverse mortgages may have an impact on the availability of RCFE for seniors who could be good candidates for this important option and level of care choice but who are locked out by a reverse mortgage. The authors are aware of a situation where a residential care facility removed two seniors from their waiting list because the seniors had been sold reverse mortgages. Because of the projected loan payback in these cases, there simply won't be enough money for these seniors to buy their way into the preferred situation of a residential care facility for the elderly.

When "Opportunity" Knocks—Who is Really There?

There are significant marketplace activities occurring that impact the consumer experience and influence consumer choice. Most consumers are unaware of how they are being targeted. For example, lead generators are developing reverse mortgage prospects for brokers and originators. Salespersons use "senior specialist" designations of questionable credibility and quality to gain trust and to sell products. Advertising campaigns target seniors to build confidence in reverse mortgage products and to promote their sale.

Lead generators—making contact with borrowers and protecting lenders from scrutiny

Identifying potential borrowers and gaining their trust is the essential gateway for selling reverse mortgage products. It's no secret that reverse mortgage lead generators are working hard to gather and sell leads to originators and brokers who want to reach reverse mortgage borrowers. Like any other targeted marketing, lead generators have identified a discreet group of homeowners 62 years of age or older, whose homes are paid off, or nearly paid off, and present profitable sales opportunities.

Many seniors will call a phone number listed in a television ad or enter their information on a form sent as an email[35] or as a web ad thinking that they are responding to a lender directly, when what they are actually doing is communicating with a lead generator. Their personal information is then given to an agent who has paid money to be given that lead. Lead generators sometimes use celebrity endorsements to engender trust in the senior.

One company developing leads through direct mail essentially offers to protect lenders from obligations to provide important information to potential borrowers. In the Frequently Asked Question (FAQ) section of its website, this company, The Closer's Key, answers the question of whether its mailings comply with the laws in each state. The response:

> "Absolutely. Remember, ***The Closer's Key*** is **NOT** a Reverse Mortgage Lender or an Originator, but you ARE. If you decide to send your own mail campaigns, you will also be required to provide the appropriate banking disclosures. Since our mail is not sent from you, none of those steps are necessary when you use ***The Closer's Key***. We send you the responses of homeowners that we have identified as being interested in Reverse Mortgages. Leave the list, the mailing, and the risk of a bad campaign to us."[36]

Another service offered by The Closers Key is its so-called "Lead Nurturing Program" which allows the lender to groom its prospects by keeping in touch, including sending "hand signed birthday cards." The Closers Key describes the benefits to reverse mortgage lenders using this service as follows:

> "By providing your senior prospects with well written, colorful newsletters that address their areas of concern and interest, along with hand signed birthday cards you will have built the credibility and trust necessary to be their lender of choice when they decide to move forward on a purchase."[37]

The Closer's Key charges reverse mortgage originators $60 per reverse mortgage lead, $80 per lead in California, when the originator purchases a between 50 and 149 leads.[38] It claims that compared to other forms of lead generation, it has "a much higher Return on Investment (ROI)"[39] for the reverse mortgage leads it provides. No doubt, lead generation can be lucrative for the companies who are able to identify prospective reverse mortgage borrowers and sell that information to reverse mortgage brokers or originators. This reality can drive aggressive outreach to potential borrowers from lead generators whose sole interest is to cultivate and sell those leads to originators and brokers, not to serve the interest of the potential borrower.

Our experience is that consumers generally don't know the difference between a lead generating company and an actual lender. This can be especially confusing for a senior who is considering a reverse mortgage.

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[35] For an example of a lead generating website *see* NewRetirement, https://www.newretirement.com/Services/Reverse_Mortgage_ZipFirst_Call_PS_Lv1.aspx?nr_product=revmort&nr_a=Adsonar&nr_placement=RTRGT_text&nr_medium=OtherCPC&.

[36] The Closer's Key, Pricing and FAQ, http://www.closerskey.com/reversemortgageleads/PricingandFAQ/tabid/68/Default.aspx.

[37] The Closer's Key, Our Reverse Mortgage Leads, http://www.closerskey.com/reversemortgageleads/OurReverseMortgageLeads/Stayintouchwithyourleads/tabid/63/Default.aspx.

[38] The Closer's Key, Pricing and FAQ, http://www.closerskey.com/reversemortgageleads/PricingandFAQ/tabid/68/Default.aspx.

[39] The Closer's Key, About Us, http://www.closerskey.com/reversemortgageleads/AboutUs/tabid/54/Default.aspx.

Recommendations:

- **We encourage the CFPB to consider creating uniform rules guiding the activities of lead generators**. At a minimum, seniors should know when they are dealing with lead generators and when they are dealing with actual lenders.

- **The CFPB should look closely at how lead generators may be driving an artificial demand** for reverse mortgages.

- **The CFPB should examine whether lead generators are misleading seniors** in order to obtain marketing information to sell to others.

- **Reverse mortgage lead generators should be required to register with the CFPB** and should be held to the same laws and regulations that apply to any reverse mortgage broker or loan originator.

The ABCs of Building Trust: Sellers Using Questionable Designations to Boost Their Credibility With Seniors

In February 2007, Consumer Reports warned consumers to "Beware of bogus senior specialists who are targeting boomers' investments."[40] Today, that warning could easily be expanded to include so-called "senior specialists" who target seniors for any myriad of financial products, including reverse mortgages.

The marketplace is replete with individuals selling reverse mortgages, including many who claim a special designation that implies they are especially qualified to advise seniors, the very type Consumer Reports warned consumers about in 2007. Some reverse mortgage brokers are building trust by boosting their credentials with designations and titles which may engender misplaced trust from potential borrowers.

Some senior borrowers may assume they are protected by working with persons who hold themselves out as senior specialists. But borrowers may not know that not everyone who does so is a qualified and unbiased advisor. Others may assume that a senior specialist designation guarantees that the person who carries it is an expert in senior financial matters, especially as they relate to reverse mortgage sales. Still, some seniors may assume that those who carry these designations will be subject to effective enforcement action for engaging in illegal behavior.

What is most important for seniors to know is that education, training and regulatory oversight can vary tremendously from designation to designation. In this realm of confusing possibilities, senior borrowers are confronted with acronyms that may sound impressive but mean little in terms of ensuring borrowers are protected when they are considering reverse mortgage products.

Touting membership in organizations without the authority to exercise regulatory oversight and enforcement is a sales tactic that can cause confusion and misplaced confidence among elders who may falsely believe that salespersons with these designations are uniquely qualified to serve the financial needs of elders, or that holding this designation or membership in a trade organization ensures that members are subject to appropriate regulation. With these designations, senior borrowers may falsely believe that the sellers are fiduciaries or are held to enforceable fiduciary standards and are looking out for the borrower's best interest.

To protect senior consumers, several states have acted to regulate the use of "senior" designations in the general context of insurance sales and investment advising. These include Massachusetts, Nebraska, Arizona, Vermont and California. The State of Massachusetts in a memorandum entitled, *Discussion of Reasons for, and Objectives of, New Regulations Regarding Use of Senior Designations* noted many troubling trends related to the use of these designations in the context of investment advising:

> "Specifically, the Division has seen many instances of a purported senior specialist using credentials or professional designations, as well as other marketing tools, to give seniors the impression that he or she is acting as their unbiased, knowledgeable and independent advisor when the real objective is to convince them to sell financial assets in order to purchase a product the specialist offers. Investors often have insufficient information when trying to decide which designations represent a meaningful achievement by the agent or representative and which designations are simply empty marketing devices. The Division is particularly concerned about the use of designations that falsely conveys a certain expertise in matters dealing with seniors and their special financial needs."[41]

In considering its regulations, the State of Massachusetts noted that the public can be easily confused by the designations particularly given the fact that the requirements to obtain similar sounding designations can require a much higher level of training and monitoring of individuals who have earned those designations. It compared the much more rigorous requirements for earning a similar sounding designation, the Chartered Financial Analyst, or CFA, with what is required to earn a CSA and there is very little comparison between the two. Yet, an unsuspecting senior could be easily confused and worse yet, misled, by the similar sounding credentials.[42] The State of Massachusetts concluded that "senior designations fit within a broader pattern of deceptive marketing to seniors" and that such "designations are part of a larger pattern of senior abuse through sophisticated and misleading marketing campaigns geared towards senior citizens."[43]

On January 1, 2009 a new law took effect in California to regulate the conduct of insurance agents and brokers when using senior designations.[44] The new law provides that a broker or agent may not use senior designations, as defined, unless specified conditions have been met, which include preapproval by the insurance commissioner before any such designation can be used. The bill requires certain experience

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[40] *What to Watch for in '07*, CONSUMER REPORTS, Feb. 2007 (on file with authors).
[41] MASS. SECURITIES DIV., DISCUSSION OF REASONS FOR, AND OBJECTIVES FF, NEW REGULATIONS REGARDING USE OF SENIOR DESIGNATIONS 1, *available at* http://www.sec.state.ma.us/sct/sctpropreg/adminrec.pdf.
[42] *See id.* at 5.
[43] *Id.* at 10.
[44] AB 2150, 2007-2008 Session (Cal. 2008), *available at* http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2101-2150/ab_2150_bill_20080926_chaptered.pdf; *see also* Cal. Dep't of Insurance, Agents and Brokers: Senior Designations, http://www.insurance.ca.gov/0200-industry/0050-renew-license/0300-cont-education/Senior-Designations.cfm.

and education before the commissioner may approve the use of a senior designation. The California Department of Insurance issued a bulletin explaining which designations have been approved.[45]

Recommendations:

- **We urge the CFPB to investigate more fully the use of senior designations** in the reverse mortgage context and their impact on senior reverse mortgage borrowers.

- **We urge the CFPB to prohibit solicitations and advertisements for reverse mortgage products where senior designations may mislead** reverse mortgage borrowers or their families at any point in the reverse mortgage sales or servicing process.

The Pitch Continues: Advertising—Aggressive, Confusing, and Misleading

"In Celebrities We Trust"

"Well, if he [Robert Wagner] thinks it is good, I thought, it probably is."

--76 year old reverse mortgage borrower

In December 2010 we stated, "The brokers and lenders of reverse mortgages are saturating the airwaves, print media, and internet and using sophisticated marketing methods that target and track prospective senior purchasers." This trend continues today. We also noted that marketers of reverse mortgages were invariably sweeping in the kinds of individuals described in a University of Iowa brain degeneration study, those with damaged cortexes impeding their ability to resist fraudulent marketing.[46] Our concern persists regarding the vulnerabilities of these and other consumers subjected to reverse mortgage marketing.

In her testimony on May 9, 2012 before a hearing of the Subcommittee on Insurance, Housing and Community Opportunity at the U.S. House Committee on Financial Services, Lori A. Trawinski , Senior Strategic Policy Advisor with the AARP Public Policy Institute, called attention to the need for stricter regulation of paid celebrity spokespersons promoting reverse mortgages on television. She noted that "despite guidance in this area from the Reverse Mortgage Lenders Association" it is not always clear in advertisements that celebrities are paid spokespersons.[47]

Celebrity spokespersons can have a powerful influence on borrowers. A 76 year old reverse mortgage borrower told Consumers Union she was persuaded to get a reverse mortgage after seeing celebrity spokesperson, Robert Wagner, pitching reverse mortgages on television. When asked how this influenced her decision, she said she "recognized him and trusted and felt more comfortable with the idea because he was talking about how good they were."

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[45] Cal. Dep't of Insurance, Agents and Brokers: Senior Designations, http://www.insurance.ca.gov/0200-industry/0050-renew-license/0300-cont-education/Senior-Designations.cfm.
[46] GARCIA, COLE & REEVES, *supra* note 8, at 16.
[47] *Oversight of the FHA Reverse Mortgage Program for Seniors: Hearing Before the Subcomm. on Insurance, Housing and Community Opportunity of the H. Comm. on Financial Services*, 112th Cong. (2012) (Statement of Lori A. Trawinski, Ph.D., CFP©, Senior Strategic Policy Advisor AARP Public Policy Institute at 6), *available* at

Paid celebrity spokespersons are hired for the very reasons the Florida borrower stated; they are recognized and trusted by the senior audience. This means they can be uniquely influential and persuasive in promoting reverse mortgage borrowing. While using a celebrity spokesperson can increase the possible entertainment value of selling reverse mortgages on television or elsewhere, a misstatement about the product can be extremely damaging because it could attract potential borrowers to the product for the wrong reasons.

We believe paid celebrity spokespersons should be clearly identified as offering paid endorsements and should be subject to the same rules and laws against unfair and deceptive marketing as those who employ them. Because celebrities have the opportunity to reach many more borrowers by virtue of their celebrity, a misstatement or omission of important information by a celebrity can be very damaging. Below we highlight some celebrity spokesperson's misstatements which could mislead borrowers about the nature of a reverse mortgage and their potential impact.

"The best part is, the cash does not affect your Social Security"-- Henry Winkler, winner of the Reverse Mortgage Daily 2012 Best Celebrity Spokesperson Award. This general statement fails to mention an important point about how reverse mortgage payouts could impact eligibility for needs-based Supplemental Social Security.[48]

"**AAG, the best advice for a better life."**[49] 2012 Best Celebrity Spokesperson Award Runner-up, Fred Thompson, implies that the company selling the reverse mortgage provides the best advice for planning a future with a reverse mortgage. We do not agree. The seller of the product has an inherent interest in selling the product and cannot provide unbiased information for potential borrowers. The best advice would be from a qualified professional advisor unaffiliated with the lender, one who has nothing to gain through the sale of the product to the senior.

The problem with reverse mortgage advertising extends beyond celebrity endorsements

The problems with reverse mortgage advertising extend well beyond celebrity spokespersons appearing in television commercials and on YouTube videos. In some cases, advertisements for reverse mortgages in newspapers, arriving in the mail, and delivered via the web similarly do not sufficiently inform potential borrowers about the real risks associated with the product. For example, recent advertisements[50] assured borrowers that with a reverse mortgage, one can:

"Remain in your home as long as you live" This statement is not true. A reverse mortgage borrower may still be alive, but for various reasons may have triggered repayment of the reverse mortgage loan which may only be accomplished by selling the home. These conditions include not occupying the home as a principal residence for the requisite time (because of a move to a residential care facility or nursing home, for example), failure to pay property taxes, homeowners insurance, or maintain the property.

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http://www.aarp.org/content/dam/aarp/politics/advocacy/2012-06/01/written-testimony-lori-tawinski-fha-reverse-mortgage-aarp-5-7-12.pdf.

[48] YouTube, One Reverse Mortgage—Henry Winkler—Take Control 1:20, http://www.youtube.com/watch?v=vhhGparW6KQ&feature=youtube_gdata_player.

[49] YouTube, Tell Me About Reverse Mortgages Features, http://www.youtube.com/watch?v=B6puYEUWbpM&feature=BFa&list=UU7Smk0BjjYNpRHtxWOEEWyg.

[50] Advertisements on file with authors.

"You continue to own your own home." It is true that title remains in the borrower's name, however, there is no mention of how quickly the equity is drained when the interest compounds, steadily and quickly decreasing any ownership/equity interest remaining for the borrower.

"Your Social Security or Medicare benefits are not affected by a reverse mortgage." Also, though many reverse mortgage advertisements state that obtaining a reverse mortgage will not affect one's Medicare or Social Security benefits, they fail to mention that a reverse mortgage has the potential to affect Medicaid or Supplemental Security Income eligibility.

Recommendations:

- **The CFPB should look carefully at the latest brain science** regarding the susceptibility of seniors to marketing messages, especially those pitched by celebrity spokespersons selling financial products.
- **The CFPB should fully investigate the nature and impact of reverse mortgage marketing on senior consumers** and **enact appropriate protections** to ensure potential borrowers are not mislead and taken advantage of.
- At a very minimum, **advertisements using celebrity endorsements should clearly and prominently display information identifying the celebrity appearance as a paid endorsement.**
- **Every advertisement should be required to include a disclosure that the borrower risks default** on the loan and may lose the home to foreclosure if she fails to pay property taxes and insurance or fails to maintain the property.

STEP THREE: ADOPTING STRONGER PROHIBITIONS ON CROSS PROMOTIONS

Despite advances in federal protections for borrowers with regards to this issue, cross selling continues to be a problem. For example, the federal law is silent as to the conduct of an insurance agent who would recommend that a senior purchase a reverse mortgage in order to fund an annuity. Also, we are aware of a company that has created a program where insurance agents get paid for providing reverse mortgage leads to lenders while circumventing existing federal regulatory firewalls designed to prevent this very practice.[51]

What continues to remain unaddressed by existing federal law is the conduct of the insurance agent or financial planner who sells products or services and convinces the senior to purchase a reverse mortgage in order to finance the transaction. Furthermore, there should be a declaration that the use of reverse mortgage equity to purchase annuities is *per se* unsuitable and insurance agents or brokers who sell an annuity when they know or should know that reverse mortgage equity will be used to purchase that

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[51] The program is detailed in this webinar.
http://www.nationalbenefitadvisory.com/index.php?option=com_content&view=article&id=187&Itemid=46

annuity, shall be held civilly liable in a private cause of action. Finally, we feel that the prohibition on cross-selling should be extended to all reverse mortgage loans and not just HECM loans.

Recommendation:

We ask that the CFPB **ensure that consumers are protected against cross selling practices** by **enforcing existing laws** and creating new regulations to **close the current loopholes.**

STEP FOUR: TAKING THE PLUNGE—WHAT'S NEXT? HOLES IN THE COUNSELING SAFETY NET

Once the elder has decided to purchase a HECM government insured reverse mortgage, in order to complete the necessary requirements for closing, the elder must complete reverse mortgage counseling with a HUD approved counseling agency. Ideally, counseling would be a time where a borrower could discuss options to a reverse mortgage before deciding to go ahead with the reverse mortgage, but in fact, that is not always the case.

Quite often, by the time the potential borrower goes for the required counseling, the decision to take a reverse mortgage has already been made. As such, the reverse mortgage counseling, as important as it should be, becomes nothing more than a formality, along the route to the consummation of a reverse mortgage. While studies such as Iowa University's Orbitofrontal Cortex, Real-World Decision Making, and Normal Aging show that it is not always possible to change a borrower's mind once the senior has committed to a plan of action,[52] it is nevertheless possible to improve the quality, content and process while seniors are considering their choices and weighing their options before they commit to making a deal.

Outstanding Concerns with Counseling

In May 2010, the HUD counseling protocols were amended to include several new requirements including a borrower comprehension quiz. Also, HUD now requires the certification of individual counselors (not just for the counseling agency). Despite these changes, problems with reverse mortgages and counseling remain. Under the current HUD counseling protocols, the counselor is asked to cover 51 points about reverse mortgages during the session with the borrower, not including constructing the borrower's budget.[53] In one author's experience, this budget construction process alone can take up half of the counseling session. If the borrower is considering a HECM For Purchase loan, an additional 17 points about reverse mortgages should be covered. If the counseling session with the borrower lasts one hour which is the minimum time recommended by HUD and often the average length of a phone counseling session (although some borrowers have reported that it is shorter), that leaves just over one minute per discussion item. This is neither practical nor possible. This also makes it challenging for the counselor to ask the 10 questions he must ask for the comprehension quiz, to make sure the elder understands the basics of a reverse mortgage, to issue the counseling completion certificate, or to answer any follow up questions the elder may have.

Recommendations:

- **We reassert our suggestion from our December 2010 report that the counseling session be broken up into two parts** in order to maximize the borrower's opportunity to learn and retain as much information as possible about reverse mortgages without suffering undue fatigue. The first session would complete the borrower's budget and the second would cover the anatomy and

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[52] GARCIA, COLE & REEVES, *supra* note 8, at 14.
[53] U.S. Dep't of Housing and Urban Dev., HUD Handbook 7610.1 86-91 (2010), *available at* http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/7610.1/76101HSGH.pdf.

features of the reverse mortgage loan, alternatives to the reverse mortgage, and whether a reverse mortgage would be suitable for the particular borrower.

- **We also restate our recommendation to require face-to-face counseling sessions which should be recorded for future reference.** The new protocols have not abated problems with reverse mortgage borrowing. If anything, the soaring number of defaults adds urgency to our recommendations to improve reverse mortgage counseling. To these we add other recommendation that can help improve the content, quality and process of reverse mortgage counseling sessions.

- **We repeat our recommendation that counseling should be required for all reverse mortgages.** Currently, the bulk of reverse mortgage loans made are HUD HECM type loans requiring mandatory pre-loan counseling however, it is quite possible that proprietary loans will make a comeback in the future. While counseling should be improved, it would nonetheless be worthwhile to give all reverse mortgage borrowers information they can use, regardless of whether the loan is a federally insured.

- **We suggest that borrowers be required to complete a new pre-counseling questionnaire.** One way to improve the counseling process is to require potential borrowers to answer a list of questions that could pre-identify any key issues a HUD approved counselor should address during the counseling sessions. We have included this list as Appendix II. The benefit of this requirement is that seniors will have a chance to identify and consider potential issues with reverse mortgage borrowing in the privacy of their own home and on their own time. They must come to the counseling session with the list completed before the counseling can commence. And the reverse mortgage counselor will be alerted to priority issues to discuss.

- **The CFPB should consider options to use modern technology to provide virtual face-to-face counseling where in-person counseling is impossible.** The CFPB should develop policy on how this can be accomplished in a manner that provides for a confidential counseling session for the borrower that does not take place in an area controlled by the seller of the reverse mortgage. As stated in our previous report, HUD-approved reverse mortgage counseling conducted via phone is inadequate due to the complexities of the loan, the possible hearing or cognitive impairments of the borrower, and the difficulty of determining exactly who is on the other end of the phone call. We noted that according to the 2009 GAO report, 90 percent of reverse mortgage counseling takes place by telephone.[54] Recently, the National Reverse Mortgage Lenders Association noted that "the current percentage of telephonic reverse mortgage counseling sessions is running at approximately 95%."[55] There is no doubt that telephone counseling is the most convenient way to conduct a counseling session. However, buying a reverse mortgage is a life altering event and convenience should not be exchanged for the important role proper counseling can play in helping to protect senior borrowers when a product is inappropriate for their particular circumstances. Face-to-face counseling is always the preferred method for counseling on a product as complex as a reverse mortgage, even though it may not be the most

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[54] GARCIA, COLE & REEVES, *supra* note 8, at 15.
[55] http://services.nrmlaonline.org/NRMLA_Documents/NRMLA_MA_Comments.pdf, at 2.

convenient or the least expensive. With defaults hovering at nearly 10 percent the CFPB should be very concerned about how the high level of telephone counseling is creating cracks in the safety net. The CFPB should act immediately to remedy the deficiencies.

- **The reverse mortgage counseling session, whether done face-to-face or through web-based counseling technology, should be digitally recorded by the counselor** and the record preserved by the counselor and the broker/lender for the life of the loan. Upon request, the recording shall be presented to the borrower, his or her legal representative, the CFPB, or other regulator. The digitally preserved session will serve as evidence should any questions arise at a later regarding the borrower's capacity for understanding the loan at the time it was originated, who participated in the session, or if anyone unduly influenced the borrower into getting the loan.

- **The CFPB should take steps beyond the HUD Counseling Survey.** We recommend that the CFPB conduct a study on the effectiveness of the current counseling protocols and methods. A good place to start would be the U.S. Government Accountability Office's June 29, 2009 report on shortcomings of HUD-approved reverse mortgage counseling titled *Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls over Counseling for Borrowers*.[56] Great care needs to be taken in any further survey in order to determine the effectiveness of the HUD counseling program. We believe the HUD Counseling Survey, a customer satisfaction-style survey, will fall far short in determining both the quality of the counseling and determining whether elders are actually learning what they need to learn in order to make informed decisions about whether a reverse mortgage is suitable for their needs.

- **The CFPB should require brokers to provide prospective borrowers with a DVD prepared by the CFPB for counseling session preparation.** A DVD and packet of information prepared by the CFPB regarding the basics and risks of reverse mortgages should be sent to the elder seven days in advance of their reverse mortgage counseling session. Any such materials should be easy to follow, must use clear language and be written at appropriate literacy levels so they can be easily understood by the intended audience. This will enable the elder to properly prepare for the session and be able to ask important questions. Currently, the only materials the counselor is required to send the client prior to the counseling session is a handout titled *Preparing for your Counseling Session*, a printout of HECM loan comparisons, a printout of the TALC calculations, a loan amortization schedule, and the National Council on Aging's Booklet *Use Your Home to Stay at Home*.[57] Additional valuable handouts and resources,[58] which include *Reverse Mortgage Warnings for Consumers* and *Questions to Ask Your Lender About Reverse Mortgages* are given to the elder during or *after* the session. At this point the counseling certificate may have already been issued and it is unlikely the elder will call the counselor at a later date to discuss questions she has about the information contained in these very useful materials.

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[56] U.S. GOV'T ACCOUNTABILITY OFFICE, REVERSE MORTGAGES: PRODUCT COMPLEXITY AND CONSUMER PROTECTION ISSUES UNDERSCORE NEED FOR IMPROVED CONTROLS OVER COUNSELING FOR BORROWERS (2009), *available at* http://www.gao.gov/assets/300/291797.html.
[57] U.S. Dep't of Housing and Urban Dev., *supra* note 53, at 131-44.
[58] *Id.* at 152-77.

- **Require HUD approved counselors to report suspected elder abuse.** HUD-approved reverse mortgage counselors are advised in the counseling protocols that if over the course of a counseling session they begin to suspect that an elder is being abused or unduly influenced, they should tell the elder himself to call an elder abuse hotline. [59] This is grossly inadequate, as elders who are being abused are very unlikely to call a hotline on their own behalf due to shame, fear, or not recognizing their own abuse. Instead of being encouraged to tell elders to report their own abuse, HUD-approved reverse mortgage counselors should receive mandatory training on how to spot and report all elder abuse to the proper authorities. They should also be mandated to report all suspicions of elder abuse to their local Adult Protective Services agency.

- **Amend counseling protocols to include a discussion of inter-family loans.** As reverse mortgage counselors discuss possible alternatives to a reverse mortgage, they should include the option of considering an inter-family loan that could function as a reverse mortgage as we discussed in our December 2010 report. In an inter-family loan, a family member or family members advance money to the senior instead a bank doing the lending. If the senior has family members who are willing to consider such an arrangement, the senior's home equity can be used as collateral for repayment. A senior could contact an estate planning attorney or a Certified Public Accountant (CPA) not involved in selling reverse mortgages to set up the paperwork at a small fraction of the cost required to start a reverse mortgage.

STEP FIVE: PROTECTING NON-BORROWING SPOUSES, OCCUPANTS, AND FAMILIES

Spouses and tenants whose names are not on the reverse mortgage loan should be notified about their limited rights to remain in the home after the borrower dies or permanently moves out of the home. All members of the household need to know what the reverse mortgage could mean for them in the future. In our December 2010 report, we noted the importance of creating an originator's duty to non-borrowing tenants. We believe that duty should extend to all non-borrowing occupants. They should receive written notifications advising them that they need to develop a relocation plan for themselves. The originators should be required to retain copies of the notifications.

We also reiterate our recommendation that the CFPB conduct a study on the impact of surviving residents living in homes that are subject to reverse mortgages. This should also include an investigation into how an inappropriate reverse mortgage can impact family members who care for loved ones. Indeed many adult children who discover their loved one was taken advantage of by a reverse mortgage lender endure extreme hardship and stress in trying to obtain justice for their parents. Despite the time, expense and heartache a family may endure, many do not succeed. These are some stories struggling families have shared with us.

"Mom received an incomplete set of loan documents at closing, all unsigned by borrower or lender. There was no HUD1, no settlement statement, no right of rescission or other important documents required at closing. Without copies of these missing documents my mom could not verify the costs and fees, know if there was fraud or exercise the right to cancel the loan, even if she had been healthy and had capacity. As Mothers heir, I asked the lender for original copies of loan documents repeatedly. The

[59] *Id.* at 148.

lender refused saying I didn't have a right to them. From the beginning the lender refused to cooperate with requests for information and documentation."

-Julie, Iowa

One month after my father died I tried to give the $81,000 back to the lender and rescind the contract. I tried twice more over the next year and a half. Instead we were forced to litigate. The CFPB and the GAO have said this loan should never have been originated. What happened to my parents is happening everyday to someone's loved ones.

--Sandy, California

"I have never spent so much time sobbing so hard because I can't fix this. I've had two strokes and this is taking my son downhill more and more and that's all we have left is him and I. Mom was sold a reverse mortgage and with it paid cash for a used Toyota Corolla and some carpeting. She didn't realize that in exchange she traded her house, 3 acres and all her memories. If my mother were looking down on this it would break her heart."

-Marjorie, Maryland

Recommendations:

- **The CFPB should create an originator's duty to non-borrowing spouses and occupants.** Reverse mortgage originators should be required to investigate who besides the borrower resides in the home. The originator should be required to provide written notification to all occupants of their limited rights when the borrower dies or permanently moves out of the home.

- **The CFPB should conduct a study on displacement risks for survivors.**

- **The CFPB should conduct a study on the impact of an unsuitable reverse mortgage on surviving family members** and enact appropriate protections to ensure families are not further victimized.

Appendix I.

Protecting Reverse Mortgage Consumers Union

Recommendations

Ensuring Responsible Lending

- **We urge the CFPB to establish a uniform fiduciary obligation** for all reverse mortgage brokers, originators and servicers.
- **All reverse mortgage brokers and originators as well as lead generators should be required to register with the CFPB.**
- **The CFPB should establish a suitability standard that promotes long-range solutions** and includes strong consumer protections for violating that standard. As a matter of public policy, a reverse mortgage should be considered suitable only when a senior has no other viable option. The standard should take into account, at a minimum, the negative consequences and potential harm these product could cause the borrower or others living in the home; whether the borrower truly understands the complexities and potential harm of the product being considered and whether the borrower's need for money can be met by other viable alternatives.
- **We urge the CFPB to probe more deeply to gather information directly from these impacted borrowers.** The CFPB should survey each of the 54,000 borrowers who have gone into default. The survey can be used to gather critical information which may reveal more details regarding potential product, marketing or professional failures that precipitated the default.
- **The CFPB could survey the borrowers in at least two ways.**
    - One would be to ask borrowers to complete a list of questions that we recommend below for borrowers to complete before their counseling sessions, included as Appendix II. in order to quickly identify any of the usual problem areas for borrowers that may have existed before they bought their loans.
    - The second would be to survey the borrowers with a list of questions regarding their reverse mortgage marketing and origination experience, the purpose for which the borrower took the loan, the extent and nature of any counseling received, the borrower's understanding and expectations about their reverse mortgage versus what was delivered, details about the borrower's age at origination, the amount received, whether the borrower got a fixed or an adjustable interest rate and the manner in which payment was received, i.e., a lump-sum at origination, monthly payments, a line of credit, or a combination of the last two payment options. We have included a sample survey which the CFPB could use to learn more from borrowers who have gone into default, included as Appendix I.

- **The CFPB should require the reverse mortgage lenders associated with each of the active HECM loans which have gone into default to submit complete loan files to the CFPB for a forensic investigation.** Coupled with the surveys from the borrowers' whose loans have gone into default, this information can be extremely helpful in helping the CFPB pinpoint areas for reform.

Protecting Consumers from Deceptive Marketing

- **We encourage the CFPB to consider creating uniform rules guiding the activities of lead generators**. At a minimum, seniors should know when they are dealing with lead generators and when they are dealing with actual lenders.
- **The CFPB should look closely at how lead generators may be driving an artificial demand** for reverse mortgages.
- **The CFPB should examine whether lead generators are misleading seniors** in order to obtain marketing information the lead generator sells to another.
- **Reverse mortgage lead generators should be required to register with the CFPB** and should be held to the same laws and regulations that apply to any reverse mortgage broker or loan originator.
- **We urge the CFPB to investigate more fully the use of senior designations** in the reverse mortgage context and their impact on senior reverse mortgage borrowers.
- **We urge the CFPB to prohibit solicitations and advertisements for reverse mortgage products where senior designations may mislead** reverse mortgage borrowers or their families at any point in the reverse mortgage sales or servicing process.
- **The CFPB should look carefully at the latest brain science** regarding the susceptibility of seniors to marketing messages, especially those pitched by celebrity spokespersons selling financial products.
- **The CFPB should fully investigate the nature and impact of reverse mortgage marketing on senior consumers** and **enact appropriate protections** to ensure potential borrowers are not mislead and taken advantage of.
- At a very minimum, **advertisements using celebrity endorsements should clearly and prominently display information identifying the celebrity appearance as a paid endorsement**
- **Every advertisement should be required to include a disclosure that the borrower risks default** on the loan and may lose the home to foreclosure if she fails to pay property taxes and insurance or fails to maintain the property.

- The CFPB should ensure that **any required disclaimers should appear in all reverse mortgage advertisements** and they **should be printed in at least the same size font** as all other language contained in the ad touting the benefits of reverse mortgages.

Adopting Stronger Prohibitions on Cross Promotions

- We ask that the CFPB ensure that consumers are protected against cross selling practices by **enforcing existing laws and creating new regulations to close the current loopholes**.

Strengthening the Quality and Content of Counseling

- **We reassert our suggestion from our December 2010 report that the counseling session be broken up into two parts** in order to maximize the borrower's opportunity to learn and retain as much information as possible about reverse mortgages without suffering undue fatigue. The first session would complete the borrower's budget and the second would cover the anatomy and features of the reverse mortgage loan, alternatives to the reverse mortgage, and whether a reverse mortgage would be suitable for the particular borrower.

- **We also restate our recommendation to require face-to-face counseling sessions which should be recorded for future reference.** The new protocols have not abated problems with reverse mortgage borrowing. If anything, the soaring number of defaults adds urgency to our recommendations to improve reverse mortgage counseling. To these we add other recommendation that can help improve the content, quality and process of reverse mortgage counseling sessions.

- **We repeat our recommendation that counseling should be required for all reverse mortgages.** Currently, the bulk of reverse mortgage loans made are HUD HECM type loans requiring mandatory pre-loan counseling however, it is quite possible that proprietary loans will make a comeback in the future. While counseling should be improved, it would nonetheless be worthwhile to give all reverse mortgage borrowers information they can use, regardless of whether the loan is a federally insured.

- **We suggest that borrowers should be required to complete a new pre-counseling questionnaire.** One way to improve the counseling process is to require potential borrowers to answer a list of questions that could pre-identify any key issues a HUD approved counselor should address during the counseling sessions. We have included this list as Appendix II.

- **The CFPB should consider options to use modern technology to provide virtual face-to-face counseling where in-person counseling is impossible.** The CFPB should develop policy on how this can be accomplished in a manner that provides for a confidential counseling session for the borrower that does not take place in an area controlled by the seller of the reverse mortgage. Face-to-face counseling is always the preferred method for counseling on a product as complex as a reverse mortgage, even though it may not be the most convenient. Modern technology offers new options.

- **The reverse mortgage counseling session, whether done face-to-face or through web-based counseling technology, should be digitally recorded by the counselor** and the record preserved by the counselor and the broker/lender for the life of the loan, and presented to the borrower, his or her legal representative, the CFPB, or other regulator upon demand.

- **The CFBP should conduct an additional study on the effectiveness of the current counseling protocols and methods.** We believe the HUD Counseling Survey, which is a customer satisfaction-style survey, will fall far short in determining both the quality of the counseling and determining whether elders are actually learning what they need to learn in order to make informed decisions about whether a reverse mortgage is suitable for their needs.

- **The CFPB should require brokers to provide prospective borrowers with a DVD prepared by the CFPB for counseling session preparation.** A DVD and packet of information prepared by the CFPB regarding the basics and risks of reverse mortgages should be sent to the elder seven days in advance of their reverse mortgage counseling session. Any such materials should be easy to follow. They must use clear language and be written at appropriate literacy levels so they can be easily understood by the intended audience.

- **The CFPB should require that additional important information be given to the consumer before the counseling session.** This way, the elder can properly prepare for the session and be prepared to ask questions. Additional valuable handouts and resources include *Reverse Mortgage Warnings for Consumers* and *Questions to Ask Your Lender About Reverse Mortgages*.

- **The CFPB should require HUD approved counselors to report suspected elder abuse.** HUD-approved reverse mortgage counselors are advised in the counseling protocols that if over the course of a counseling session they begin to suspect that an elder is being abused or unduly influenced, they should tell the elder himself to call Adult Protective Services (APS). [60] This is grossly inadequate, as elders who are being abused are very unlikely to call APS on their own behalf due to shame, fear, or not recognizing their own abuse. Instead of being encouraged to tell elders to report their own abuse, HUD-approved reverse mortgage counselors should receive mandatory training on how to spot and report all elder abuse to the proper authorities. They should also be mandated to report all suspicions of elder abuse to their local Adult Protective Services agency.

- **Amend counseling protocols to include a discussion of inter-family loans.** As reverse mortgage counselors discuss possible alternatives to a reverse mortgage, they should include the option of considering an inter-family loan that could function as a rarely considered but promising alternative to a reverse mortgage.

Protecting Non-Borrowing Spouses and Occupants

- **The CFPB should create an originator's duty to non-borrowing spouses and occupants.** Reverse mortgage originators should be required to investigate who besides the borrower resides in the home. The originator should be required to provide written notification to all occupants of their limited rights when the borrower dies or permanently moves out of the home.

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[60] http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/7610.1/76101HSGH.pdf (page 148)

- **The CFPB should conduct a study on displacement risks for survivors.**
- **The CFPB should conduct a study on the impact of an unsuitable reverse mortgage on surviving family members** and enact appropriate protections to ensure families are not further victimized.

Appendix II.

Reverse Mortgage Suitability Self-Evaluation Worksheet

Whether a loan is "suitable" or right for the borrower who is purchasing it can only be determined by looking at the totality of the particular borrower's circumstances, goals, and needs.

Suitability is a very personal matter. Seniors interested in reverse mortgages need to determine whether a reverse mortgage is right for them and if so, which reverse mortgage is most appropriate. Because reverse mortgage decision-making can involve a complex number of issues, before committing to a loan every senior should contemplate possible negative consequences. CANHR highly recommends that seniors use the suitability worksheet provided below before committing to the purchase of a reverse mortgage.

Seniors are advised to discuss every concern they may have about suitability with the reverse mortgage counselor. Every prospective purchaser of a reverse mortgage should study and complete this worksheet before attending a reverse mortgage counseling session. No purchaser should move forward in purchasing a reverse mortgage loan unless and until he or she completes this self-evaluation and clearly understands if a reverse mortgage is suitable for their needs.

Benefits of the Suitability Self-Evaluation Worksheet

- The senior purchaser can contemplate the suitability of reverse mortgages at his or her leisure.
- Seniors should complete and bring the worksheet to their counseling session so that they may ask the counselor questions that will help the senior clarify for themselves if having a reverse mortgage is ultimately a suitable proposition.
- The worksheet is designed to help the senior understand the various suitability issues and to prepare the senior for the mandatory counseling session.
- There is simply not enough time in the counseling session to cover all aspects of reverse mortgages.
- Having completed a pre-counseling worksheet will serve as a roadmap to both the senior and counselor throughout the session.
- Having a completed worksheet will promote an efficient counseling session by keeping the session focused on issues that the senior has pre-identified as being important or in need of further clarification.

The Pre-Counseling Self-Evaluation Suitability Worksheet

Directions: Carefully read through each of these suitability questions and make notes on a separate piece of paper of any question you may have about suitability. You are also advised to bring these questions with you when you have your reverse mortgage counseling session. The purpose of the counseling session is for you to have an opportunity to speak openly and candidly with a neutral professional whose sole purpose is to help you understand what it means to become involved with this particular loan.

Five Questions to Help You Decide: Is a Reverse Mortgage Right For Me?

1. What happens to others in your home after you die or move out?

Rule: When the borrowers die, move, or are absent for a length of time, the loan becomes due.

Considerations: Having a reverse mortgage affects the future of all those living with you. If the loan cannot be paid off, then the home will have to be sold in order to satisfy the lender.

- Who is currently living in the home with you?
- What will they do when you die or permanently move from the home?
- Have you discussed this with all those living with you or any family members?
- Who will pay off the loan, and have you discussed this with them?
- Heirs may not have enough money to pay off the loan, and the home will pass into foreclosure.

Yes or No: Do you need to discuss this with your counselor?

2. Do you know that you can default on a reverse mortgage?

Rule: There are three continuous financial obligations. If you fail to keep up with your insurance, property taxes, and home maintenance, you will go into default. Uncured defaults lead to foreclosures.

Considerations: Will you have adequate resources and income to support your financial needs and obligations once you have removed all of your available equity?

- Are you contemplating a lump-sum withdrawal?
- What other resources will you have once you have reached your equity withdrawal limit?
- Will you have funds to pay for unexpected medical expenses?
- Will you have the ability to finance alternative living accommodations, such as independent living, assisted living, or a long-term care nursing home?
- Will you have the ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable?

Yes or No: Do you need to discuss this with your counselor?

3. Have you fully explored other options?

Rule: Less costly options may exist.

Consideration: Reverse mortgages are compounding loans, and the debt to the lender accelerates as time goes on. You may want to consider using less expensive alternatives or other assets you may have before you commit to a reverse mortgage.

- Financial options for senior may include, but not be limited to, less costly

home equity lines of credit, property tax deferral programs, or governmental aid programs.

- With peer-to-peer lending or other contractual arrangements you can use your home equity to secure loans from family members, friends, or would-be heirs.

Yes or No: Do you need to discuss this with your counselor?

4. <u>Are you intending to use the reverse mortgage to purchase a financial product</u>?

Rule: Reverse mortgages are interest-accruing loans.

Considerations: Due to the high cost and accelerating debt incurred by reverse mortgages, using home equity to finance investments is not suitable in most instances.

- The cost of the reverse mortgage loan may exceed any financial gain from any product purchased.

- Will the financial product you are considering freeze or otherwise tie up you money?

- There may be high surrender fees, service charges or undisclosed costs on the financial products purchased with the proceeds of a reverse mortgage.

- Has the sales agent offering the financial product discussed suitability with you, and has the agent given you a written suitability evaluation?

Yes or No: Do you need to discuss this with your counselor?

5. <u>The impact of reverse mortgages on your eligibility for government assistance programs</u>.

Rule: Income received from investments will count against individuals seeking government assistance.

Considerations: Converting your home equity may create non-exempt asset statuses.

- There are state and federal taxes on the income investments financed through home equity.

- If you go into a nursing home for an extended period of time, the reverse mortgage loan will become due, the home may be sold, and any proceeds from the sale of the home may make you ineligible for government benefits.

- The impact of government benefit recovery programs on home equity.

Yes or no: Do you need to discuss this with your counselor?