ConsumersUnion
POLICY & ACTION FROM CONSUMER REPORTS

CANHR
Long Term Care Justice and Advocacy

December 13, 2012

Mr. Shaun Donovan
Secretary, U.S. Dept. of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

Re: Stabilizing and Strengthening the Home Equity Conversion Mortgage (HECM) Program

Dear Secretary Donovan:

Consumers Union, the advocacy and policy division of *Consumer Reports* (CU)[1] and California Advocates for Nursing Home Reform (CANHR)[2] read with great interest the recent FHA's proposals to stabilize and strengthen the HECM program as detailed in written testimony before the Senate Banking Committee on December 6, 2012. We would like to take this opportunity to comment on these proposals which we understand are part of the agency's larger initiative to restore the nation's housing market and to ensure the longevity of the FHA mortgage insurance programs.

Over the last decade and a half, CU and CANHR have been very active in advocating for protections for reverse mortgage borrowers and their families. Most recently, on August 31, 2012, we submitted comprehensive comments in response to the CFPB's request for information regarding the consumer experience in the reverse mortgage marketplace. [3] Additionally, In December 2010, CU and CANHR published a report on reverse mortgages entitled *Examining Faulty Foundations in Today's Reverse Mortgages*.[4] As stated in our 2010 report, and in our 2012 comments to the CFPB, we 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

[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] CONSUMERS UNION & CALIFORNIA ADVOCATES FOR NURSING HOME REFORM, COMMENTS TO THE CONSUMER FINANCIAL PROTECTION BUREAU ON REQUEST FOR INFORMATION REGARDING CONSUMER USE OF REVERSE MORTGAGES (2012), *available at* http://www.consumersunion.org/pdf/Comments_CFPB_8-31-12.pdf.

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

downsize to a smaller property or do not wish to move into assisted living in the future.[5] Nonetheless, it is critical that the FHA and other regulators 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.

According to the CFPB, the reverse mortgage marketplace is experiencing a serious 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.[6] Not only does this reality pose grave threats to reverse mortgage borrowers and their families, but the FHA now notes in testimony from December 6 that the HECM program is under "substantial stress."[7] Also in the testimony, the FHA announced that "in order to mitigate the negative impact of the 2013 and future HECM books on the MMI Fund, FHA is taking aggressive actions in both the near and long terms to ensure that consumers are better protected and able to sustain their reverse mortgage, while also protecting the Fund."[8] We have examined the proposals to the extent possible, given the limited details provided in the testimony, and provide our initial analysis below. We look forward to learning more about the planned initiatives and providing additional feedback.

FHA Proposals

The FHA is proposing both immediate, interim steps and longer-term changes to reduce losses and permanently strengthen the HECM program. The goal articulated in the December 6 testimony for taking immediate steps is to "better align the program with its objective of enabling seniors to age-in-place and to reduce the likelihood of borrower defaults due to nonpayment of property taxes and insurance."[9]

On these points, we observe that while these measures may help reduce losses, they may nonetheless do little to help seniors to age-in-place. The risk of default due to nonpayment of property taxes and insurance, or failure to properly maintain the home, is just one of the many reasons reverse mortgages can be ill-advised for seniors and prevent them from aging-in-place. It is not the only reason. Seniors getting reverse mortgages are subject to other risks such as not having sufficient reserves for home care or medical care or any other aging-related costs that are outside the realm of taxes and insurance

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[5] *Id.* at 5.

[6] *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.

[7] *Status of FHA Programs and the FY 2012 Annual Review of the Mutual Mortgage Insurance Fund: Hearing Before the Senate Banking Committee*, 112th Cong. (2012) (Written Testimony of Secretary Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development at 15), *available* at http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=c2ed0463-5007-459f-a699-d281480b9195

[8] *Id.*

[9] *Id.*

or maintenance of the home. While highly desirable, aging-in-place is simply not possible, advisable, nor safe for all seniors at all stages in their lives.

Proposed Short-Term Interim Measures

- **First, the FHA is proposing to use its existing authority to reduce the maximum amount of funds available to a HECM borrower by consolidating its HECM Standard and HECM Saver programs and limiting loan amounts to the maximum HECM Saver amount.** Because of the costs associated with a reverse mortgage, CU and CANHR advise potential borrowers to consider a reverse mortgage as a loan of last resort. Borrowers should seek a reverse mortgage only after exhausting all their less expensive options first, obtaining professional advice independent of the reverse mortgage lender and in addition to any required counseling, and should borrow as little as possible because of how quickly the debt grows due to compounding interest and fees. Lowering the maximum amount a borrower could draw from a reverse mortgage to the maximum amount available under the Saver program would help minimize the degree of indebtedness for a reverse mortgage borrower and this could be a prudent safeguard.

- **Second, to reduce its costs of disposing properties mortgaged with a HECM, the FHA will permit estate executors to either sell such properties or convey them to HUD for disposal**. We'd like to learn more about this proposal. Our initial impression is that it would be a good idea to give estate executors more options as long as there is no penalty for selling directly rather than conveying the encumbered property to HUD for disposal.

FHA Proposed Longer-Term Changes

The FHA is proposing three longer-term changes that would require legislative action or rule making.

- **First**, l**imiting the borrower's draw at origination to mandatory obligations**. We would like to learn more about what will be included within the definition of "mandatory obligations" and who will determine which items qualify. Regardless of what items might fall within this definition, it will be essential to put protections in place to prevent reverse mortgage sellers from evading the intent of any future law or regulation in this area. Lenders could easily circumvent lump-sum payout restrictions by structuring a reverse mortgage as a *de facto* lump-sum payout while still calling it a limited up-front payout. This could easily be accomplished by paying out a small or limited initial payment, followed by a much larger secondary payment, which may constitute the balance of the eligible loan amount or close to it, shortly after the initial payout. Such tactics would be reminiscent of high-cost lenders structuring high-cost loans as spurious open ended loans to evade the consumer protections of the Home Ownership and Equity Protection Act of 1994 (HOEPA).

- **Second, requiring the performance of a financial assessment to determine the suitability of various HECM products for individual borrowers**. CU and CANHR have long supported requiring lenders and brokers to perform a suitability assessment that evaluates whether there are lower cost options available to the borrower, whether a loan puts a borrower at risk of losing their home, and determining whether the borrower fully understands the complex nature of the contract and its future implications. In addition to protecting borrowers and their families, because HECM loans are backed by the FHA, it's even more important that suitability assessments be required before origination to minimize the risk of loan defaults which destabilize and weaken the HECM program.

- **Third, establishing a tax and insurance set-aside or an annuity to ensure there is sufficient equity available to pay taxes and insurance to avoid defaults from non-payment of taxes and insurance**. CU and CANHR believe it is prudent to have, at the beginning of the loan, a set aside for paying taxes and insurance. We recommend that an additional set-aside be required for exigent circumstances. We think it is prudent to isolate a certain amount of equity to be held in a separate account, similar to a spendthrift trust account, to provide a small cushion for a borrower who otherwise would have no other assets to draw upon if they have to move out of the home because it becomes uninhabitable, or because ailments or infirmities make it unsafe or impractical to live in an independent setting. As we envision the exigent circumstances trust, the sums will not be subject to any recourse by the lender. The trust is meant only for the borrower during his or her lifetime, and should the borrower pass away, any remaining sums would go unencumbered to the surviving heirs.

CU and CANHR Recommend Additional Steps

In addition to the measures being considered by the FHA, CU and CANHR recommend that the FHA initiate a more comprehensive multi-agency consumer protection approach which would include measures we have proposed to the CFPB (discussed in fuller detail in our August 31, 2012 comments) as critical steps to protect seniors and their families. These include:

- **Establishing a fiduciary responsibility for the loan**: Lenders and brokers must be required to act in the best interests of the borrower and should be held liable for violating this fiduciary duty.

- **Outlawing deceptive marketing**: All reverse mortgages should be required to include information to help borrowers determine whether the loans are suitable for them.

- **Adopting stronger prohibitions on cross promotions**: Prohibitions against cross promotions of other financial products by lenders and brokers should extend to non-HECM loans. Insurance agents and brokers should be held liable for selling an annuity when it is purchased with reverse mortgage funds.

- **Strengthening the quality and content of counseling**: Specify that the prospective borrower receive a copy of a pre-counseling self-evaluation suitability worksheet no sooner than seven days prior to the required counseling session, to be discussed during the counseling session. HUD counselors should be required to hold an in-person session with prospective borrowers to determine whether a reverse mortgage is suitable for the borrower. Where face-to-face counseling is not possible, the borrower should receive audio-visual counseling over the internet or through some other simultaneous audio-visual technology. The counseling session should be recorded with a copy sent to the borrower and another copy kept in the counselor's file. The counselor should deny a counseling certificate to the borrower if the loan is not in the best interest of the senior.

- **Protecting non-borrowing spouses and tenants**: 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.

Conclusion

In our comments to the CFPB in August 2012, we noted that the stakes are high for seniors eligible for reverse mortgages. Those stakes are no less high today. Reverse mortgage borrowers are homeowners with a lot of equity which for many may be their largest remaining asset. 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. They are typically retirees and are no longer in the workforce. They are heavily marketed to by reverse mortgage sellers who can easily sell a reverse mortgage loan, even if the loan is unsuitable, and bear little or no risk in the process. Further compounding borrower vulnerability, once a borrowing senior's 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. For all these reasons, we support a swift, comprehensive, and multi-agency action to protect reverse mortgage borrowers and their families.

We look forward to an opportunity to speak with you further about these issues at your earliest convenience.

Very truly yours,

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cc: Carol Galante, Acting Federal Housing Administration (FHA) Commissioner and Assistant Secretary for Housing, U.S. Department of Housing & Urban Development

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