COMMENTS to the Consumer Financial Protection Bureau

on Request for Information Regarding Senior Financial Exploitation,

77 FR 36491 (June 19, 2012)

Docket No. CFPB-2012-0018

By the National Consumer Law Center

On behalf of its low-income clients

August 20, 2012

Table of Contents

Introduction……………………………………………………………………………………..1

I. Wealth-draining financial abuse of older adults by debt collectors is on the rise……………1

A. The debt burden on older adults has increased substantially and more adults are aging into debt…………………………………………………………………..1

B. Rising debt loads imperil elders' financial security and puts them at risk for abusive debt collection practices…………………………………………………………....3

1. Credit cards trap older adults in a decades-long cycle of debt…………….3

2. Creditors' practices push debt-laden older consumers to borrow beyond their means…………………………………………………………………...5

C. Abusive debt collection tactics are imperiling the health and financial security of older adults and surviving family members……………………………………………….6

1. Sick older adults are being pursued aggressively by medical debt collectors, even in their hospital beds…………………………………………….……6

2. Debt beyond death: grieving family members are being preyed on by a new breed of debt collectors intent on collecting decedents' debts……………...8

D. Federal regulators should impose stronger policies to protect older consumers from abusive debt collection practices…………………………………………………...9

II. Reverse mortgages are a complex financial product with the potential to drain all the equity from the homes of cash-strapped older adults……………………………………...…11

A. Homeowners' ability to pay taxes and insurance should be evaluated before origination, and current defaults should be dealt with in a manner designed to prevent the loss of the home…………………………………...……………14

1. Dealing With Homeowners Currently in Default…………………………15

2. Protecting Future Reverse Mortgage Homeowners from Taxes and Insurance Defaults……………………………………………………………18

B. Stronger substantive protections should be added to the HECM program to prevent eviction of the non-borrowing spouses of reverse mortgage borrowers………..…18

III. Military pension scams are stealing income from debt-burdened veterans………………20

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Introduction

The National Consumer Law Center[1] (NCLC) respectfully submits the following comments on behalf of its low income clients in response to the request for information regarding senior financial exploitation by the Consumer Financial Protection Bureau's Office of Older Americans. In this comment we address three topics of great importance to the financial stability and security of older adults, and provide recommendations for substantive protections or stepped-up enforcement by the Bureau. Specifically, we address how abusive debt collection practices have imperiled the financial security of already debt-laden older consumers; the risks posed by the marketing and sale of complex reverse mortgages; and how military pension buyout scams target vulnerable veterans after a lifetime of service to their country. Together these practices drain billions of dollars in wealth from already debt burdened older Americans. We urge the CFPB to take action to impose substantive protections and provide greater enforcement to protect the pocketbooks of older Americans.

I. Wealth-draining financial abuse of older adults by debt collectors is on the rise.

A. The debt burden on older adults has increased substantially and more adults are aging into debt.

Older consumers have been increasing their debt loads at a time of life when debt is especially burdensome and fraught with great peril to their financial security and peace of mind. Prior generations of older consumers held less credit card, mortgage, and student loan debt than younger consumers. In the last two decades elders have been rapidly catching up. The average credit

[1] The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of nineteen practice treatises and annual supplements on consumer credit laws and unfair and deceptive practices. NCLC also publishes bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting elders and low-income people, conducted trainings for tens of thousands of legal services and private attorneys on the law as applied to consumer problems facing elders, including debt collection, the electronic delivery of government benefits, predatory lending, and reverse mortgages, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC attorneys regularly testify in Congress and provide comprehensive comments to the federal agencies on the regulations under consumer laws that affect elders. These comments are written by NCLC attorneys Arielle Cohen, Robert Hobbs, Margot Saunders, and Odette Williamson.

card debt for Americans between 65 and 69 years old rose a staggering 217 percent between 1992 and 2001, to $5,844.[2] While fewer elders are seriously behind in debt payment than younger groups, the 2010 Federal Reserve Bank's survey of consumers showed that rate of serious nonpayment was rising most rapidly among older adults.[3] A University of Michigan study similarly found a rapid rise in bankruptcy filings by older adults, who were on average more indebted to credit card companies than younger filers.[4] Older homeowners borrow against the equity in their homes, often repeatedly, in an effort to stay afloat.[5] Baby boomers, many of whom had children later in life, end up paying for their children's higher education and other expenses well into their retirement years and beyond. Many are also becoming caretakers for older parents.

Overall, both the "younger" and "older" segments of the elder population are going into debt, filing bankruptcy, and in many cases losing their homes in greater numbers than ever before. Not surprisingly, given these and other trends, elders are finding that they are unable to afford prescribed medications and other basic necessities and are filing bankruptcy in record numbers.[6]

Older homeowners were hit particularly hard by the recession and financial crisis. AARP reports that homeowners over the age of 75 were one of the hardest hit groups in terms of foreclosures between 2007 and 2011. The study found that over the last 20 years this age group experienced the greatest increase in mortgage debt. Between 2007 and 2011, 1.5 million homeowners over the age of 50 lost their homes.[7]

In addition, many elders are still dealing with student loan debt. Recent research conducted by the Federal Reserve Bank of New York disclosed that Americans over age 60 still owe roughly $36 billion dollars in student loans. "Adults 50 and older owe 17 percent of the nation's $870 billion in student-loan debt, according to a March report by the Federal Reserve Bank of New York." Some of the contributing factors to this lingering student loan debt is returning to school later in life or co-signing loans for younger members of their families. As a result, "it is not uncommon for Social Security checks to be garnished or for debt collectors to harass borrowers in their eighties over student loans that are decades old."

While the debts of elders have increased dramatically in a single generation, the income and assets of many elders are minimal:

- Debt levels for households headed by individuals 75 and older averaged $20,234 in 2004, a 160 percent jump from 1992.

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[2] Heather C. McGhee and Tamara Draut, Demos, *Retiring in the Red: The Growth of Debt Among Older Americans*, January 19, 2004, available at http://www.demos.org/pub101.cfm.

[3] *Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, 98 FRB Bull. Table 17, June 2012 (showed that only 1.5% of 65 to 74 year olds 60 days late paying a debt in 2001 and 6.1% were late in 2010. The 75+ group rose from just to .8% to 3.2% in the same time span.).

[4] John Pottow, *The Rise in Elder Bankruptcy Filings and Failure of U.S. Bankruptcy Law*,The Elder Law Journal, Vol. 19, 2012, June 1, 2011; University of Michigan Public Law Working Paper No. 210; University of Michigan Law & Economics, Empirical Legal Studies Center Paper No. 10-015. Available at SSRN: http://ssrn.com/abstract=1669298.

[5] *See* Deanne Loonin, *The Implications of Rising Credit Card Debt Among Older Consumers*, National Consumer Law Center, July 2006, at 10-11.

[6] *See Id.* at 5.

[7] *See* Robbie Brown, *Senior citizens hit hard by home loss*, New York Times, July 19, 2012.

- About one in five elders are overextended, spending over 40 percent of their income on debt payments, including mortgage debt.

- The mean amount of credit card debt was $6,504 for households with incomes less than $35,000 per year.

- Thirty percent of elders 70 to 74 years old have an average of only $2,885 of net worth (excluding home equity).

- 70% of seniors have annual incomes of under $50,000.

Added to this increasing debt burden and declining income is the spiraling medical expense burden facing seniors. Fidelity Brokerage Services estimates that a couple retiring in 2012 at age 65 would on average face $240,000 for medical care and health insurance expenses over their lifetimes, up from an estimated $160,000 in 2002.[8]

B. Rising debt loads imperil elders' financial security and puts them at risk for abusive debt collection practices.

It is not just that elders have more debt than before, but that many are buried in unaffordable debt. The danger is that older consumers who get into trouble will lose their financial security in order to service their debt.

1. Credit cards trap older adults in a decades-long cycle of debt aided by a well-funded debt-buying industry.

Older consumers are using credit cards as a plastic safety net, to make essential purchases that they cannot otherwise afford. Other consumers make discretionary purchases at a time when they can afford those purchases or at least afford the minimum payments.

Few households borrow money without intending to repay it. These plans, however, easily change, often due to unexpected, adverse events. This is particularly true for older consumers with diminished incomes after retirement or those who unexpectedly lose income due to disability or death in their households. There is little margin for error with older populations. Those who lose income over time or who slip in and out of poverty have fewer working years, if any, to replace resources and save.

Once trouble begins, creditors often hit elder consumers with so many late fees and such high interest rates that the elder's payments barely reduce the balance, if at all. In one case after having paid $3,492 on a $1,963 credit card debt, an elder's balance grew to $5,564.[9] This is the credit

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[8] Fidelity Brokerage Services, *Retirees face estimated $240,000 in medical costs*, May 16, 2012, available at www.fidelity.com/viewpoints/retirees-medical-expenses.

[9] *See Discover Bank v. Owens*, 822 N.E.2d 869 (Ohio Mun. 2004). *See also See Wahl v. Midland Credit Mgmt.*, Inc., 556 F.3d 643 (7th Cir. 2009) (because of interest and late fees, a debt of less than $70 sold to a debt buyer ballooned to over $1000; finding that it was not deceptive to disclose the principal owed as over $1000).

card trap. It is not only difficult for elders to get out of this trap, it is also difficult to find a helping hand once trouble begins.[10]

A lack of financial knowledge exacerbates the problem for many seniors. Researchers in general have found widespread financial illiteracy among older adults.[11] Women, minorities, and those without college degrees were particularly at risk. Yet even the most educated consumers will not necessarily understand intricate, complex credit card lender practices which heavily penalize users who fall into trouble.

The key factors that explain the use of credit cards as a plastic safety net include:

• ***Shrinking income:*** The largest share of older adults live on low incomes that stagnated or declined during most of the last two decades, while their basic costs increased.

• ***Higher expenses:*** These include higher housing costs, rising out of pocket medical costs,[12] increased energy and utility costs, and rising property taxes.

• ***Creditor practices*** that push consumers to borrow beyond their means.

In the last two decades, millions of past due credit card accounts have been sold to large, well-funded debt buyers by credit card companies for pennies on the dollar. Debt buying has increased the specter of elders facing perpetual indebtedness for purchases from their younger years. Financial institutions in prior generations frequently gave up on collecting past due consumer debts after a matter of months or years, leaving it to the consumer to pay old debts to rehabilitate their credit worthiness when the consumer's fortunes improved. For elders financial improvement is unlikely because of their fixed incomes and rapidly increasing expenses. Now elders are faced with debt buyers that are collecting on debts for old purchases along with the compounding fees that are added to the account. The debt buyers expect to collect old debts for decades by getting default judgments or through refinancing, which restarts longer statutes of limitations on the debts. Even then, debt collection lawsuits are often filed after the state's statute of limitations has expired, a violation of the Fair Debt Collection Practices Act.[13]

Resolving credit card disputes and balances promptly is necessary because documentation of the application for credit, the daily transactions, the issuer's terms for the account, and the sales of the account to investors and debt buyers may be destroyed or lost in a few years. This problem is compounded by the practice of most debt buyers and many debt collection law firms of failing to obtain any documentation substantiating the person responsible, the ownership of the account, the amount owed, or the applicable statute of limitations.[14] Debt buyers file a million or more debt collection lawsuits yearly without sufficient documentation to substantiate that they are the true

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[10] *See generally*, Ronald J. Mann, *Credit Cards, Consumer Credit & Bankruptcy*, The University Of Texas School Of Law, Law And Economics Research Paper No. 44 (Revised March 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=690701.

[11] AARP, *Beyond 50.04: A Report to the Nation on Consumers in the Marketplace* (2004), available at http://assets.aarp.org/rgcenter/consume/beyond_50_cons.pdf.

[12] *See* Deanne Loonin, *The Implications of Rising Credit Card Debt Among Older Consumers*, National Consumer Law Center, July 2006, at 5.

[13] *See* National Consumer Law Center, *Fair Debt Collection* § 5.5.2.13.3 (7th Ed. 2011 and Supp.).

[14] *See* National Consumer Law Center, *Collection Actions* Ch. 4 (2d ed. 2011 and Supp.).

owners of the account, that the defendant is the person responsible for the account, or the amount owed on the account.[15] And, many states provide that a payment by a consumer on account restarts the running of the statute of limitation which are as long as 5 or 10 years in some states.[16]

To address these problems, the CFPB should prohibit debt collectors from collecting debt without the documentation substantiating the persons responsible, the collector's ownership of the debt or authority to collect it, the amount of the debt, and the statute of limitation on the debt. Furthermore, debt collectors should not request or accept payment on a stale debt governed by state law that would extend the statute of limitations because of the payment, without the consumer's written verification that she made the specific payment understanding that payment would extend the statute of limitations by the applicable period.

2. **Creditors' practices push debt-laden older consumers to borrow beyond their means.**

Credit cards provide a great convenience for many older consumers. The danger comes from the borrowing features of credit cards, the exorbitant costs of borrowing, and the downward spiral that hits consumers once they get into trouble.

The specific credit card practices that harm consumers are:

- High-cost credit;
- Aggressive solicitation and lack of real underwriting;
- Punitive fees;
- Penalty rates and universal default;
- Deceptive marketing;
- Changes to credit limits;
- Debt collection abuses;
- Use of mandatory arbitration clauses;
- Tiny monthly minimum payments; and
- Change-in-terms provisions.[17]

The fact that Congress and federal regulators have addressed some of these credit card abuses prospectively does not affect the billions of dollars of old credit card debt that will remain in collection at least until the elder dies.

Contrary to popular conception, older consumers are increasingly shopping on-line and using credit cards. Many are becoming at ease with a cashless society, receiving Social Security benefits through electronic deposit and regularly using ATMs. For those who are able to use their cards only for convenience, the advantages often outweigh the costs. For those who borrow, severe trouble and financial distress is often just one or two missed payments away.

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15 *See* R. Jurgens, R. Hobbs, *The Debt Machine How the Collection Industry Hounds Consumers and Overwhelms Courts,* at 13-15 (July 2010).
16 *See National Consumer Law Center, Collection Actions,* § 3.5.8.3 *(2d ed. 2011 and Supp.)* .
17 *See Deanne Loonin, The Implications of Rising Credit Card Debt Among Older Consumers, National Consumer Law Center, July 2006,* at 17 -27.

The danger is that older consumers who get into trouble will lose their financial security in order to service their debt. Over-indebtedness threatens to undermine the key goals that consumers hold and continue to hold as they age. These are, according to an AARP survey, first and foremost to pay bills on time, followed by living at home as long as possible, being financially independent, and having enough to live well.[18]

C. Abusive debt collection tactics are imperiling the health and financial security of older adults and surviving family members.

Consumers complain more about debt collectors than any other business.[19] Those complaints include debt collectors asking for money that is not owed, phoning consumers repeatedly, using obscene language, and falsely threatening consumers with lawsuits.

Debt collectors know that older people, 80 percent of whom are homeowners, are susceptible to threats that they may lose their homes. Older consumers living alone are often targets of abusive tactics because they may be socially isolated. In addition, because they are at home during daytime hours, older consumers are more accessible to collectors by phone.[20] Moreover, the ability of some older people to make financial decisions or to remember the details of stale debts may be impaired by cognitive decline. As a result, older people sometimes agree to pay on debts they had already paid in full or never owed at all, such as the debts of a deceased spouse.

A Texas case involving a 72 year old consumer shows the harm that abusive debt collection can cause elders. Ninfa Perez was called by a finance company's collection department demanding that she immediately send a payment on her mobile home. She explained that she did not own a mobile home. The debt collector continued to call and demand payment, ultimately threatening to have Ms. Perez arrested. Frightened and distraught Ms. Perez got her daughter to drive to the sheriff's office to avoid the humiliation of being arrested at home. Even though the sheriff called the finance company and told them Ms. Perez did not have a mobile home and that her signature had been forged on the note buying the mobile home, the finance company sued her for the total mobile home debt. The threats and suit caused a painful flair up of her shingles and eruptions of painful, open sores over her body. A jury valued her pain and suffering at $5,000,000.[21] The debt collection misconduct in the case was not unusual. What was unusual was that Ms. Perez obtained skilled legal counsel and the case was pressed by the finance company to trial.

The CFPB needs to be vigilant in monitoring and responding to deceptive, unfair and abusive debt collection tactics against the elderly.

1. Sick older adults are being pursued aggressively by medical debt collectors, even in their hospital beds.

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[18] Hana Holley, AARP, *Retirement Planning Survey Among U.S. Adults Age 40 And Older,* May 2006, available at http://assets.aarp.org/rgcenter/econ/ret_planning.pdf.

[19] *See CFPB Annual Report 2011*, Fair Debt Collection Practices Act.

[20] *See* Charles Duhigg, *Bilking the Elderly with a Corporate Assist*, N.Y. Times, A1 (May 20, 2007).

[21] *See Greenpoint Credit Corp. v. Perez,* 75 S.W.3d 40 (Tex. App. 2002).

Medical expenses for many elder couples suffering from poor health are likely to exceed their housing expenses.[22] Ironically, consumers have historically been billed for uninsured medical services at several times the price that they would be billed if the same services had been covered by insurance.[23] This will be changing under the Affordable Health Act, but only prospectively, not affecting elders' older medical bills. Furthermore, hospital bills frequently contain significant billing errors, sometimes involving thousands of dollars.[24]

Recent reports by the Minnesota Attorney General reveal an insidious development in medical debt collection. In January, Lori Swanson—the Minnesota Attorney General who put the National Arbitration Forum, Mann Brackin (the largest collection law firm), and Axiant (a large collection agency) out of business a few years ago—sued a company, Accretive Health, Inc., (AHI) that was started by the same hedge fund as the other three firms. AHI takes over the billing and collections operations of the hospitals that retain it. In addition to the lawsuit, Swanson's website spotlights a six volume compliance review of a local hospital program with AHI. Both sets of documents chronicle violations of state and federal debt collection and other laws.

AHI took over the management of the intake and claims functions at the hospital with the power to fire the hospital's staff that did not meet revenue goals. While working to change the culture of the intake staff to prioritize revenue collection goals, AHI staff never disclosed to patients that a debt collection firm was managing the patient intake process at the hospital. Hospital intake workers were required by HCI to collect in full outstanding bills or get promises to pay before admitting patients not in need of immediate care. They also were required to obtain prepayment or promises to prepay the patient's share of the care being sought. Bedside visits were made by HCI supervised "financial counselors" in the emergency room and maternity ward. While prepayment often resulted in overpayments by patients who had not yet been diagnosed or treated, AHI did not develop a system for disclosing or automatically refunding the overpayments.

The suit alleges HCI would misrepresent to uninsured patients that it could offer a significant cash discount but only if payment was made that day. However, the Minnesota hospital had agreed years before to always offer uninsured patients the lowest rate charged to insured patients.

Patient affidavits in the case describe the collection activities of AHI:

- Bruce Folken spends much of his time in retirement volunteering for the Yellow Ribbon program to help military members during and after their deployments. One day, his left side went numb and his blood pressure spiked. His clinic referred him to the Emergency Room. As he lay unclothed in a gown and hooked up to an IV, a heart monitoring machine, and a blood pressure machine at the Fairview Ridges Emergency Room, groggy and in pain, a woman approached his bedside and asked him to pay $493.60. At the time, Bruce recalls

[22] *See Elder Economic Security Standard*™ *Index* (Elder Index), developed by WOW and the Gerontology Institute at the University of Massachusetts Boston, available at www.basiceconomicsecurity.org/gateway.aspx.
[23] *See* National Consumer Law Center*, Collection Actions* § 9.1.3 (2nd ed. 2011).
[24] Jessica Silver-Greenberg, *How to Fight a Bogus Bill, Many Medical Bills Contain Errors That Could End Up Wrecking Your Credit Score. Here's What You Need to Know*, WSJ (Feb. 9, 2011) ("Stephen Parente, a professor of health finance at the University of Minnesota who has studied medical billing extensively, estimates that 30% to 40% of bills contain errors. The Access Project, a Boston-based health-care advocacy group, says it's closer to 80%.").

wondering if he would be alive to watch his grandkids grow up. Bruce determined that he wouldn't get proper treatment if he didn't pay. The woman brought Bruce his pants, he found his health savings card in his wallet, and she scanned it for $493.60. Bruce was not told how she arrived at that amount. After paying, Bruce was taken for a CT scan to his head. He was overcharged $177.42. Affidavit of Bruce Folken.

- Retired over-the-road truck driver Don Williams, 72, had a similar experience. He woke up around 4 a.m. one morning with sharp abdominal pain. He went to the Emergency Room at Fairview Ridges Hospital. He was brought to an examination table and placed on a bed in a thin gown, hooked up to an IV and a blood pressure monitor, and given a morphine drip for pain. A tube was put down his throat to drain his stomach. As Don lay hooked up to tubes, monitors, and drips, a woman rolled in and told him he needed to pay $50. He tried to resist, but the woman insisted. The woman grabbed his pants and dropped them on his chest. Don got out his debit card, which she swiped. Don was thereafter diagnosed with a bowel obstruction and taken to surgery. Don has been married to his wife May Ann for 44 years. May Ann graduated from the nursing program at Swedish Hospital and was a nurse for 50 years. May Ann says of Don's experience: "As a nurse, I cannot imagine a situation in which a patient is more vulnerable or under greater duress than laying in an emergency room bed in pain, on morphine, hooked up to tubes, with other tubes down their throat, and not having any idea of the gravity of their medical situation, including whether it is life or death." Affidavit of Donald Williams; Affidavit of May Ann Williams.[25]

2. **Debt beyond death: grieving family members are being preyed on by a new breed of debt collectors intent on collecting decedents' debts.**

A new breed of specialized debt collection agencies has sprung up in the last decade or two with a focus on the collection of decedents' debts.[26] Their websites often stress their gentle handling of bereaved relatives in order develop a new customer for the creditor client as well as to enhance recovery on the decedent's debt: "When finalizing financial obligations during a period of grief, it's critical that collectors employ techniques that are sensitive and respectful of survivors' circumstances."[27] However, their collection employees' actual practices may not always be in tune with that approach.[28]

An affiliated debt collector, DCM Services,[29] markets a system to encourage a decedent's creditors to use the time of grieving to establish a customer relationship with the decedent's survivors while DCM Services recovers on the debt from the estate. A paper by DCM Services mentions several times some creditors' goal of having the survivors assume the decedent's debts.[30] The funds and income streams of survivors, combined with their vulnerability, may create strong

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25 *Swanson v. Accretive Health*, Plaintiff's Memorandum Of Law In Support Of Motion To Amend And Supplement Its First Amended Complaint pp. 8-9, available at www.ag.state.mn.us/PDF/Consumer/MemorandumOfLaw.pdf
26 *See* Phillips and Cohen at www.phillips-cohen.com/; Probate Finder OnDemand at www.probatefinder.com; Forte, L.L.C. at www.fortedatasolutions.com; DCM Services at www.dcm services.com.
27 www.dcmservices.com/solutions_empathetic_active.php.
28 *See*, e.g., *Sparks v. Phillips & Cohen Assocs., Ltd.*, 641 F. Supp. 2d 1234 (S.D. Ala. 2008).
29 *See* DCM Services at www.dcmservices.com. DCM Services, which focuses on decedent debts, manages collections on more than $1 billion in decedent accounts per year.
30 *See* Forte, From CRM to DCRM: *A Multi-Generational Approach to Customer Relationships 3, 5, 6* (2009), available at www.fortedatasolutions.com/whitepaper.php.

incentives for creditors and debt collectors to approach unobligated survivors about "honoring the memory of the deceased" by assuming the deceased's debt or by implying that it is the survivor's obligation to pay the decedent's debt. DCM Services and its affiliated decedent debt collection firms also maintain a separate website for the bereaved that provides useful information in their time of grief. Noticeably absent from that website is any statement that the bereaved are usually not legally responsible for the debts of the decedent unless they had cosigned for the debt.[31]

A front page Wall Street Journal article in 2011 exposed a collector's subtle, illegal pressure to get a widow to pay her deceased husband's debt. After sincerely offering his condolences and adding a formal disclaimer stating that the widow had no personal responsibility for her recently deceased husband's $16,000 in business debts on his credit card, the debt collector talked of the difficulty of losing a loved one and living on limited means. The widow explained that her husband had lost his business, they lost their car and house, and now she had lost her husband. The debt collector sympathized. The debt collector called back in a week or two continuing to offer his condolences as if he were the widow's friend and then offered to clear the debt for $2,000, the amount he learned that the widow had received from the deceased's life insurance. The elderly widow had second thoughts after agreeing to give the collector every penny she had left, consulted a lawyer, and sued the collection agency, one of several specializing in decedent debt collections for the big credit card banks. The online version of the newspaper article had recordings of two of the collection calls as well as excerpts from another debt collector's employee manual.[32]

Much of American's property passes to beneficiaries such as spouses and children outside of the probate system and is legally unavailable to creditors. Life insurance proceeds, individual retirement accounts, annuities, jointly held accounts, some types of trusts, and other property passes outside of probate. Yet debt collectors pursue widows, widowers, and children to assume the decedent's debt and pay using their own funds that they received as beneficiaries. The Federal Trade Commission has indicated that it believes it is deceptive to accept payments from relatives own funds without disclosing that they are under no obligation to make the payment.[33]

Unobligated survivors should not be approached at all by debt collectors in connection with paying the debts of the decedent's estate unless they are the representative of the estate through the probate process. If there is no probate process, the debt collector can initiate one or abandon the claim. Debt collectors should not use the absence of a probate to seek payment from survivor's funds.

D. Federal regulators should impose stronger policies to protect older consumers from abusive debt collection practices.

Abusive debt collection practices are imperiling the financial security of already debt–burdened older Americans. The National Consumer Law Center recommends that the CFPB:

- Promptly investigate elders' complaints about debt collectors and address patterns of abuse.

[31] *See* www.mywayforward.com.
[32] Jessica Silver-Greenberg, *For the Families of Some Debtors, Death Offers No Respite*, The Wall St. J., at 1 (Dec. 3, 2011).
[33] FTC Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts , 76 Fed. Reg. 44,915 (July 27, 2011).

- Prohibit debt collectors from contacting widows, widowers, and children of a decedent to locate the representative of the decedent's estate unless they conform to requirements of 15 U.S.C. § 1692b.

- Promote debit card use, but only if debit card users are afforded the same protections as credit card users.

- Prohibit the most dangerous credit card terms and practices.

- Improve disclosures and consumer information about the risks of financial products, of strategies to deal with spiraling debt, and how to address abusive debt collectors.

- Require debt collectors to provide consumers notice, upon placing their third phone call to a debtor, that the consumer has the right to request in writing that the debt collector cease contacting the consumer.[34]

- Set weekly or monthly limits on the number of calls a debt collector may place to a consumer.[35]

- Prohibit debt collectors from collecting consumer debts unless they have obtained documentation of the person responsible, the person with authority to sue on the account, the balance due, and the applicable statute of limitations on the account.

- Require that a debt collector who receives a timely, written dispute or request for information pursuant to 15 U.S.C. § 1692g(b) respond with information and documentation that addresses the dispute or the request for information.

- Prohibit debt collectors from requesting or accepting payment on a stale debt[36] governed by state law that would extend the statute of limitations because of the payment, without the consumer's written verification that she made the specific payment understanding that payment would extend the statute of limitations by the applicable period

- Prohibit the collection of consumer accounts that may involve daily transactions more than three years after the receipt of a regular timely payment.[37]

Congress designed the strong protections of the Fair Debt Collection Practices Act to be enforced primarily by private actions by consumers. It took more than a decade for a private bar to develop that would regularly provide consumers skillful representation with the debt collection abuse claims. Most of those lawyers are listed in a lawyer directory at www.naca.net. NCLC urges the CFPB to make this information about legal resources available to consumers who may benefit from this representation.

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[34] *See* 15 U.S.C. § 1692c(c).
[35] *See* 15 U.S.C. § 1692d(5). See 940 C.Mass.R. § 7.04(f).
[36] Stale debts may be defined as debts on which there has not been a regular timely payment in two years.
[37] See National Consumer Law Center, *Model Family Financial Protection Act* § 1-105 (June 2012).

II. Reverse mortgages are a complex financial product with the potential to drain all the equity from the homes of cash-strapped older adults.

Dynamic changes in the reverse mortgage market are putting older consumers at risk. In the last few years, the range of options offered to consumers has become more complex and long-term costs have increased. Borrowers are being steered to options that offer little benefit to them, but provide ample profit for brokers and lenders. This has resulted in a trend where increasingly younger borrowers are cashing out all the available equity in their homes. For older adults, the equity in their home is their largest asset.[38] Abusive or misleading lending practices that target elders' home equity jeopardizes their future financial security.

A reverse mortgage is a loan secured by the home that does not require repayment until the borrower dies, moves out of the home permanently, or sells the home. The borrower is responsible for general maintenance and upkeep on the property, and for paying property taxes and homeowners insurance. The amount the borrower will receive depends on the value of the home, current interest rates, and the age of the borrower.[39] Almost all of the reverse mortgage loans offered today are insured by the Federal Housing Administration as part of the Home Equity Conversion Mortgage (HECM) program.

While reverse mortgages can provide a real benefit to older consumers, changes in the marketplace, the aggressive marketing of unsuitable loan options to cash-strapped, debt-laden consumers, and gaps in regulatory oversight put homeowners at risk. Some of the patterns emerging in the reverse mortgage market are reminiscent of problems that plagued the forward market in the run-up to the subprime boom.[40] While the current volume of reverse mortgages is low by historical standards, lenders are aggressively increasing staffing to drive growth and capture market share.[41] The nonbank originators that dominate the market anticipate capturing a larger share of homeowners' equity as the first wave of baby boomers become eligible for reverse mortgages.

One disturbing trend in the reverse mortgage marketplace is the high percentage of borrowers who are sold fixed-rate, lump sum reverse mortgages. With fixed-rate loans, the borrower is required to withdraw the full loan limit at closing. For borrowers who do not need all of the available proceeds immediately, fixed-rate loans are much more expensive than variable-rate

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[38] See Lori Trawinski, *Nightmare on Main Street: Older Americans and the Mortgage Market Crisis*, AARP Public Policy Institute, July 2012.

[39] The borrower must be at least 62 years old.

[40] See National Consumer Law Center, *Subprime Revisited: How Reverse Mortgage Lenders Put Older Homeowners' Equity at Risk*, at 7-9 (October 2009).

[41] Elizabeth Ecker, *Urban, Genworth and Cherry Creek Now Hiring Reverse Mortgage Professionals*, Reverse Mortgage Daily (August 6, 2012); Elizabeth Ecker, *Security One Hires 130 MetLife Reverse Mortgage Los, Doubles Sales Team*, Reverse Mortgage Daily (July 24, 2012).

loans. Borrowers pay compounding interest and an ongoing mortgage insurance premium on the full amount over the life of the loan. With a variable rate loan, money is withdrawn, as needed, over the course of the loan. HECM reverse mortgages also have a credit line growth feature which allows the unused portion of the line of credit to grow at a specified interest rate, increasing the amount available.[42]

Aggressive marketing, pricing and product availability, rather than overwhelming consumer demand, is driving this trend. In the nine months between March and December 2009, the percentage of fixed-rate, lump-sum loans went from less than 3% to approximately 70%, where it has remained.[43] Consumers did not suddenly develop an appetite for fixed-rate, lump-sum loans. Indeed, just a year earlier, during the height of the economic crisis, almost 90% of HECM reverse mortgages borrowers chose to receive their money *solely* as a line of credit.[44] Rather, the change occurred because reverse mortgage lenders began to waive the origination fees and other charges on fixed-rate loans, and not the variable rate option, driving consumers to immediately withdraw all the proceeds up front, whether they needed it or not.[45] At other times, consumers were not given a choice, as some lenders simply did not offer a loan with a line of credit or monthly payment option. Counselors have reported to the CFPB that some clients reported having *only* been presented with the fixed-rate loan by their loan originator.

Unsuspecting borrowers are being steered to fixed-rate, lump-sum reverse mortgages because this option is more profitable for lenders and brokers. Originators receive exceptionally high compensation from the secondary market for originating fixed-rate HECMs.[46] Their compensation is structured as a percentage of the loan balance at closing, and the percentage rate is higher for fixed-rate loans than for variable rate loans. According to industry rate sheets obtained by the CFPB, the percentage rate that brokers are paid on a fixed-rate loan balance is nearly twice that of adjustable rate loans.[47] The Bureau noted that "some originators may be recommending the

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[42] For HECM reverse mortgages, that rate is specified in the regulations. 24 C.F.R. §§206.3; 206.25(d). The remaining funds in the line of credit grow by the same rate as the interest rate on the mortgage, plus 0.5%. The existence of this feature means consumers do not have to withdraw a lump-sum up front and put that money into a savings account at a low yield or into an unsuitable investment product.

[43] Donald L. Redfoot, *How Recent Changes in Reverse Mortgages Impact Older Homeowners*, AARP Public Policy Institute, February 2011. *See also* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012.

[44] *See* Government Accountability Office, *Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls Over Counseling for Borrowers*, GAO-09-606, at 8 (June 2009) available at http://www.gao.gov/new.items/d09606.pdf, at 8.

[45] *See* Rachel L Sheedy, *Reverse Mortgage Lenders Cut Fees*, Kiplinger (July 13, 2010), available at http://www.kiplinger.com/features/archives/krr-reverse-mortgage-lenders-cut-fees.html; Tara Siegel Bernard, *Reverse mortgages Still Costly, but Less So*, April 16, 2010 *available at* http://www.nytimes.com/2010/04/17/your-money/mortgages/17money.html?8dpc

[46] *See* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 4.3.5 (noting that a portion of the premiums issuers receive have been passed on to brokers, retail loan officers and correspondent lenders; the premium is structured as a percentage of the loan balance at closing, and the percentage is higher for fixed-rate loans that for variable rate loans).

[47] *See* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 4.5.4a.

fixed-rate product more strongly than – or even to the exclusion of – the adjustable rate product to prospective borrowers."[48]

Even good counseling cannot overcome lender pressure. According to one counselor, even after she has educated potential borrowers regarding the fixed-rate lump-sum mortgage, borrowers are "convinced this is the best option because it is what the lender is pushing."[49] Given the dominance of thinly regulated nonbank mortgage companies, relying heavily on brokered loans, and a lopsided compensation structure tilted heavily towards fixed-rate loans, borrowers are at risk.[50]

When consumers are fairly presented with a choice, they are likely to choose the HECM line of credit with the credit growth feature. This option is especially critical for those who would lose eligibility for federal or state benefits upon receiving a large lump-sum payment. Such a payment from a reverse mortgage can render borrowers previously receiving SSI and Medicaid ineligible for these programs. Moreover, consumers who make large lump-sum withdrawals up front are at heightened risk for fraud and scams, and enticements to purchase expensive and complicated insurance policies, annuities and other financial products. The combined front-end expense of a reverse mortgage loan and an annuity in particular is unlikely to benefit consumers.

Today's use of reverse mortgages is a far cry from the original purpose of the program which was to enable older adults to convert home equity into cash to help meet the expenses of retirement. As outlined in the statute, the program's goal is "to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income…"[51] It was anticipated that borrowers would use loan proceeds to age in place, staying at home until they died or at least needed skilled care outside of the home. However, today's consumers are taking out reverse mortgages at younger ages than in the past even though they receive fewer proceeds from the loan. Depleting all the equity in a home early in retirement – or even before retirement – puts consumers on an unsustainable financial course that may result in the premature eviction from their homes if they do not have sufficient resources to pay for taxes and insurance, maintain the property, or meet unexpected expenses.

Aggressive marketing campaigns aimed at cash-strapped older adults are promoting the use of reverse mortgages for short-term needs. The broad marketing efforts solicit borrowers through TV and internet advertisement using celebrity spokespeople, direct mail solicitations, phone calls and door-to-door solicitations. Also common are old-fashioned marketing techniques such as advertisements in senior newsletters and "educational" programs at senior centers. Some marketing solicitations misleadingly or deceptively pitch reverse mortgages as "free money," or imply that the

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[48] *Id.* at note 253.
[49] Excerpt from *Survey of Reverse Mortgages*, conducted August 2012, on file with the National Consumer Law Center.
[50] *See* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 4.3.2 (aggressive sales tactics among originators could be a cause for concern).
[51] 12 U.S.C. § 1715z-20.

money comes from the federal government or that the borrower could never lose their home. Such deception, when coupled with a complex product that offers confusing choices, makes it hard for consumers to evaluate whether the loan fits their needs.

Lenders and brokers try to gain a competitive advantage in the market through a variety of techniques. To gain the trust of consumers, brokers tout their confidence-inspiring credentials as "Certified Senior Advisors" or "certified reverse mortgage consultants."[52] These purported credentials imply a level of expertise or special training that may be especially enticing to consumers who are trying to understand a complex product. Regulators in several states have made it an unethical practice for brokers and others to use such senior designations unless the regulator recognizes the use of the designation and the organization that offers it.[53] State insurance regulators have also issued similar prohibitions.[54]

With the exit of big retail lenders, and smaller lenders jockeying for market position, this type of marketing as well as other confidence-inducing strategies may well increase. In the forward mortgage market, aggressive solicitations by high-cost subprime lenders landed many consumers in inappropriate loans that were not sustainable. These marketing efforts have moved to the reverse mortgage market where older adults are obtaining loans that may be inappropriate for their needs.

The aggressive marketing push and the overwhelming debt burden of older adults are causing consumers to underestimate the long-term costs and risk of reverse mortgages.[55] Two such risks, the risk of foreclosure when the homeowner is unable to afford ongoing property charges and the danger of removing younger spouses from the loan, are highlighted below. We recommend that that the CFPB and HUD put in place substantive protections to protect borrowers and spouses from the ultimate risk associated with reverse mortgages--being evicted from the home and being rendered homeless.

A. Homeowners' ability to pay taxes and insurance should be evaluated before origination, and current defaults should be dealt with in a manner designed to prevent the loss of the home.

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52 *See* National Consumer Law Center, *Subprime Revisited: How Reverse Mortgage Lenders Put Older Homeowners' Equity at Risk*, at 8-9 (October 2009). Certified Senior Advisor is a designation offered by the Society of Certified Senior Advisors and requires approximately three to four days of coursework. The "Certified Reverse Mortgage Consultant" designation is offered by the National Reverse Mortgage Training Institute after 36-40 hours of classroom instruction and 10-20 hours of self-study.

53 S*ee*, *e.g.,* 950 Mass. Code Regs. §§ 12.204(2)(h)(i); N.H. Rev. Stat. § 421-B:6.

54 *See, e.g.*, Minn. Stat. § 72A.204, Utah Admin. Code R590-252 et seq.

55 Joel Berg, *Reverse Mortgages: A Business in Flux*, American Banker (August 1, 2012).

Homeowners are required to pay the taxes due and the property insurance premiums for the home secured by the reverse mortgage.[56] Failure to make these payments makes the loan "deemed to be out of compliance with the FHA requirements and … delinquent."[57] When homeowners fail to pay these charges, servicers are initially required to pay them from the loan's available proceeds.[58] If there are no available proceeds, the servicer is required to advance these amounts and then try to collect them from the homeowner.[59]

As the CFPB has recognized, homeowners fail to make these payments for a variety of reasons, ranging from not understanding that they are required to not having sufficient discretionary income.[60] Testing by the Federal Reserve Board revealed that some consumers do not understand that the reverse mortgage loan would come due if they failed to pay insurance and taxes.[61]

1. Dealing With Homeowners Currently in Default.

Only those homeowners who have failed to make payments for taxes or insurance *and* who do not have sufficient credit available on their loan account to repay the servicer's advances are facing default. Additionally, lack of available credit prevents refinancing to cover the delinquent payments. The result is that almost 10% of homeowners with outstanding HECM loans are at serious risk of losing their home due to defaults on their property taxes and insurance.[62]

These prospective foreclosures on elderly homeowners with outstanding reverse mortgages flow from an unusual decision by HUD. In January 2011, HUD issued a Mortgagee Letter that requires servicers to collect the advances made for delinquent taxes and insurance from homeowners within very short time period.[63] For example, delinquencies of as much as $5,000 must be collected from the homeowner on a repayment schedule of only 12 months, while amounts over $5,000 must be repaid in only 24 months.[64]

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[56] 24 C.F.R. § 206.205(a) ("The mortgagor shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner and shall provide evidence of payment to the mortgagee as required by the mortgage.").

[57] FHA Mortgagee Letter 2011-01: Home Equity Conversion Mortgage Property Charges Loss Mitigation, January 3, 2011.

[58] 24 C.F.R. § 206.205(c) ("If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account.").

[59] 24 C.F.R. § 206.205(c) ("If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account.").

[60] *See* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 6.6.

[61] *See* ICF Macro, Summary of Findings: Design and Testing of Truth in Lending Disclosures for Reverse Mortgages, at 14 (July 2010).

[62] *See* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 6.6; 75 Fed. Reg. 58539, 58678 (Sept. 24, 2010).

[63] FHA Mortgagee Letter 2011-01: Home Equity Conversion Mortgage Property Charges Loss Mitigation, January 3, 2011.

[64] FHA Mortgagee Letter 2011-01: Home Equity Conversion Mortgage Property Charges Loss Mitigation, January 3, 2011.

These repayment periods are terribly burdensome to elderly homeowners who are, in most instances, unable to afford the payments. Repaying a $5,000 debt in 12 months requires a payment of more than $416 a month. Similarly, a $15,000 debt in 24 months would require a payment of $625 a month. These amounts are unlikely to be affordable to many homeowners with reverse mortgages.

Moreover, it is difficult to understand why HUD would require repayment of servicer advances in twenty-four months or less for reverse mortgages offered to elderly people, when it permits servicer advances on forward-mortgages to be repaid over the entire remaining term of the loan.[65]

The National Housing Act requires lenders to engage in loss mitigation upon the default or imminent default of an FHA-insured mortgage.[66] Regulations and guidelines issued by HUD require that lenders evaluate the borrower for alternatives to foreclosure before the borrower becomes delinquent on four mortgage payments.[67] This raises the question of why HUD has not required the application of similar home-saving strategies applicable to reverse mortgages.

For example, in standard, forward-mortgages, servicers are required to evaluate homeowners for a special forbearance which allows homeowners to reduce or suspend payments for a minimum of four months so long as the arrearage does not exceed the equivalent of twelve monthly mortgage payments.[68] At the end of the forbearance period, the homeowner must typically begin paying at least the full amount of the monthly mortgage payment due under the mortgage. **The repayment period must last at least four months, but otherwise lenders and homeowners are free to agree to any repayment plan for the accumulated arrears throughout the remaining term of the loan**.[69] There is no maximum length of time to repay.

Either the CFPB or HUD should require these same type of repayment periods for amounts currently owed by reverse mortgage homeowners. It simply does not make sense for HUD to insist that reverse mortgage homeowners repay delinquent amounts in twenty-four months or less, when it is the goal of the FHA and HECM programs to help keep seniors in their homes *and* there are reasonable alternatives that will protect the U.S. Treasury from large losses.

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[65] *See e.g. See* Dep't of Hous. & Urban Dev., Mortgagee Letter 2010-04 (Jan. 22, 2010).

[66] *See* 12 U.S.C. § 1715u. A borrower facing imminent default is defined as one that is current or less than thirty days past due on the mortgage and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage in the month it is due. Borrowers facing imminent default can only take advantage of HUD's forbearance or FHA-HAMP options. *See* Dep't of Hous. & Urban Dev., Mortgagee Letter 2010-04 (Jan. 22, 2010).

[67] 24 C.F.R. § 203.605. Notice to the homeowner on foreclosure prevention options together with a HUD brochure on that topic must be sent between the thirty-fifth and the forty-fifth day of delinquency. *See* Dep't of Hous. & Urban Dev., Mortgagee Letter 00-05 (Jan. 19, 2000); Dep't of Hous. & Urban Dev., Mortgagee Letter 97-44 (Sept. 29, 1997).

[68] HUD temporarily changed its guidelines to extend the minimum forbearance period to twelve months. This change to the guidelines will expire August 1, 2013, and the minimum forbearance period will revert back to four months. *See* Dep't of Hous. & Urban Dev., Mortgagee Letter 2011-23 (July 7, 2011).

[69] Dep't of Hous. & Urban Dev., Mortgagee Letter 2002-17 (Aug. 29, 2002).

We propose an alternative rule that would encompass both a much longer repayment period for past defaults, plus an evaluation of the homeowner's ability to afford both these repayments and ongoing taxes and insurance. This rule would not need to be applied to homeowners who have sufficient credit left on their reverse mortgage to cover future payments for taxes and insurance – as the mortgagee is already authorized to raid that fund to make the payments.[70]

Our proposal for a home-saving rule applicable to homeowners who have arrearages due and do not sufficient funds in their credit line to cover past and future tax and insurance charges, would include the following components:

- An evaluation and certification that the homeowner has the resources to pay ongoing charges for taxes and insurance; this process would occur with the assistance of the certified reverse mortgage counselor.

- An amortization schedule of the balance currently due for the servicer advances for past taxes and insurance over the expected remaining term of the loan. These amounts would be required to be paid by the homeowner, on a monthly basis, to the servicer into an escrow account established for this purpose for the remaining period during which the loan is active.[71]

- The loan would not be considered delinquent so long as the homeowner maintained the ongoing obligations for taxes and insurance, and paid the servicer the amortized amount for past advances.

- The servicer could establish an escrow account for the homeowner to pay into each month to assist with budgeting for these expenses.

For example, suppose a homeowner has taxes due each year of $2,000, and annual insurance premiums of $700. Current servicer advances equal three years of these expenses, or $8,100. This homeowner is 75 years old, so assume the remaining term of the HECM loan is twenty-five years. The servicer should evaluate whether the homeowner has the resources to afford both the $2,700 annual costs, and the $8,100 repaid over the 300 (25 years x 12) monthly payments.

- Amortizing $8,100 over 300 payments equals $27 a month.

- The $2,700 annual costs for future taxes and insurance would be paid into an escrow account, at the rate of $225 a month (or slightly more if the RESPA rules on escrow accounts allowing a cushion were made applicable to reverse mortgage escrow accounts).

[70] 24 C.F.R. § 206.205(c).
[71] This would not violate 24 C.F.R. § 206.205(e)(1) because the funds are not withheld from the proceeds of the loan, they are being paid directly by the homeowner to the servicer.

- The monthly expenses that the homeowner would need to show she could afford would then be $27 plus $225, or $252.

Only if the homeowner was found to be unable to afford these monthly payments, and there were no available funds left on the reverse mortgage, would the reverse mortgage loan be referred to foreclosure.

2. Protecting Future Reverse Mortgage Homeowners from Taxes and Insurance Defaults

The treatment of reverse mortgage borrowers' ability to pay for taxes and insurance must be changed for the future, otherwise reverse mortgages threaten to become simply another expensive way to lose one's home to foreclosure. The remedy is simple: every prospective reverse mortgage borrower must either be evaluated to determine whether the borrower has sufficient income to afford taxes and insurance, *or* the reverse mortgage must include sufficient reserves to cover these costs for the entire expected term of the reverse mortgage.

As the CFPB has recognized,[72] voluntary efforts by reverse mortgage originators to underwrite or include reserves will fail in the marketplace because the process is more onerous and makes the mortgage appear to be more expensive.[73] As noted, the industry has already requested that FHA mandate a "baseline underwriting requirement."[74] We support both the FHA and the industry in this regard.

B. Stronger substantive protections should be added to the HECM program to prevent eviction of the non-borrowing spouses of reverse mortgage borrowers.

Non-borrowing spouses are being forced out of their homes upon the death or move of the mortgagor-spouse.[75] Lenders and brokers encourage the non-borrowing younger spouse (generally the wife) to deed over her share of the house to the husband prior to originating a reverse mortgage so that more funds or better terms will to be available from the loan.

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[72] *See* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 6.6.4.

[73] *See* discussion of MetLife's withdrawal from the market after experimenting with underwriting requirements, Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 6.6.4a.

[74] *Id.*

[75] *See* Norma Paz Garcia, Prescott Cole, Shawna Reeves, *Examining Faulty Foundations in Today's Reverse Mortgages*, Consumers Union, at 19 (December 2010); *As Complaints Increase, HUD to Address HECM Non-Borrowing Spouse Issue*, Reverse Mortgage Daily, Apr. 29, 2010, available at http://reversemortgagedaily.com/2010/04/29/as-complaints-increase-hud-to-address-hecm-non-borrowing-spouse-issue/

Lenders and brokers mislead or outright lie to consumers regarding the consequences of leaving younger spouses off the deed and reverse mortgage.[76] Borrowers have reported to the CFPB that brokers promised lower rates, additional funds or a more favorable deal if the spouse's name was not on the deed or reverse mortgage, and promised that borrowers would be able to add a spouse or family member when they reached a certain age.[77] According to officials at HUD, who have received many complaints regarding this practice, "borrowers were told the loan was assumable, or a loan officer said that it was alright to remove a spouse from title because they could refinance or add the spouse back to title later without any problem."[78]

These blatant misrepresentations echo some of the false promises that brokers made during the subprime boom. As with those earlier practices, brokers stand to profit by putting pressure on consumers to remove younger spouses from the reverse mortgage loan. Brokers earn a percentage of the funded loan balance at closing. Any practice that leads to an increase in that amount will result in more money in the pocket of the broker.

In the authorizing statute, Congress expressed its intent to protect spouses. The HECM statute states that HUD may not insure a reverse mortgage "unless the mortgage provides that the homeowner's obligation to satisfy the loan obligation is deferred until the homeowner's death, the sale of the home, or the occurrence of other events specified in the regulation of the Secretary. For the purposes of this subsection, the term "homeowner" includes the spouses of homeowners."[79] The statute's broad definition of homeowner anticipated the need to keep an elder housed even if the spouse passed away or was forced to move.

Newly issued guidance from HUD requiring that non-borrower spouses and co-owners receive HECM counseling is a good step forward, but not enough.[80] Misinformation and sales pressure from lenders and brokers may override information provided by counselors, especially if consumers are told that they need to remove the younger spouse from the deed and reverse mortgage to get more proceeds. Moreover, the couple simply may not inform the counselor that they are considering removing one spouse from the deed. As a result, the non-borrowing spouse may not be fully counseled or understand the risks posed by quitclaiming his or her interest in the home.

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[76] See, e.g., *Ellison v. Wells Fargo Home Mortgage, Inc.*, 2010 WL 3998091 (E.D. Mich. Oct. 12, 2010) (borrower told that by adding non-borrower spouse's name to the mortgage agreement, spouse could remain in home even after borrower died, and spouse's interest in the property would be protected by borrower's quit-claim deed issued to himself and spouse *after* execution of the reverse mortgage).

[77] *See* Consumer Financial Protection Bureau, *Reverse Mortgages -- Report to Congress,* June 28, 2012, § 6.7.1.

[78] *As Complaints Increase, HUD to Address HECM Non-Borrowing Spouse Issue*, Reverse Mortgage Daily, Apr. 29, 2010, (statement of Erica Jessup, Program Specialist at the Dep't of Housing and Urban Dev.) available at http://reversemortgagedaily.com/2010/04/29/as-complaints-increase-hud-to-address-hecm-non-borrowing-spouse-issue/

[79] 12 U.S.C. § 1715z-20(j).

[80] *See* Dep't of Housing and Urban Dev. Mortgagee Letter 2011-31 (Aug. 26, 2011).

HUD and the CFPB should take more aggressive action to ensure that non-borrowing spouses do not end up homeless. The rule should be simple: If a couple is married when the reverse mortgage is originated, the life expectancy runs for the youngest member of the couple, and the termination of the reverse mortgage for death applies to both spouses *regardless of who actually owns the home*. This resolution furthers the traditional and sensible homestead rule of preserving the home for the spouse after widowhood, regardless of legal ownership of the home.

Eviction from the home puts the non-borrowing spouse, mainly women, at risk not only for homelessness, but premature entry into long-term care facilities, like nursing homes. The premature displacement of elders is clearly counter to the purpose of the reverse mortgage product, and to public policy, which supports having older adults "Age in Place."

III. Military pension scams are stealing income from debt-burdened veterans.

Companies and individuals target veterans' benefits, usually by offering an up-front cash payment in return for several years of the veteran's monthly benefit, are a growing threat to elder veterans and their dependents. These schemes produce huge profits for the scammers, deprive veterans of funds they need for their long-term financial security, and are illegal. Unfortunately, the companies engaging in these scams have been relatively successful at avoiding payment of damages to victims.

Veterans receiving retirement and disability benefits are highly attractive targets for financial exploitation.

- Retirement and disability benefit payments are regular, very dependable, and long-term. Furthermore, it is very easy to arrange automatic transfer of the funds each month through "allotments" set up through the Defense Finance and Accounting Servicer. A company that can convince a veteran to sign over rights to his or her pension payments, and can enforce such an agreement, faces an extremely low risk of non-payment. The companies often reduce this risk even further by requiring the veteran to buy life insurance and designate the company as the beneficiary.

- Veterans are easy to reach through affinity marketing and advertising in targeted publications such as the Military Times Network. Although these publications are produced by a private, for-profit corporation, many servicemembers and veterans perceive them to be "official" and assume that advertisers are screened or approved in some way. The companies may also use referral networks and commissions to reach more potential victims.

- Veterans may have or perceive themselves to have unusually heavy debt burdens or poor credit as a result of the financial strains of deployment, frequent relocations and other challenges of military service. Veterans, many of whom enlisted at a young age, may also be less familiar with the landscape of legitimate lenders and financial institutions.

A number of companies have targeted military veterans by offering lump sums in exchange for the veteran's promise to redirect monthly benefits payments directly to the company for a fixed number of years (8 years is a typical time frame). The cost of these transactions can be astronomically high – NCLC has found agreements with effective APRs of 27% all the way up to 106%. These are typically not small-dollar transactions – the agreements NCLC has examined involved principal amounts of up to $85,000, and many in the range of $40,000-$55,000.

The companies try to characterize the transactions as sales or assignments rather than loans for two reasons. First, as the owner of one such company admitted in a deposition, they want to make the transaction non-dischargeable in bankruptcy. Where a true assignment or sale has taken place, the purchaser may have a property interest in the income stream that is unaffected by the bankruptcy; in other words, the obligation effectively cannot be discharged by the veteran. Second, the companies seek to avoid disclosure requirements and any usury limits imposed by state law.

Mr. Johnson's story illustrates the cost of these transactions. Mr. Johnson retired after 20 years of military service with a combined pension and disability payment of just over $1,000 per month. Approximately a year and a half later, Mr. Johnson began considering purchasing a home for himself and his wife. Mr. Johnson tried to comparison shop; he did research on the internet to see what kind of interest rate he could expect to get. Because Mr. Johnson was already working to pay off quite a bit of debt (partly as a result of the seven months it took him to find employment after he retired from the military), he discovered his credit score was too low to qualify him for the best rates.

Trying to find a better option, he reached out to a company he'd seen advertised in the Navy Times. The company gave him various estimates of lump-sum payments, based on how much of his pension he signed over. None of the estimates included a disclosure of the effective interest rate. If they had, he would have seen that it was about 28%, far higher than most subprime mortgages. The company assured him that the transaction was not a loan, and used as a selling point the fact that the transaction would not appear on Mr. Johnson's credit report, taking advantage of Mr. Johnson's concern about his low credit score. Mr. Johnson agreed to direct his entire monthly benefit to the company for 8 years in exchange for a lump sum payment of just over $40,000. He also paid for a life insurance policy for the benefit of the company. Mr. Johnson used the funds he received to pay off his other debts, in hopes that it would improve his credit score, and then he bought a home with a loan from a conventional lender. Mr. Johnson's attempt to be responsible and to improve his credit before buying a house ended up costing him tens of thousands of dollars more than he would have paid if he had not entered into the pension transaction.

The sale or assignment of a veteran's retirement or disability benefits is prohibited by federal law. Indeed, where the transactions have been subjected to court scrutiny, they have often been invalidated. However, only a fraction of the victims of these illegal and abusive transactions find legal representation. And even where the transactions are challenged, it may be impossible to recover overpayments and damages. For example, NCLC and its co-counsel successfully litigated a class action against one pension buy-out company, and won a judgment of approximately $3 million for class members. Unfortunately, the defendant apparently has no assets available to satisfy the judgment and the principals have declared bankruptcy. The few class members who have not completed their 8 years of payments have the benefit of stopping the transfer of their pensions, but the rest of the victims (including Mr. Johnson, who reached out for legal help when he realized he'd been victimized) are out of luck.

Court decisions have not been consistent in determining whether the transactions are loans, assignments, or loans secured by assignments. The transactions should be invalidated as assignments forbidden by federal law, but they should also be subject to usury, Truth in Lending and other remedies associated with loan statutes.

However, as Mr. Johnson's story illustrates, litigation, even when veterans prevail, is an inadequate response to these abuses. Pro-active, aggressive enforcement is required to prevent these companies from targeting veterans in the first place. The companies that target veterans for these illegal transactions are elusive; they change names and websites frequently and use nested structures to hide the identities of the individuals involved.

The CFPB should use creative, aggressive enforcement tactics, such as working with DFAS to monitor allotments and direct deposit instructions for evidence of new scams, and doing 'stings' on companies that offer products on the internet or through advertisements in affinity publications.