MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

EXAMINING REVERSE MORTGAGES: REQUIREMENTS, ADVERTISING AND FACTORS CONTRIBUTING TO DEFAULT RATES

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The Office of the Commission Auditor was established in September 2002 by Ordinance No. 03-2 to provide support and professional analysis of the policy, service, budgetary and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners on the fiscal operations of County departments, as well as whether or not the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented.

This report, prepared in collaboration with the Miami-Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards. The Office of the Commission Auditor plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the objectives; accordingly, OCA does not express an opinion on the data gathered by the subject matter experts.

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I. Reverse Mortgage Introduction and History

Purpose

The Office of the Commission Auditor (OCA) prepared this report in response to a request from Commissioner Barbara J. Jordan, representing District 1, to conduct research regarding whether minorities are disproportionately impacted by reverse mortgage foreclosures. The report addresses whether reverse mortgage foreclosures have negatively impacted urban African American neighborhoods at higher rates than other ethnic groups.

Scope

The scope of this request encompasses the following:

(1) The impetus driving eligible homeowners to capitalize on reverse mortgages;
(2) Regulatory and operational framework of the Home Equity Conversion Mortgage (HECM), the most popular type of reverse mortgage;
(3) Reverse mortgage foreclosure rates across states and cities; and
(4) Factors contributing to the disproportionate rate of reverse mortgage foreclosure in urban minority communities.

Methodology

To produce this report, OCA conducted qualitative and quantitative analytical research, i.e., reviewing academic treatises; journalistic investigatory expositions; governing legislation and case law relating to reverse mortgage foreclosures; and regulatory, programmatic, and statistical data from the U.S. Department of Housing and Urban Development (HUD) applicable to the HECM.

Reverse mortgage loans are hybrid financial products that allow elderly homeowners to borrow against the collateral of their housing wealth.[1] In contrast to a standard loan, the key element of a reverse mortgage contract is that the homeowner is not required to pay off the debt or make payments on the loan as long as he or she chooses to stay in the house. Rather, the lender makes payments to the homeowner. As such, reverse mortgages provide an attractive lending solution for homeowners ages 62 and older - the eligible population - who are long on home equity but short on monthly cash flow.[2]

In addition to living longer, demographics suggest that a significant segment of the U.S. population is approaching retirement age. By 2030, when the last of the baby boomer generation turns 65, there will be over 70 million Americans in their golden years. Studies reveal that many Americans over 65 have most of their net worth tied up in the form of home equity. Despite having equity in their homes, roughly one-third of seniors have monthly cash flow shortages resulting in average credit card debt of $9,283. Reverse mortgages provide a means of converting home equity into cash, thereby permitting seniors to age in place for as long as their total net worth allows. For many seniors, the options available for converting home equity into cash are

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[1] Swarn Chatterjee, *Reverse Mortgage Participation in the United States: Evidence from a National Study*, International Journal of Financial Studies (March 17, 2016).
[2] Ben Jakubowicz, *What the HECM is a Reverse Mortgage: The Importance of the Home Equity Conversion Mortgage in an Aging America*, University of Louisville Law Review (2016).

limited. Post-recession tightening in the mortgage industry has made it difficult for borrowers to access the built-up equity in their homes.[3]

Reverse mortgages offer an option for low-income homeowners, who would otherwise not qualify for home equity loans, to borrow money by converting their house equity. Studies find that households with low incomes, modest wealth and poor health were most likely to benefit from reverse mortgages. Reverse mortgage loans can provide a financial buffer for elderly households that lack adequate retirement savings, or for those who are severely credit constrained.[4] Such borrowers use the loan to cover everyday expenses, home improvements or extraordinary costs that arise. Borrowers who already have a home mortgage or other debt may also use reverse mortgages to pay down debt so they have fewer monthly expenses.[5]

In addition to the financial liquidity afforded to otherwise financially constrained consumers, a reverse mortgage provides a convenient alternative to many financially struggling older homeowners who are unwilling or unable to downscale by selling their larger homes and moving to smaller homes. The trend of an increasing number of households retiring with inadequate savings is expected to continue, as many of the employer sponsored retirement plans have moved from a defined benefit plan (in which employers guarantee a retirement pension) to a defined contribution plan (in which employers match employee contributions up to a point, but the responsibility for saving for retirement rests with the employee). Due to the two large stock market downturns over the past 15 years, many recent retirees may look favorably upon reverse mortgages as a way to supplement their retirement income needs. Still, only 2% of eligible elderly homeowners report borrowing against their housing wealth.[6]

There are two other important considerations for households deciding whether to take out a reverse mortgage. First, any money drawn potentially reduces inheritance that the elderly individuals would otherwise have given as a bequest. Second, converting housing assets to cash could adversely affect Medicaid eligibility, since housing is exempt from Medicaid's eligibility calculator, while cash is not.[7]

The most popular type of reverse mortgage is the Home Equity Conversion Mortgage (HECM), which accounts for 90% of the reverse mortgage loans originated in the United States.[8] This report focuses exclusively on HECMs and all references to reverse mortgages are specifically directed thereto. The HECM program, administered by HUD's Federal Housing Administration (FHA), is a reverse mortgage insurance program whereby older homeowners borrow against the equity in their homes and FHA insures lenders against potential losses associated with the loans. Unlike conventional mortgages, HECM borrowers receive payments, either periodically or in a lump sum, and the mortgages are paid off when the home is sold. Where the home is sold for less than the balance of the reverse mortgage, FHA will reimburse the lender up to a maximum claim

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[3] *Id*.
[4] Swarn Chatterjee, *Reverse Mortgage Participation in the United States: Evidence from a National Study*, International Journal of Financial Studies (March 17, 2016).
[5] Libby Perl, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, Congressional Research Service (March 2017).
[6] Swarn Chatterjee, *Reverse Mortgage Participation in the United States: Evidence from a National Study*, International Journal of Financial Studies (March 17, 2016).
[7] *Id*.
[8] Ben Jakubowicz, *What the HECM is a Reverse Mortgage: The Importance of the Home Equity Conversion Mortgage in an Aging America*, University of Louisville Law Review (2016).

amount. Borrowers pay an up-front fee, or premium, when they enter into HECMs, and pay annual premiums based on a loan's principal balance.[9]

The HECM program came about as a demonstration in 1988. The impetus for creating a program to help older homeowners obtain reverse mortgages was to make home equity available for aging in place – particularly for homeowners with lower incomes who may otherwise have difficulty with maintenance and other expenses. Another idea was that reverse mortgage proceeds could be used to pay for long-term care expenses. Offering government insurance was also a means to encourage private lenders to enter into the reverse mortgage market. The HECM program became permanent in 1998 and has insured nearly 1 million reverse mortgages since its inception.[10] Nearly 10% of those loans are in default, jeopardizing the affordability and sustainability of the HECM program.[11]

II. HECM Framework, Program Requirements and Guidelines

The statute governing HECMs set eligibility standards for both borrowers and properties. To participate in the HECM program, HUD requires homeowners to be 62 years of age or older. The home being mortgaged must be a one-to-four family residence, with the homeowner occupying one of the units as their primary residence. While most borrowers already occupy their homes, HECMs can also be used to purchase property. In the case of a purchase, a borrower must pay the difference between the HECM and purchase price with cash from sources approved by HUD.[12]

Under the HECM program, the amount of cash available to the borrower is determined by: (1) the amount of equity in the home; (2) the age of the borrower; (3) the interest rate charged; and (4) the payment option selected by the borrower. HECMs, like other FHA loans, are subject to loan limit restrictions based on geographic area. Reverse mortgage borrowers retain title to their residence unless specified events occur. The borrower is entitled to pay off the loan balance and retain ownership of the residence. If selling the home yields a return in excess of the reverse mortgage obligation, the senior (or the senior's estate) retains the proceeds.[13]

Reverse mortgages, like traditional mortgages, are subject to closing costs including origination fees. In addition to origination fees and standard third-party closing costs, reverse mortgage borrowers are required to pay Mortgage Insurance Premiums to the FHA as a means of reducing the risk of loss associated with the HECM program.[14]

Reverse mortgage borrowers can opt for loan disbursements in a number of different ways. The options include: (1) a lump-sum payment; (2) a line-of-credit that the borrower may draw upon as needed; (3) a tenure plan that provides a fixed disbursement every month so long as the

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[9] Libby Perl, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, Congressional Research Service (March 2017).
[10] *Id*.
[11] Ben Jakubowicz, *What the HECM is a Reverse Mortgage: The Importance of the Home Equity Conversion Mortgage in an Aging America*, University of Louisville Law Review (2016).
[12] Libby Perl, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, Congressional Research Service (March 2017).
[13] Ben Jakubowicz, *What the HECM is a Reverse Mortgage: The Importance of the Home Equity Conversion Mortgage in an Aging America*, University of Louisville Law Review (2016).
[14] *Id*.

homeowner remains in the home; and (4) a term payment which provides a fixed payment amount for a set number of years.[15]

The HECM statute requires that potential borrowers go through counseling. Spouses must participate in counseling even if they will not be on the mortgage. Counseling must be provided by a counselor who has gone through the HUD approval process. Other obligations of the borrower include: must stay in the home as their principal residence; must keep the home in good repair; and must pay their property taxes and homeowner's insurance.[16]

For a number of years, there was uncertainty surrounding the way in which spouses of HECM borrowers, who themselves were not a party to the loan, would be treated when the borrowing spouse passed away. The confusion centered on HUD interpreting the term "homeowner" in Section 1715-20(j) of the U.S. Code in a way that a federal district court ruled was at odds with the statute. For years, HUD interpreted the statute to require that HECMs become due and payable upon the borrower's death. The result was numerous non-borrowing spouses finding themselves facing foreclosure or faced with having to be responsible for full loan repayment when their spouses passed away. However, due to the court decision invalidating HUD's interpretation of the statute, HUD has changed the way in which non-borrowing surviving spouses are treated to ensure that, in most cases, they may remain in the home.[17] Protections for non-borrowing spouses exist in both mortgagee letter and HECM regulations effective September 19, 2017.

Under the HECM program, there are certain events that trigger loan repayment. The four principal events are: (1) death of the borrower; (2) sale of the property; (3) when the property is no longer the owner-occupied residence of the borrower or the borrower does not occupy the property for 12 consecutive months; and (4) when the borrowers violate the mortgage covenants. A borrower breaches the mortgage covenants by failing to make timely payments for property taxes or hazard insurance, or by failing to keep the property adequately maintained. When a triggering event occurs, the lender ceases making payments to the borrower and the loan becomes due and payable.[18] Within six months of notifying the borrower of due and payable status or becoming aware of the borrower's death (or additional time approved by HUD), the lender is required to proceed to foreclosure.[19]

III. Jurisdictional Survey of Top HECM Origination and Foreclosure Rates

Across the nation, an increasing number of seniors are facing foreclosure after taking out reverse mortgages, either because they fell behind on property charges or failed to meet other requirements of the complex mortgage loans. A HUD report issued in 2016 found that nearly 90,000 reverse mortgage loans held by seniors were at least 12 months behind in payment of taxes and insurance and were expected to end in "involuntary termination" in fiscal year 2017.[20]

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[15] *Id*.
[16] Libby Perl, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, Congressional Research Service (March 2017).
[17] *Bennett v. Donavan*, 4 F. Supp. 3d 5 (D.D.C. 2013).
[18] Ben Jakubowicz, *What the HECM is a Reverse Mortgage: The Importance of the Home Equity Conversion Mortgage in an Aging America*, University of Louisville Law Review (2016).
[19] Libby Perl, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, Congressional Research Service (March 2017).
[20] Jennifer McKim, *More seniors are taking loans against their homes – and it's costing them*, The Washington Post (August 25, 2017), https://www.washingtonpost.com/business/economy/more-seniors-

Prior to 2015, the only thing homeowners aged 62 and older needed to qualify for a reverse mortgage was equity in their home. Lenders were not required to determine whether they could afford to maintain their homes or cover tax and insurance payments in the future. Some homeowners used the funds to pay off the original mortgages or ran out of money after covering living expenses over many years. After 2015, HUD began requiring for all borrowers to undergo a financial assessment to qualify, to make sure they will be able to pay for their taxes and insurance.[21]

Still, tens of thousands of troubled loans remain. More than 18% of reverse mortgage loans transacted from June 2009 to June 2016 are expected to go into default because of unpaid taxes and insurance, according to the HUD report. Foreclosures on these mortgages have been on the rise after a 2011 mandate from HUD requiring loan servicers to reach a repayment plan with seniors in tax and insurance default – or to foreclose if there is no way to help them. In 2015, the federal agency instituted detailed timelines for lenders to work with borrowers. HUD made these changes to shore up its insurance fund after a federal audit a year earlier criticized it for allowing lenders to continue paying property charges for defaulting borrowers, adding to the borrowers' final debt, which resulted in millions of dollars of losses in 2009 and 2010. In many cases, a lender paid property charges to municipalities for years, in an effort to protect the lender's investments.[22]

Table 1 below depicts the top 10 states where the most reverse mortgages originated in 2017.[23] The state where the most reverse mortgages originated was California, with 9,325. The state with the least for that year was Alaska with 38. Florida was ranked second.

Table 1

Ranking	State	2017 HECM Traditional Reverse Mortgages
1	California	9,325
2	Florida	3,712
3	Texas	3,385
4	Colorado	2,188
5	New York	1,965
6	Arizona	1,633
7	Washington	1,333
8	Pennsylvania	1,253
9	North Carolina	1,131
10	New Jersey	1,093

A. HECM Foreclosure Rates in Urban Neighborhoods

According to a recent USA TODAY investigatory report, in a stealth aftershock of the Great Recession, nearly 100,000 loans that allowed senior citizens to tap into their home equity have failed, blindsiding elderly borrowers and their families and dragging down property values in

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are-taking-loans-against-their-homes--and-its-costing-them/2017/08/25/5f154072-883a-11e7-961d-2f373b3977ee_story.html?utm_term=.b164976189f7.

[21] *Id.*

[22] *Id.*

[23] Reverse Mortgages.com, *Reverse Mortgage Statistics*, https://www.reversemortgages.com/reverse-mortgage-statistics

their neighborhoods. In many cases, the worst toll has fallen on those ill-equipped to shoulder it: urban African Americans, many of whom worked for most of their lives, then found themselves struggling in retirement.[24] Borrowers living near the poverty line in pockets of Detroit, Chicago, Baltimore, Miami, Philadelphia, and Jacksonville are among the hardest hit based on an analysis of more than 1.3 million loan records.[25]

USA TODAY found that reverse mortgages end in foreclosure six times more often in predominantly black neighborhoods than in neighborhoods that are 80% white. Even comparing only poorer areas, black neighborhoods fare worse. In ZIP codes where most residents make less than $40,000, the analysis found reverse mortgage foreclosure rates were six times higher in black neighborhoods than in white ones. In hundreds of reverse mortgage default cases reviewed by USA TODAY, the homeowners' original financial needs were basic. They were the kinds of challenges – house repairs and medical bills – that those with easier access to credit and more disposable income can weather with a second traditional mortgage or home equity loan.[26]

Eight of the 25 ZIP codes with the most foreclosures are in Florida. That is more than in any other state. The USA TODAY analysis found that the Florida ZIP codes with the highest rates of reverse mortgage foreclosures had two things in common – they tended to be low-income and they had a high percentage of black and/or Hispanic residents. In Florida, unlike some other states, foreclosures require a lawsuit.[27]

Table 2 below depicts the top five cities with the highest default rates on reverse mortgages.[28] Note that an area of Chicago encompassing six ZIP codes endured more than 1,000 reverse mortgage foreclosures in the past five years – more than many entire states. The foreclosure rate is more than nine times the national average. Pockets of the area were still suffering from the 1930s redlining that froze out black borrowers for decades.[29]

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[24] Nick Penzenstadler and Jeff Kelly Lowenstein, *Seniors were sold a risk-free retirement with reverse mortgages. Now they face foreclosure*, USA TODAY (July 5, 2019), https://www.usatoday.com/in-depth/news/investigations/2019/06/11/seniors-face-foreclosure-retirement-after-failed-reverse-mortgage/1329043001/

[25] *Id*.

[26] *Id*.

[27] Melanie Payne, *Reverse mortgages: 15,000 older Florida homeowners at risk of foreclosure and homelessness*, Naples Daily News (June 12, 2019), https://www.naplesnews.com/story/news/local/2019/06/12/seniors-florida-lose-homes-reverse-mortgage-foreclosure-thousands-risk-homeless/1192702001/

[28] Joe Guillen, *Detroit leads the nation in reverse mortgage foreclosures*, Detroit Free Press (June 14, 2019), https://www.freep.com/story/news/investigations/2019/06/14/detroit-leads-nation-reverse-mortgage-foreclosures/1442186001/

[29] Nick Penzenstadler and Jeff Kelly Lowenstein, *Seniors were sold a risk-free retirement with reverse mortgages. Now they face foreclosure*, USA TODAY (July 5, 2019), https://www.usatoday.com/in-depth/news/investigations/2019/06/11/seniors-face-foreclosure-retirement-after-failed-reverse-mortgage/1329043001/

Table 2

Ranking	Location
1	Detroit, MI
2	Chicago, IL
3	Baltimore, MD
4	Miami, FL
5	Philadelphia, PA

To better assess whether reverse mortgages disproportionately impact minorities, OCA submitted a Freedom of Information Act request to HUD's Office of Administration on May 18, 2018. OCA requested statistical information on reverse mortgage borrowers from 2010 to 2017 broken down by state, marital status, ethnicity and gender. HUD assessed a fee of $195 for the data, which was paid by Miami-Dade County. On May 2, 2019, OCA sought assistance through Senator Marco Rubio's office to obtain the requested information. As of the publication date of this report, OCA has not received any of the requested data.

B. HECM Foreclosure Rates across Miami-Dade County Commission Districts

The below map was developed to show reverse mortgage foreclosure rates from 2013 to 2017 across Miami-Dade County Commission Districts. Each ZIP code within a district was reviewed using a tool found in the USA TODAY article chronicling reverse mortgage foreclosure rates.[30] The map shows the results of that review, highlighting foreclosure rates per County ZIP code. The ZIP codes falling under each commission district were provided by the Elections Department. Note that some commission districts share the same ZIP code. The three ZIP codes with the highest default rates are: (1) 33147 with 161 defaults; (2) 33142 with 120 defaults; and (3) 33127 with 79 defaults. The cumulative default rate across the County is 1,499.

[30] Nick Penzenstadler and Jeff Kelly Lowenstein, *Seniors were sold a risk-free retirement with reverse mortgages. Now they face foreclosure*, USA TODAY (July 5, 2019), https://www.usatoday.com/in-depth/news/investigations/2019/06/11/seniors-face-foreclosure-retirement-after-failed-reverse-mortgage/1329043001/

Miami-Dade County

Reverse Mortgage Default Rates

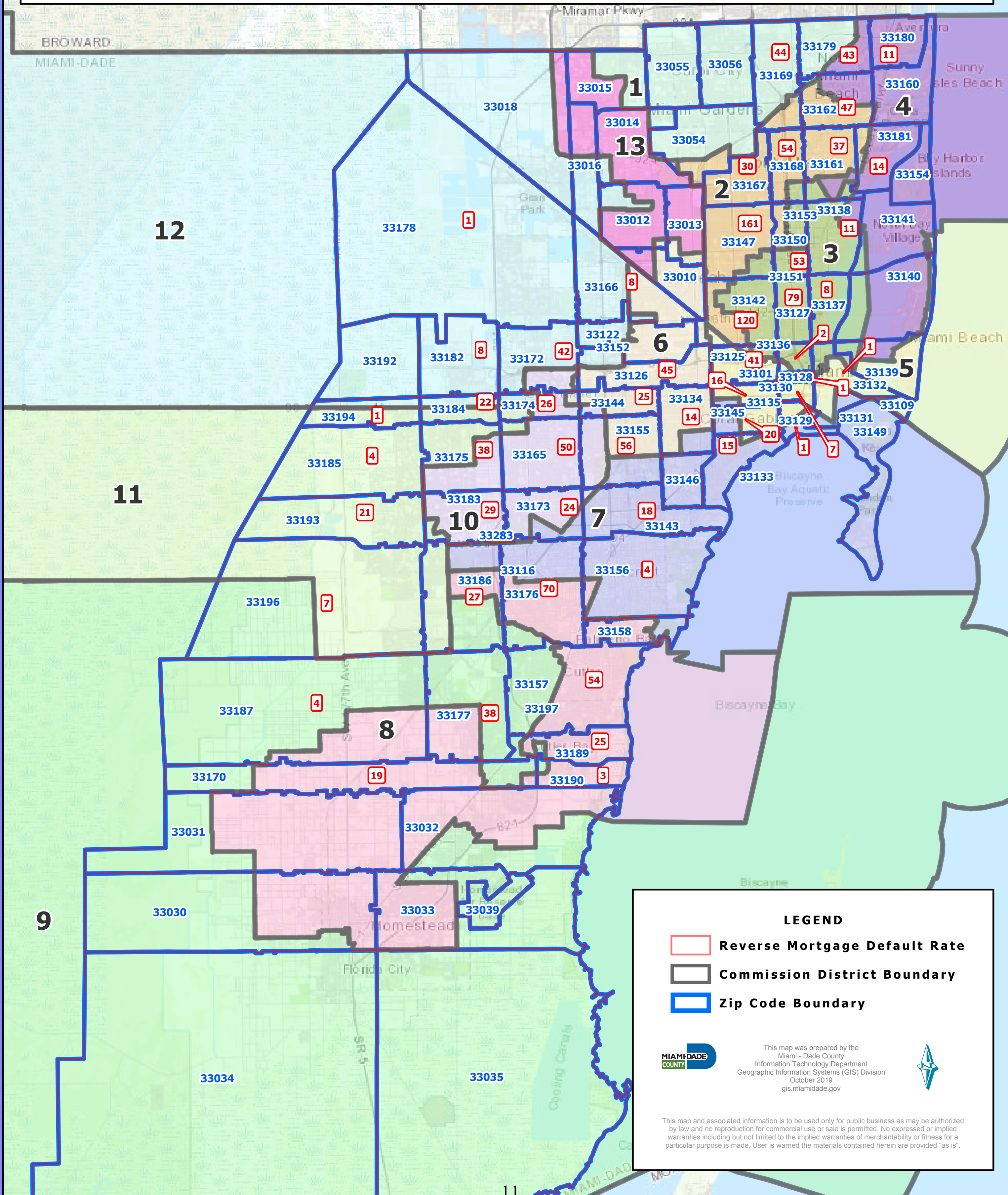

Table 3 below captures comprehensive data relating to the foreclosure rates from 2013 through 2017, including median household income and default percentages per racial/ethnic categorization. The data was provided by the authors of the referenced USA TODAY report.

Table 3

Zip Code	Median Household Income	Foreclosures (2013-17)	Foreclosures (2013-17) by Race			
			% White	% Black	% Hispanic	% Asian
33125	$26,019.00	41	4.46	2.48	92.33	0.38
33126	$34,528.00	45	4.79	0.41	93.72	0.8
33127	$24,505.00	79	3.08	53.1	42.41	0.19
33128	$19,250.00	1	4.17	5.86	89.46	0.09
33129	$55,034.00	1	26.47	1.31	68.98	1.97
33130	$20,891.00	7	11.91	2.08	84.1	1.14
33131	$74,486.00	0	37.17	2.78	54.7	3.52
33132	$51,784.00	1	34.19	13.69	46.67	2.97
33133	$55,229.00	15	35.31	11.02	51.36	1.3
33134	$52,417.00	14	22.33	0.82	75.07	1.21
33135	$19,954.00	16	4.71	0.65	94.03	0.36
33136	$21,250.00	2	8.8	50.98	37.13	1.4
33137	$43,098.00	8	24.83	22.78	48.06	2.13
33138	$40,811.00	11	28.51	38.89	28.48	1.58
33142	$23,955.00	120	2.52	40.02	56.72	0.13
33143	$64,067.00	18	33.43	8.59	53.14	3.52
33144	$37,556.00	25	6.16	0.19	92.99	0.43
33145	$40,210.00	20	11.22	0.67	86.54	1.06
33146	$105,545.00	0	48.18	3.48	41.41	5.06
33147	$28,586.00	161	2.29	55.75	41.01	0.14
33150	$25,759.00	53	3.43	71.65	22.55	0.29
33155	$53,132.00	56	15.58	0.58	82.52	0.76
33156	$94,399.00	4	44.65	1.92	47.87	4.19
33157	$62,845.00	54	25.26	25.85	44.01	2.78
33158	$134,764.00	0	58.54	2.08	33.84	3.81
33161	$33,662.00	37	11.21	61.34	23.22	1.73
33162	$41,751.00	47	14.62	50.56	28.59	3.42
33165	$44,679.00	50	9.23	0.25	89.63	0.66
33166	$51,400.00	8	20.78	5.45	71.57	1.62
33167	$37,093.00	30	2.44	68.92	26.49	0.39
33168	$46,136.00	54	5.04	66.08	25.46	1.16
33169	$46,322.00	44	3.87	81.14	11.78	1.22
33170	$40,800.00	19	10.16	44.93	42.81	0.77
33172	$41,742.00	42	6.42	0.83	90.95	1.36
33173	$59,755.00	24	19.1	1.52	76.57	1.99
33174	$36,595.00	26	7.3	2.68	87.68	1.67
33175	$52,555.00	38	6.83	0.39	91.66	0.84
33176	$60,501.00	70	26.53	15.41	54.06	2.47
33177	$59,724.00	38	9.4	13.08	74.5	1.58
33178	$74,040.00	1	15.03	1.74	79.01	3.36
33179	$46,023.00	43	24.1	38.31	32.88	2.31
33180	$68,733.00	11	57.92	3.87	35.2	1.76
33181	$40,534.00	14	29.67	29.02	37.15	2.12
33182	$73,464.00	8	8.57	10.25	79.88	0.71
33183	$54,299.00	29	12.41	1.42	84.3	1.34
33184	$52,873.00	22	5.53	0.21	93.44	0.63
33185	$83,478.00	4	8.79	1.16	87.63	1.77
33186	$66,515.00	27	19	5.53	70.77	2.96
33187	$65,087.00	4	16.94	5.5	74.3	1.76
33189	$51,677.00	25	20.92	18.13	56.86	1.89
33190	$43,865.00	3	13.76	21.69	61.17	1.63
33193	$49,468.00	21	8.33	2.1	86.85	1.99
33194	$75,881.00	1	12.35	14.38	70.9	1.52
33196	$65,147.00	7	13.69	5.97	75.98	2.91

IV. Reverse Mortgages and Misleading Advertising Practices

The federal Consumer Finance Protection Bureau (CFPB) has long warned about deceptive advertising and reverse mortgages. In December 2016, the federal agency fined three companies – American Advisors Group, Reverse Mortgage Solutions and Aegean Financial – for alleged false claims, saying they told seniors with reverse mortgages that they would not have to make monthly payments or face foreclosure, omitting the risks of failing to pay property charges. The companies did not admit wrongdoing in settlements that required them to collectively pay $790,000 in fines.[31]

Reverse mortgage advertisements can entice the elderly into believing that the loans are risk-free. In some cases, consumers often do not understand that the reverse mortgage would be structured as a loan. More specifically, the advertisements do not focus on traditional loan features, such as interest rates or fees. The fine print in some of the advertisements is unreadable to most potential borrowers; yet, the fine print usually includes pertinent information such as tax and insurance requirements, property maintenance, residency requirements, and repayment terms. Additionally, the role of the government in a reverse mortgage is often misrepresented; the most common and easiest to notice is the use of text and images that invoke a sense of affiliation with patriotism or the federal government. Images of Bald Eagles, government seals, references to tax free incentives, HUD or FHA invoke a strong sense of government affiliation in many of the advertisements.[32]

While the advertisements themselves can be misleading, often reverse mortgage advertisements on television compound the problem by featuring celebrities vouching for companies offering reverse mortgages. Celebrity endorsements often fail to prominently state that the celebrity is acting as a paid spokesperson for the product, rather than providing his or her own personal testimonial about the product. Advertisements generally run on television or in print formats without any mention of the substantial risks involved; the conclusions are often incomplete or misleading. Most notably, such ads proclaim that borrowers can remain in their homes as long as they are alive; however, these ads fail to explain that moving to a residential care facility, not paying insurance or taxes, or not adequately maintaining the home can all cause borrowers to lose their homes to foreclosure.[33]

The federal laws are not tailored to the unique needs of reverse mortgages and are generally weak restraints on the ability of lenders to put forth potentially misleading advertisements. The U.S. Department of Justice classifies the elderly as uniquely vulnerable to a broad range of exploitation and abuse. Financial crimes in particular are targeted at seniors with alarming frequency, and are all too often successful. Southern states have the lowest financial literacy in America and make up a significant portion of reverse mortgages in the country. Dementia and Alzheimer's also impact the rational decision making of elderly individuals. This problem is prevalent in American society and poses a great threat to the potential pool of individuals considering whether or not to obtain a reverse mortgage.[34]

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[31] Jennifer McKim, *More seniors are taking loans against their homes – and it's costing them*, The Washington Post (August 25, 2017), https://www.washingtonpost.com/business/economy/more-seniors-are-taking-loans-against-their-homes--and-its-costing-them/2017/08/25/5f154072-883a-11e7-961d-2f373b3977ee_story.html?utm_term=.b164976189f7

[32] Eric Brenner, *Reverse Mortgages and Elderly Americans: Protecting the Greatest Asset from Potentially Misleading Advertising Practices*, 80 Alb. L. Rev. 569, 2016-2017.

[33] *Id.*

[34] *Id*.

Reverse mortgages are subject to the same laws affecting conventional mortgages. First, Regulation Z affects nearly every credit transaction through the implementation of the Truth in Lending Act or Home Ownership and Equity Protection Act (HOEPA). However, the Federal Trade Commission asserts that reverse mortgages are still exempt from most of HOEPA's broader requirements. Moreover, there are no specific rules within these statutes directly addressing advertising of reverse mortgages. HUD is the primary agency responsible for regulating reverse mortgages. The Dodd-Frank Wall Street Reform and Consumer Protection Act was intended to create vast reform, but its provisions do not go far enough in addressing the issues present in reverse mortgage advertising.[35]

Multiple government agencies are charged with providing consumer protection for seniors obtaining an HECM loan. With banks such as Wells Fargo, Bank of America and MetLife exiting the reverse mortgage market, federal banking oversight in the industry was greatly reduced, as these companies held much of the market share. HUD also plays a regulatory role in how HECM loans are advertised. After repeated complaints about misleading advertisements, the agency responded by distributing a five-page letter to all mortgagees. Without changing any policies or requiring immediate compliance, the letter reminds all mortgagees of the policies that have already been in place. Unlike other reverse mortgage regulations included in the letter, the section on misleading advertisements and marketing techniques lacked any specific reference to laws or regulations that can be referenced to ensure compliance.[36]

A 750-member class-action suit in 2011 accused Urban Financial Group of targeting African American women homeowners with deceptive marketing and unfavorable loan rates in some West and South Side neighborhoods of Chicago. The suit alleged that, in one year, 70% of Urban Financial loans in Chicago went to areas that were at least 80% African American. From 2001 to 2009, the company wrote more than half of its reverse mortgages in ZIP codes that were 80% black, according to USA TODAY's analysis. The suit further alleged that the brokers targeted the minority homeowners for the mortgage products and overpriced home repair work that they did not need or cannot afford to capitalize on elderly widows unaccustomed to both the home's finances and home repair.[37] In 2013, Urban Financial was ordered to pay each class member $672,000.[38]

V. The Housing Market in the United States

OCA examined a 13-year homeownership trend nationally. **Graph 1**[39] depicts U.S. homeownership percentage rates by race and ethnic group for the years 2006 through 2018, and through the second quarter of 2019. Based on the data, homeownership by African-Americans increased by 7% from 2017 to 2018; however, homeownership for the same group declined by 4.96% from 2006 to 2018; the outlook appeared to improve for African-Americans in 2019, with homeownership rates reported to have climbed by 5.9% through the second quarter of 2019.

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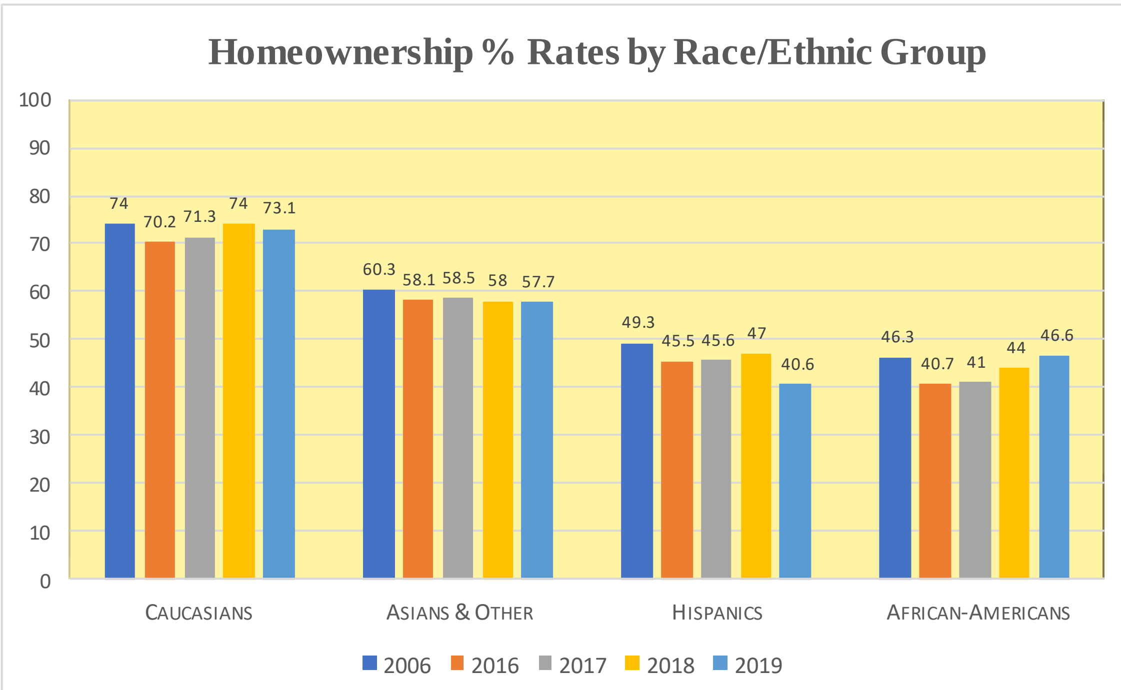
[35] *Id*.
[36] *Id*.
[37] Nick Penzenstadler and Jeff Kelly Lowenstein, *Seniors were sold a risk-free retirement with reverse mortgages. Now they face foreclosure*, USA TODAY (July 5, 2019), https://www.usatoday.com/in-depth/news/investigations/2019/06/11/seniors-face-foreclosure-retirement-after-failed-reverse-mortgage/1329043001/
[38] Jon Greig, *New Report Details How Elderly Black Homeowners were Targeted by Deceptive Lenders*, Blavity News (June 12, 2019), https://blavity.com/new-report-details-how-elderly-black-homeowners-were-targeted-by-deceptive-lenders?category1=news
[39] U.S. Census Bureau, www.census.gov

By contrast, homeownership for Caucasians declined steadily by 3.64% from 2006 to 2017, but rose by 3.78% from 2017 to 2018. Thus far, Caucasian homeownership has slightly dropped by 1.21% in 2019. For Hispanic homeowners, there was a 7.5% decline from 2006 to 2017, and a 3% growth from 2017 to 2018.[40] However, the upturn from 2018 significantly shifted downward in 2019. Hispanic homeownership dropped by 13.61% in 2019.[41] Based on the estimated 138 million U.S. households,[42] the national homeownership rate across all groups was approximately 64.1% as of August 2019.[43]

Graph 1



VI. Federal Government Response to Protect HECM Borrowers

The HECM portfolio has shown volatility for the last eight years, the span during which it has been subject to actuarial review. Since 2009, the estimated economic value of the HECM portfolio has fluctuated between positive and negative. HUD tightened the requirements to reduce defaults for new loans going forward.

Congress enacted the Reverse Mortgage Stabilization Act of 2013 (P.L. 113-29) to give HUD the ability to use notices or mortgagee letters to improve fiscal oversight of reverse mortgage programs. Upon the enactment of P.L. 113-29, HUD initiated a number of program changes,

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[40] Carmel Ford, *Homeownership Rates by Race and Ethnicity*, NATIONAL ASSOCIATION OF HOME BUILDERS, (2019), http://eyeonhousing.org/2019/03/homeownership-rates-by-race-and-ethnicity/
[41] U.S. Census Bureau, *supra* 1
[42] *Id.*
[43] United States Home Ownership Rate, TRADING ECONOMICS, (2019), https://tradingeconomics.com/united-states/home-ownership-rate

some of which are included in final regulations released on January 19, 2017. Below is a timeline of those modifications:

2013	HUD applied new lump sum payment limits to all HECMs;
2014	HUD decided to insure fixed rate loans where all proceeds are taken up front in lump sum without any future draws; and
2015	HUD required that borrowers' credit histories and their ability to pay taxes and insurance were taken into account when approving HECMs.

Despite changes to the program, the FY 2016 HECM actuarial review reported an economic value of negative $7.7 billion.[44]

In October 2017, Congresswoman Maxine Waters, ranking member of the Committee on Financial Services, representing a large part of South Los Angeles, California, introduced the Preventing Foreclosures on Seniors Act, a bill intended to reform HUD's reverse mortgage program and help prevent unfair foreclosures on seniors. The bill was not enacted. It would have reformed HUD's HECM program in the following ways:

- Requires loss mitigation for HECM borrowers in default (currently it is optional);
- Requires for non-borrowing spouses to be treated as borrowing spouses for the purposes of loss mitigation (currently they are ineligible);
- Requires mandatory assignment of HECM loans to HUD if there is an eligible non-borrowing spouse living in the home upon the death of the borrower (currently it is optional);
- Requires mortgagees to provide prompt notice to a surviving non-borrowing spouse of their eligibility to remain in the property if they meet certain basic requirements;
- Prevents foreclosures on non-borrowing spouses once the loan is assigned to HUD unless they fail to meet certain basic requirements;
- Grants the Secretary of HUD authority to reduce or deny insurance benefits to any mortgagee who fails to comply with loss mitigation requirements;
- Extends the deadline by which non-borrowing spouses must obtain the proper paperwork to prove their eligibility; and
- Requires HUD to consult with the Bureau of Consumer Financial Protection on matters of consumer protection to ensure that HUD rules are more sensitive to these issues in the future.[45]

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[44] Libby Perl, *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, Congressional Research Service (March 2017).

[45] *Waters Introduces Legislation to Help Prevent Unfair Foreclosures on Seniors with HUD Reverse Mortgages*, U.S. House Committee on Financial Services (October 27, 2017), https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=400890

VII. Legislative Response to HECM Foreclosures across Select Jurisdictions

Several jurisdictions have adopted legislative measures to address HECM technical defaults, aiming to prevent the displacement of seniors. Those measures have been set forth below.

Arizona

Section 1, Title 6 of the Arizona Revised Statutes was amended by adding Chapter 16 on Reverse Mortgages. Arizona Senate Bill 2242 took effect on July 29, 2010.

Section 6-1602(A) states that "[a]dequate counseling under this chapter must be provided by a counselor who is an independent third party."

Section 6-1602(B) clarifies that "[t]o qualify as an independent third party, the counselor may not be associated with or compensated, directly or indirectly, by a party involved in any of the following:

1. Originating or servicing the reverse mortgage;
2. Funding the loan underlying the reverse mortgage; or
3. Selling annuities, investments, long-term care insurance or any other type of financial or insurance product."

Section 6-1603(A) states that "[b]efore accepting a final and complete application for a reverse mortgage or assessing any fees, the originator shall:

1. Provide the borrower with a list of at least five housing counseling agencies, including at least two housing counseling agencies that can provide counseling by phone; and
2. Receive from the borrower or the borrower's authorized representative a certification that the borrower has received counseling from a housing counseling agency."

Section 6-1603(B) states that "[a]t least 10 days before loan closing, the originator shall make available to the borrower a statement informing the borrower that the borrower's liability under the reverse mortgage is limited and explaining the borrower's rights, obligations, remedies with respect to temporary absences from the home, late payments and payment default by the originator and all conditions requiring satisfaction of the loan obligation."

Section 6-1603(C) provides that "before entering into a reverse mortgage, the originator shall fully disclose in writing:

1. All costs charged by the originator, including costs of estate planning, financial advice and other services that are related to the reverse mortgage but that are not required to obtain the reverse mortgage.
2. All terms and provisions with respect to insurance, repairs, alterations, payment of taxes, default reserve, delinquency charges, foreclosure proceedings, anticipation of maturity and any additional and secondary liens.
3. The projected total cost of the reverse mortgage to the borrower based on the projected total future loan balance for at least two projected loan terms."[46]

[46] Arizona Revised Statutes, Section 1, Title 6, Chapter 16, Reverse Mortgages.

Florida

The Florida Housing Finance Corporation, in partnership with the Florida Department of Elder Affairs, Fannie Mae, and other agencies launched the Elderly Mortgage Assistance Program (ELMORE) to assist senior homeowners with reverse mortgages in Florida who may face foreclosure due to nonpayment of property-related expenses, such as property taxes, homeowners insurance, and homeowners and/or condo association fees. The goal is to assist senior homeowners catch up on past due payments and upcoming payments, so they can remain in their homes.

ELMORE has specific income, hardship and residency requirements. To be eligible, the senior must satisfy the following:

- Be a U.S. citizen or lawful permanent resident;
- Have a reverse mortgage secured by a property in Florida;
- Reside in your house as your primary residence;
- Have income lower than 140% of the average median income in your area;
- Have fallen behind on property-related expenses due to a hardship, such as medical expenses, reduction in income, home repairs, divorce, disability, unemployment, underemployment or other challenges; and
- Can afford property-related payments once caught up on payments with this program.

If approved, the program participant may receive up to $25,000 to pay for property-related expenses through a forgivable two-year loan. The loan funds are provided to the reverse mortgage servicer to reimburse the property-related expenses.[47]

Illinois

On January 1, 2016, the Illinois Reverse Mortgage Act (765 ILCS 945) took effect, which requires a "cooling-off period" of three days after a person enters into a reverse mortgage agreement. During this time, potential borrowers are encouraged to consider their decision and seek additional information from a reverse mortgage counselor. This three-day period cannot be waived and allows the potential borrower time to consider the material terms of a reverse mortgage agreement, and provides that written correspondence related to the agreement must be made in "at least 12-point font."

Section 15(a) states that "[t]he Office of the Attorney General shall develop the content and format of an educational document providing independent consumer information regarding reverse mortgages, potential alternatives to reverse mortgages, and the availability of independent counseling services, including services provided by non-profit agencies certified by the federal government to provide required counseling for reverse mortgages insured by the U.S. Federal Government."

Section 15(b) states that "[l]enders are required to provide each borrower a document regarding the availability of counseling services that shall be in at least 12-point font, containing contact information (including agency name, address, telephone number, and, if applicable, website) for agencies approved by the U.S. Department of Housing and Urban Development (HUD) to conduct reverse mortgage counseling. The purpose of counseling is to help the prospective

[47] Elmore Program, https://www.ncoa.org/wp-content/uploads/ELMORE-Brochure.pdf.

borrower understand the financial implications, alternatives to securing a reverse mortgage, borrower obligations, costs of obtaining the loan, repayment conditions, and other issues."

Section 20(b) states that "[a] borrower shall not be bound for three full business days after the borrower's acceptance, in writing, of a lender's written commitment to make a reverse mortgage loan and may not be required to close or proceed with the loan during that time period. A borrower may not waive the provisions of this subsection (b)."

Section 20(c) states that "[a]t the time of making a written commitment, the lender shall provide the borrower a separate document in at least 12-point font containing the following statement: IMPORTANT NOTICE REGARDING THE COOLING-OFF PERIOD: Illinois State law requires a three-day cooling-off period for reverse mortgage loans, during which time a potential borrower cannot be required to close or proceed with the loan. The purpose of this requirement is to provide potential borrowers with three business days to consider their decision whether to secure a reverse mortgage or not. Potential borrowers may want to seek additional information from a reverse mortgage counselor during this three-day period. The three-day cooling-off period cannot be waived."[48]

New York

In New York, Senate Bill S4407 provides for the regulation of reverse mortgages that are issued under the federal HECM program. The bill does the following:

- Prohibits deceptive advertising and issuance of such mortgages;
- Requires that independent counseling be provided to applicants for such mortgages;
- Requires lenders to provide notice of duty of mortgagor to pay certain property related expenses when equity in the real property is low or depleted;
- Prohibits foreclosure on mortgaged property based on the failure of the mortgagor to live on the property until an inspection has been made at the property; and
- Establishes a proved right of action with treble damages for violations of such provisions.

The bill is from the 2019-2020 legislative session and has passed both the Senate and Assembly.[49]

Utah

Utah has enacted legislation to regulate reverse mortgage loan transactions made in the state. The Utah Reverse Mortgage Act (S.B. 120) went into effect on May 12, 2015. It establishes requirements for making reverse mortgages; addresses the treatment of loan proceeds, priority, foreclosure, and lender default; and provides for enforcement. Under the Act, a borrower must be at least 62 years of age and occupy the dwelling that secures the reverse mortgage as a principal residence. At the time a lender gives a prospective borrower a reverse mortgage application, the lender must provide the following disclosures: (1) explain any adjustable interest rate feature of the reverse mortgage; and (2) list at least five independent housing counselors. At least 10 days before the day on which a reverse mortgage closes, the lender must give the borrower a disclosure describing:

- That the prospective borrower's liability under the reverse mortgage is limited;

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[48] Illinois Compiled Statutes, Reverse Mortgage Act, 765 ILCS 945.
[49] The New York State Senate, Senate Bill S4407, https://www.nysenate.gov/legislation/bills/2019/s4407.

- The prospective borrower's rights, obligations, and remedies relating to temporary absences, late payments, and payment default by the lender; and
- The projected total cost of the reverse mortgage to the prospective borrower, based on the projected total future loan balance.

In addition, a lender must annually provide a borrower with a statement summarizing the following:

- Total principal amount paid to the borrower under the reverse mortgage;
- Total amount of deferred interest added to the principal; and
- Outstanding loan balance at the end of the preceding year.

Before a prospective borrower signs a reverse mortgage application, the prospective borrower must meet with an independent housing counselor to discuss the financial impacts of a reverse mortgage. The counselor must give the prospective borrower a written disclosure stating that a reverse mortgage may have tax consequences; affect the prospective borrower's eligibility for assistance under certain state and federal programs; and impact the prospective borrower's estate and heirs.

After a prospective borrower accepts, in writing, a lender's commitment to make a reverse mortgage, the lender may not bind the prospective borrower to the reverse mortgage earlier than seven days after the day on which the prospective borrower gives the written acceptance to the lender.

Prior to initiating foreclosure proceedings on a reverse mortgage, the borrower must be given a written notice setting forth the grounds for default and foreclosure. The borrower must be given at least 30 days after the day on which the borrower receives the notice to cure the default.[50]

VIII. Conclusion

Despite being available for over 20 years, reverse mortgages remain unpopular, with the overwhelming majority of the eligible population not capitalizing on them for retirement planning purposes. When successful, reverse mortgages allow seniors to age in place, providing an opportunity for those households that may not have sufficient liquid assets or financial savings to convert some of their housing wealth to cash without needing to move or sell their residences. However, the default rate for reverse mortgages is considerably greater than traditional forward mortgages. That rate is even more pronounced in urban minority communities due to a lack of understanding of the complex loan structure, misleading advertising practices and predatory lenders that specifically target such communities. This report contributes deceptive advertising and predatory lenders as the biggest factors contributing to the high foreclosure rates.

Notwithstanding the federal government's modifications to the HECM Program to improve its efficacy, the program is a failure financially, with a portfolio valued at a negative $7.7 billion. Data suggests that an increasing number of seniors across the United States are facing foreclosure after taking out reverse mortgages, either because they fell behind on property charges or failed to meet other requirements of the reverse mortgage program. Some senior homeowners are facing foreclosures for a relatively small tax bill in comparison to the amount of equity in their properties. Legislation can cure many infirmities within the HECM guidelines but may be unable

[50] Utah Code, Utah Reverse Mortgage Act, 57-28-101.

to adequately regulate the conduct of those who sell the product. For HECM to be successful, the eligible population, should consider HECM one of many options in retirement planning, only undertaking the loan when wholly educated on its requirements, particularly the events triggering default.