National Consumer Law Center
Fighting Together for Economic Justice

April 24, 2024

Administration for Community Living
Administration on Aging
330 C Street, S.W.
Washington, D.C. 20201

Submitted electronically to the Administration on Aging at *ejpubliccomments@acl.hhs.gov*

RE: Request for Information: Elder Justice Coordinating Council Priorities

The National Consumer Law Center[1] respectfully submits the following comments on behalf of its low-income clients in response to the *Request for Information* issued by the Administration for Community Living ("ACL") seeking input regarding issues or areas which the Elder Justice Coordinating Council (Council) can promote to have a positive impact on survivors of elder abuse, neglect, and exploitation, and their communities.[2]

We welcome the opportunity to weigh in on the agenda and work of the Council. For older survivors of elder abuse, neglect, and exploitation and their communities we recommend that the Council focus intently on issues regarding debt, housing, and frauds and scams aimed at older adults to give survivors the resources they need to recover from abuse, to preserve existing assets, and to deal with the devastating economic consequences of the abuse.

Coordinated federal action and policies are needed to address the wide range of issues survivors face. What follows is a slate of recommendations to address the economic and financial well-being of older adult survivors, and to shape the work of the Elder Justice Coordinating Council on their behalf. Specifically, we recommend that the Council:

- Coordinate federal policies and action to protect debt-burdened older adults from financial abuse and exploitation;
- Protect survivors of elder abuse and financial exploitation from the consequences of coerced debt;

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[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 practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics.
[2] 89 Fed. Reg. 20661 (March 25, 2024).

- Put in place policies and practices that will prevent older victims of abuse from losing their homes; and
- Develop a more coordinated approach to aggressively combat scams and frauds aimed at older adults.

Improving the federal response to elder abuse, neglect and exploitation will advance elder justice, promote the resilience of older adults, and save the resources older adults need to age in place. In its work the Council should prioritize the needs of older adults most at risk, including older adults of color and those from vulnerable and marginalized communities.

I. Coordinate Federal Policies and Action to Protect Debt-Burdened Older Adults from Financial Abuse and Exploitation

A. The Debt Burden on Older Adults and its Consequences

Overwhelming debt makes older adults vulnerable to abuse and financial exploitation. The debt burden has increased significantly in recent years. More than half of families with a person age seventy-five or older were in debt in 2022, compared to less than a quarter of similar families in 1989.[3] Older adults are aging with more mortgage, student loan, medical and credit card debt than in the past.[4] The amount of the debt has also increased, siphoning off much needed resources to age in place.[5]

Many older adults of color enter retirement with fewer resources and greater debt after a lifetime of discriminatory credit, housing, and employment practices. Older adults of color are more likely to live in extreme poverty with few resources to pay off debt.[6] Without Social Security, nearly half of Black elders and 43% of Latino or Hispanic elders fall below the poverty

[3] Bd. of Governors of the Fed. Reserve Sys., Survey of Consumer Finances, 1989–2022, Nov. 2, 2023, available at https://www.federalreserve.gov (53.4% of households with reference persons 75 or older were in debt in 2022, compared to 21% in 1989).

[4] See, e.g., CFPB, Snapshot of Older Consumers and Student Loan Debt, Jan. 2017, available at https://www.consumerfinance.gov ("The proportion of delinquent student loan debt held by borrowers age 60 and older increased from 7.4% to 12.5% from 2005 to 2012. Nearly 40% of federal student loan borrowers age 65 and older are in default"); Bd. of Governors of the Fed. Reserve Sys., Survey of Consumer Finances, 1989–2022, Nov. 2, 2023 (showing increase in rate of indebtedness from 20.7% in 1989 to 29.3% in 2022 for households with a reference person age 65–74 and from 5.8% to 24.9% for households with a reference person age 75 or older), available at https://www.consumerfinance.gov (increasing percentage of older Americans owe mortgage on their home).

[5] See Bd. of Governors of the Fed. Reserve Sys., Survey of Consumer Finances, 1989–2022 (Nov. 2, 2023), available at https://www.federalreserve.gov.

[6] See American Society on Aging, Precarious Aging: The Spatial Context of Racial and Ethnic Disparities in Economic Security, Generations Journal, Summer 2021, available at https://generations.asaging.org/racial-and-ethnic-disparities-economic-security.

line.[7] Those who have weathered the health and economic consequences of the pandemic remain financially vulnerable as inflationary pressures increase the cost of food, medicine, and other necessities.

The consequences of debt for older people are significant and can be life-changing, resulting in health problems, decreased financial resilience, and increased susceptibility to predatory lenders, aggressive debt collectors, scammers, and other financial exploiters who can drain the limited resources and assets of older adults. Older debt-burdened adults need stronger consumer protections and coordinated federal action to protect themselves against financial exploitation, scams, and fraud. Action is needed across the debt landscape, from medical debt to student loan debt.

B. Medical & Nursing Home Debt

In 2020, older adults carried $53.8 billion in unpaid medical debt.[8] Despite near universal coverage by Medicare, gaps in that coverage caused 22% of adults 65 and over to report that they currently had medical debt in 2022 and an additional 15% reported that they have had medical debt in the past five years.[9] Adults aged 50-64 frequently struggle to afford health care premiums or are underinsured before qualifying for Medicare.[10] Older adults face an increased risk of errors and inaccurate medical bills because they are more likely to have chronic conditions and to have multiple insurance plans and have difficulty navigating complex billing systems to correct inaccurate bills.[11] The burden of medical debt falls even more heavily on Black and Hispanic older adults, who are nearly two times more likely to carry medical debt than older white or Asian adults.[12]

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[7] See Center on Budget and Policy Priorities, Social Security Lifts More People Above the Poverty Line Than Any Other Program, January 2024, available at https://www.cbpp.org/research/social-security/social-security-lifts-more-people-above-the-poverty-line-than-any-other; Policy Paper: Minorities and Social Security: An Analysis of Racial and Ethnic Differences in the Current Program, Social Security Bulletin, Vol. 62, No. 2, 1999, available at https://www.ssa.gov/policy/docs/ssb/v62n2/v62n2p59.pdf.

[8] CFPB Issue Spotlight: Medical Billing and Collections Among Older Americans, May 30, 2023, available at https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report/

[9] Lunna Lopes, et al., Health Care Debt in The U.S.: The Broad Consequences of Medical and Dental Bills, KFF, June 16, 2022, available at https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/.

[10] The Commonwealth Fund, Issue Brief: Can Older Adults with Employer Coverage Afford Their Health Care? Findings from the Commonwealth Fund Biennial Health Insurance Survey, 2022, August 10, 2022, available at https://www.commonwealthfund.org/publications/issue-briefs/2023/aug/can-older-adults-employer-coverage-afford-health-care-biennial.

[11] See CFPB Issue Spotlight: Medical Billing and Collections Among Older Americans, May 30, 2023, available at https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report/; AARP, Medical Credit Cards: A Potential Debt Trap for Older Consumers, November 17, 2023, available at https://blog.aarp.org/thinking-policy/medical-credit-cards-potential-debt-trap.

[12] See Robin Cohen, et al, Problems Paying Medical Bills: United States, 2021, National Health Statistics Reports, No. 180, January 2023. available at https://www.cdc.gov/nchs/data/nhsr/nhsr180.pdf?utm_campaign=wp_the_health_202&utm_medium=email&utm_source=newsletter&wpisrc=nl_health202.

The medical debt crisis also impacts caregivers, many of whom are older adults themselves. Nearly eight in 10 caregivers deal with out-of-pocket expenses related to looking after their loved ones.[13] The financial strain of caregiving is even greater on women and Black caregivers. Older caregivers in retirement and on fixed incomes are especially at risk of financial setbacks because of a loved one's nursing home bills, and more nursing homes are seeking to hold caregivers personally responsible for their loved ones' debts.

We have seen older caregivers being pursued in collection lawsuits for their loved ones' nursing home bills.[14] As a result of rising long-term care costs, loopholes in federal law, and a lack of enforcement of existing protections, nursing homes and collection law firms have been able to obtain judgments against caregivers totaling hundreds of thousands of dollars. These collection actions force older caregivers to make difficult choices between helping their elderly loved ones get the care they need in their final years or facing their own financial ruin.[15] Without more support and protections for caregivers in this area, caregivers may be forced to decline to assist their older loved ones in need, leaving their loved ones vulnerable to bad actors and financial exploitation.

NCLC recommends that the Elder Justice Coordinating Council focus on the following items to address the growing problem of older adults and caregivers with medical and nursing home debt:

- Coordinating between agencies to enhance services to older adults and caregivers dealing with medical and nursing home debt;
- Supporting increased free civil legal services to older adults and caregivers dealing with medical and nursing home debt;
- Combating illegal medical and nursing home debt collection practices through enforcement of existing consumer protections;
- Developing national training for elder justice organizations to assist older adults and caregivers dealing with medical and nursing home debt;
- Developing a research agenda focused on relieving older adults and caregivers of medical and nursing home debt; and
- Conducting public outreach to help older adults address medical debt and avoid debt relief scams.

For further information on these issues, see the following NCLC materials:

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[13] AARP, Caregiving Out of Pocket Costs Study, June 2021, available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/ltc/2021/family-caregivers-cost-survey-2021.doi.10.26419-2Fres.00473.001.pdf

[14] NPR, Nursing homes are suing friends and family to collect on patients' bills, July 28, 2022, available at https://www.npr.org/sections/health-shots/2022/07/28/1113134049/nursing-homes-are-suing-friends-and-family-to-collect-on-patients-bills.

[15] CFPB, Issue Spotlight: Nursing home debt collection, September 9, 2022, available at https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-nursing-home-debt-collection/full-report/.

- [The Racial Health and Wealth Gap]()
- [FAQs: Can a Nursing Home Force a Resident's Family and Friends to Pay the Bill?]()

C. Student Loan Debt

Many student loan borrowers are not able to age out of their loans—they are aging while carrying the burden of that debt. Alarmingly, borrowers over 60 are the fastest growing age-segment of student loan borrowers, with student loan balances for borrowers over age 50 increasing by 512% in the last 20 years. Older adults with student debt are also disproportionately Black: one in three older adults with student debt are Black.[16]

Since federal student loans do not have a statute of limitations and do not expire when a borrower reaches a certain age or begins drawing Social Security, carrying student loan debt can destroy older borrowers' financial stability—particularly if they default. When federal student loan borrowers default, the government can seize their tax refunds, wages, and a substantial portion of their Social Security benefits. Social Security offsets deprive older, low-income borrowers of basic subsistence income that they need as they go into retirement. This pushes many older borrowers further below the poverty level, all while not resulting in any meaningful repayment of their student loan debt.

Older borrowers with loans that they took out to help their children pay for school are also locked out of more affordable payment plans, and often left without any feasible repayment options. Additionally, student loan refinancing and relief scams are rampant, exposing older borrowers to additional financial risk.

While the last few years have brought unprecedented change within the federal student loan system, older borrowers are still facing substantial difficulties related to managing their debt burdens as they age.[17]

NCLC recommends that the Elder Justice Coordinating Council focus on the following items to address the growing problem of older adults with student loan debt:

- Support increased services, including free civil legal services, available to older student loan borrowers, and develop national trainings for elder justice organizations to assist elder student loan borrowers;

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[16] New America, Blog Post: Who Are Older Americans Still Repaying Loans From College?, June 22, 2023, available at https://www.newamerica.org/education-policy/edcentral/seniors-borrowers-financially-strapped/#:~:text=In%20contrast%2C%20one%20in%20three,poorer%20health%20outcomes%20and%20care.

[17] National Center on Law and Elder Rights, Helping Older Borrowers Navigate the Changing Federal Student Loan System, March 2023, available at https://studentloanborrowerassistance.org/wp-content/uploads/2023/06/Student-Loan-Updates-Ch-Summary-Final.pdf

- Coordinate a public outreach campaign to help older student loan borrowers access student loan debt relief and avoid student loan scams;
- Combat student loan scams;
- Coordinate with the Department of Education, Treasury, and Social Security Administration to better protect Social Security payments from being seized from distressed borrowers to collect on federal student loans;
- Develop a research agenda focused on relieving older adults of student loan debt burdens; and
- Research and develop recommendations to address the problem of saddling low-income parents with student loans that they cannot afford to repay.

For further information on this issue, see the following NCLC materials:

- Helping Older Borrowers Navigate the Changing Federal Student Loan System
- Delivering Distress to Borrowers in Default
- Pushed Into Poverty: How Student Loan Collections Threaten the Financial Security of Older Americans

II. Protect Survivors of Elder Abuse and Financial Exploitation from the Consequences of Coerced Debt

Older adults are subject to a wide range of abuse and exploitation, including from family members and partners. Abusive partners or family members utilize different methods to control their victims, including physical, emotional, psychological, and economic abuse.[18] Economic abuse involves behaviors that control a person's ability to acquire, use, or maintain economic resources, destabilizing that person's financial security.[19]

Although economic abuse surfaces most in the context of intimate partner violence (also termed domestic violence or domestic abuse), it can occur in other coercive and abusive familial relationships. The Violence Against Women Act (VAWA) Reauthorization Act of 2022 defines economic abuse in the context of domestic violence, dating violence, and abuse in later life as:

> "behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—

[18] Advocates interchangeably use the terms "victim" and "survivor" depending on the preference of the person who experienced the abuse. If a person continues to be victimized by the abuse, or the abuse is ongoing, the person most often identifies with the term "victim." If a person has escaped an abusive relationship and is free from ongoing abuse, the term "survivor" is more often preferred. We use the term "victim of coerced debt" and use the more general term "survivor" to refer to consumers who have experienced intimate partner violence or another form of family or dating violence.

[19] A.E. Adams et al., Development of the scale of economic abuse, 14 Violence Against Women 563 (2008).

(A) restrict a person's access to money, assets, credit, or financial information;

(B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty."[20]

Economic abuse encompasses a variety of acts utilized by abusers to leverage the power and control they possess over a survivor to exploit their financial status.[21] An abuser may limit a survivor's access to employment, assets, income, joint bank accounts, or knowledge of household finances.[22]

While economic abuse spans a wide array of abusive behavior, damage to credit is one predominant tactic abusers use to exert control over survivors. Abusive partners destroy credit by fraudulently opening accounts in a survivor's name, lying about paying bills in a survivor's name, overcharging credit accounts, or coercing survivors to sign for loans, credit lines, or other expenses.[23] This type of activity is known as "coerced debt." Coerced debt is a form of economic abuse, encompassing "all non-consensual, credit-related transactions that occur in a relationship where one person uses coercive control to dominate the other person."[24] Coerced debt encompasses both fraudulent debt, incurred in the name of a survivor without their knowledge or permission, and debt obtained by a survivor through the abuser's use of force, threat, and intimidation.[25]

Many survivors do not discover unknown coerced debt accounts until after they have been placed for collection and their credit has already been damaged.[26] Survivors may have difficulty obtaining housing, employment, utilities, and insurance because consumer reports are routinely used by creditors, potential employers, and landlords.[27] Survivors are often unable to obtain

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[20] 34 U.S.C.A. § 12291(a)(13).

[21] Angela Littwin, Coerced Debt: The Role of Consumer Credit in Domestic Violence, 100 CAL. L. REV. 951, 981-982 (2012).

[22] *Id*.

[23] *Id.*

[24] Understanding Coerced Debt. Retrieved March 26, 2024, from https://csaj.org/wp-content/uploads/2022/10/CSAJ-CCD_Part-2_Understanding-Coerced-Debt.pdf

[25] *Id.*

[26] Domestic Violence and Economic Well-being Study." https://csaj.org/resource/domestic-violence-and-economic-well-being-study/. Accessed March 26, 2024.

[27] Domestic Violence and Economic Well-being Study." https://csaj.org/resource/domestic-violence-and-economic-well-being-study/. Accessed March 26, 2024.

credit from traditional lenders and are driven to borrowing from predatory sources such as payday lenders. These high-cost loans aggravate an older adult's already precarious financial situation, trapping them in insurmountable debt.

Because coerced debt has a long-lasting impact on whether an older survivor will have access to credit, employment, or housing, the Elder Justice Coordinating Council should:

- Coordinate and support the investigation and prosecution of financial abuse and exploitation cases;
- Urge the Consumer Financial Protection Bureau (CFPB) to undertake rulemaking to address the impact of coerced debt, including under the Fair Credit Reporting Act; and
- Support increased resources to victims of coerced debt, including legal assistance, and support policy initiatives, enforcement, and education of elder advocates and other individuals interacting with older victims of coerced debt.

III. Focus on Policies and Practices that will Protect and Prevent Older Victims of Abuse, Neglect and Financial Exploitation from Losing their Homes

Over eighty percent of older adults own a home. Federal policies related to disasters, Medicaid estate recovery, and the servicing of forward and reverse mortgages put older victims of abuse, neglect, or financial exploitation at heightened risk of losing their homes. Scams and fraudulent practices by family members and third parties are also a well-known threat to housing stability. Council members, particularly those focused on housing and mortgages, such as the U.S. Department of Housing and Urban Development (HUD) and the CFPB, should act in a coordinated fashion to address policies that undermine housing for elder victims, and the family members that provide care and assistance to older adults.

A. Medicaid Estate Recovery

The Elder Justice Coordinating Council should prioritize a close review of the Medicaid estate recovery rules and the way states are implementing this program. Medicaid estate recovery procedures should be carefully tailored to promote racial equity and stable housing for older adults. In their current form, the estate recovery rules too often lead to surviving spouses and heirs being displaced from the family home. Older adults who need long-term care services or adaptive home modifications that could be funded by Medicaid sometimes refrain from applying for these services due to a concern about their family members being displaced by, or having an inheritance lost to, estate recovery.

Since 1993, the federal government has required state Medicaid programs to pursue recovery of costs from the estates of deceased beneficiaries. States must seek recovery for "nursing home services, home and community-based services, and certain related services, if the recipient was 55 years or older when services were provided," and may seek recovery for other services. In all cases, recovery is limited to the size of the deceased recipient's estate.[28] Since Medicaid recipients are typically prohibited from owning over $2,000 in non-exempt assets, a home (considered an exempt asset) is often the only asset of significant value held by enrollees at death.[29] The Medicaid and CHIP Payment and Access Commission (MACPAC) reports that three-quarters of Medicaid beneficiaries have a net wealth below $48,500, with an average home equity of only $27,364.[30] The program therefore disproportionately burdens low-income and Black and Brown communities, which have fewer estate planning resources to avoid losing their homes from estate recovery.

State Medicaid estate recovery programs, while incredibly disruptive to older adults and families, fail to live up to their cost-effectiveness rationale. MACPAC found that from 2015 to 2019 states recovered only 0.53 percent to 0.62 percent of the Medicaid fee-for-service spending on long-term services and supports.[31]

The federal government should take steps to alleviate the burden of Medicaid estate recovery on low-income families. Specifically,

- The U.S. Department of Health and Human Services (HHS) should implement rules restricting the scope of assets eligible for estate recovery.
- Absent federal legislation to render state estate recovery optional, HHS should prohibit states from pursuing recovery for:
    - Any asset that is the sole income-producing asset of survivors;
    - Homes of modest value; or
    - Any estate valued under a certain threshold.[32]

Limiting the scope of estate recovery in this way would allow low-income and marginalized older adults and communities to keep their homes and prevent intergenerational home loss, the only source for wealth formation for many families. Importantly, it would allow elder victims of abuse to seek services without fear that family members will be displaced in the future.

B. Heirs property and disaster relief

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[28] Justice in Aging et. al, Issue Brief: Medicaid Estate Claims: Perpetuating Poverty & Inequality for a Minimal Return (April 2021), https://justiceinaging.org/wp-content/uploads/2021/04/Medicaid-Estate-Claims.pdf, at 2.
[29] Id.
[30] MACPAC, Report to Congress on Medicaid and CHIP, ch. 3 (Medicaid Estate Recovery: Improving Policy and Promoting Equity) (March 2021), at 81.
[31] Id. at 89 (March 2021). The recovery for states with managed care is likely similar: a 2004 study conducted by AARP and surveying all but four states found a median recovery rate of 0.57 percent. See Naomi Karp et al., ABA Commission on Law and Aging, Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices, at 51 (Table 3) (June 2005).
[32] MACPAC, Report to Congress on Medicaid and CHIP, ch. 3 (Medicaid Estate Recovery: Improving Policy and Promoting Equity) (March 2021), at 95.

Accessibility of disaster relief to heirs property owners is another key issue that the Elder Justice Coordinating Council should prioritize. Heirs property is created when a property owner dies intestate and multiple heirs inherit the property as tenants in common. Heirs property is also created when a property owner, through a will, leaves the property to multiple heirs and the estate does not go through probate. Title to the property remains in the name of the deceased former owner. Without a registered deed or legal proof of ownership, heirs are limited in their ability to manage their property, and may be excluded from disaster relief funds and other public programs.

HUD should require that states and localities receiving Community Development Block Grant-Disaster Recovery (CDBG-DR) grants accept affidavits of ownership as proof of ownership of a property from homeowners applying for these funds to repair their homes after a natural disaster. In addition to serving the CDBG program's purpose of providing low-income families with "decent housing and a suitable living environment,"[33] such a requirement would also comport with HUD's responsibility to affirmatively further fair housing, given the disproportionate number of Black and Brown communities who have and will continue to experience home loss due to informal title.

Many communities, particularly in territories such as Puerto Rico and states in the U.S. Southeast, have historically transferred home title informally. Local CDBG-DR guidelines with unnecessarily restrictive title requirements have therefore frustrated relief efforts after natural disasters, with thousands of families ineligible for disaster relief.[34] Lack of access to critical disaster relief funds displaces elders and families, frustrates the ability of communities to rebound, and threatens future climate resiliency, particularly for older homes that are less likely to be insured.[35]

While HUD has previously reiterated that the agency does not require grantees to accept only title documents as proof of ownership for applications for assistance, this clarification only appeared in a 2021 issue of the Disaster Recovery and Special Issues (DSRI) Digest. In addition to affirmatively requiring that CDBG-DR grantees accept affidavits of ownership, HUD should also release a more current and publicly available statement attesting to its current policies on proof of applicant ownership requirements.[36]

C. Mortgage servicing

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[33] 42 U.S.C.A. § 5301(c).

[34] See Heather K. Way, Ruthie Goldstein, Heir Property Owners and Federal Disaster Aid Programs: Opportunities for A More Equitable Recovery When Disaster Strikes, J. Affordable Housing & Community Dev. L., 2022.

[35] Hannah Dreier and Andrew Ba Tran, 'The real damage': Why FEMA is denying disaster aid to Black families that have lived for generations in the Deep South," Washington Post (July 11, 2021), https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/; Sharon Cornelissen et. al., EXPOSED: A Report on 1.6 Trillion Dollars of Uninsured American Homes, Consumer Federation of America (Mar. 12, 2024), https://consumerfed.org/wp-content/uploads/2024/03/Exposed-UninsuredHomes-1.pdf.

[36] See U.S. Department of Housing and Urban Development, Policy Unit: Frequently Asked Questions, DRSI Digest vol. 3 (July, 2021).

Older adults who have inherited a family home are also vulnerable to home loss when mortgage servicers fail to properly recognize and communicate with them regarding the mortgage secured by their home. The Elder Justice Coordinating Council should include this issue within its review due to the importance of preserving housing for victims of financial exploitation and their family members.

The CFPB should revise its mortgage servicing rules to better protect older adults who have an ownership interest in a home yet are not an original borrower on a mortgage loan. Currently, under the regulations for the Real Estate Settlement Procedures Act, Regulation X, an individual can obtain information and potential loss mitigation options about a mortgage securing a home in which they have an ownership interest, provided that they are confirmed as a successor in interest by the mortgage servicer. However, servicers often delay confirming successors, leading would-be successors to face foreclosure risk while waiting to be confirmed, even where they have provided adequate documentation.

The CFPB should therefore modify the definition of a "confirmed successor" to be any person who has provided reasonable proof of successor status, provide dual tracking protections to successors in interest once they have notified a servicer that they are a potential successor in interest, and include a definition of "borrower" in Regulation X that would include a signatory to the security instrument even if they did not sign the promissory note. Additionally, the CFPB should consider including open-end lines of credit (home equity plans) within its definition of a mortgage loan in § 1024.31 of Regulation X.

D. Reverse Mortgages

The Elder Justice Coordinating Council should also prioritize a close examination of opportunities to strengthen the FHA-insured reverse mortgage program. Reverse mortgages play a crucial role in preserving stable housing for low-income older adults. The FHA-insured Home Equity Conversion Mortgage (HECM) reverse mortgage program was created to allow older homeowners to remain at home while accessing their home equity as a resource to create financial stability. Yet weak regulation and poor oversight of the servicing of these loans have resulted in older homeowners losing their homes to foreclosure at an alarming rate.[37] FHA must continue to improve its HECM servicing rules to make property charge loss mitigation more accessible and prevent unnecessary foreclosures.[38] In addition, the CFPB should amend its mortgage servicing rule under the Real Estate Settlement Procedures Act to cover reverse mortgages and prevent servicing abuses.[39]

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[37] Sarah Mancini et al, Unmet Promise: Reverse Mortgage Servicing Challenges and How to Preserve Housing Stability for Older Adults, National Consumer Law Center (Feb. 6, 2023), available at https://www.nclc.org/resources/unmet-promise-reverse-mortgage-servicing-challenges-and-how-to-preserve-housing-stability-for-elder-adults/.

[38] Id. at 62 (policy recommendations).

[39] National Consumer Law Center, Petition to the Consumer Financial Protection Bureau for a Rulemaking Under Regulation X (Aug. 29, 2023), available at

In addition, the Council should examine the origination rules for HECMs to ensure that the program remains a viable option for low-income older adults who wish to tap into their home equity in order to age in place. Reverse mortgage experts have raised concerns in recent years that the program changes designed to reduce defaults on property charges might have resulted in limiting access to the program for older homeowners who could benefit from a reverse mortgage. These changes reduced the amount a homeowner could borrow through a reverse mortgage (the "principal limit"), increasing the chances that a homeowner with an existing mortgage balance might not be able to refinance into a reverse mortgage.[40] As interest rates have gone up considerably due to anti-inflationary policies, those lower principal limits combined with high interest rates would have an even more severe limiting effect. The time is right to reexamine how HECM origination policies are working, in order to keep this product available for the most vulnerable homeowners.

IV. Enhance Coordination and Cooperation to Aggressively Combat Scams and Frauds Aimed at Older Adults

Reports of scams and fraudulent practices increased significantly during the last few years. In 2022, the Federal Trade Commission (FTC) received over 2.5 million reports of fraud, with reported losses totaling almost $9 billion. This was an increase of 30% over reports from 2021.[41] Older adults were targeted by romance scammers, imposters, identity thieves and other fraudsters. While older adults were less likely to report losing money to scams than younger consumers, when they did report losses the dollar amount was significantly higher.

Fraud is substantially underreported; only an estimated 15% of U.S. fraud victims report the fraud to law enforcement.[42] As AARP noted:

> "While nearly nine in 10 respondents (87%) feel people should report incidents of fraud, only an estimated 15% contact law enforcement. The gap may be tied to attitudes and

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https://www.nclc.org/resources/nclc-petition-for-reg-x-rulemaking-on-helocs-reverse-mortgages-language-access-and-manufactured-housing/.

[40] Lauren Lambie-Hanson and Stephanie Moulton, Reverse Mortgage Retrospective: How Recent Policy Changes Affected Government-Insured Reverse Mortgage Originations and Performance, Federal Reserve Bank of Philadelphia Consumer Finance Institute DP20-06 (Nov. 2020), https://www.philadelphiafed.org/-/media/frbp/assets/consumer-finance/discussion-papers/dp20-06.pdf.

[41] FTC Blog, FTC crunches the 2022 numbers. See where scammers continue to crunch consumers, February 2023, available at https://www.ftc.gov/business-guidance/blog/2023/02/ftc-crunches-2022-numbers-see-where-scammers-continue-crunch-consumers

[42] Department of Justice, U.S. District Attorney's Office, District of Alaska, Financial Crime Fraud Victims (2020), https://www.justice.gov/usao-ak/financial-fraud-crimes.

> awareness about fraud. Sometimes those who have been victimized by a scam feel embarrassed, guilty, or believe there is nothing the police can do."[43]

All consumers are vulnerable to scams and fraudulent practices. Scammers may target older adults whom they suspect are lonely, isolated, confused or financially distressed. Romance scams and government imposter scams result in the highest monetary loss for older consumers.[44] Low-income older adults living on fixed or limited income in particular may lose most or all of the resources they need to age in place.

Fraudulent practices and scams impact every community. Older adults in communities that are racially, ethnically or linguistically isolated are particularly at risk. The FTC Fraud Surveys, for example, found that Latinos experience higher rates of fraud than other populations.[45] This includes government imposter scams, multi-level marketing and pyramid schemes advertised in both English and Spanish, fake job opportunities, and fake immigration assistance schemes.[46] Limited English proficient (LEP) elders are exposed to scams in their own language, and may lack in-language information from reputable sources.[47] Scammers purchase ads on Spanish language radio and other ethnic media to exploit misinformation and confusion regarding financial products.

Despite the proliferation of these fraudulent schemes, older adults face structural and other barriers to reporting scams to law enforcement and other authorities. Older adults with diminished capacity may not recognize that they have been scammed, and are at high risk for revictimization if the perpetrator shares the victim's name with other scammers. Other victims may be embarrassed, or worry that exposing the scam may lead to a loss of independence if they are perceived as incapable of handling their financial affairs. Scams may go undetected, or undiscovered long after money is transferred to the scammer if the older adult is isolated or separated from family and friends. Moreover, to the extent that scams have moved online,

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[43] Williams, Alicia R., "*Americans Are Aware of Fraud's Pervasiveness but Remain Vulnerable*," AARP Research (May 17, 2023); *see* Department of Justice, U.S. District Attorney's Office, District of Alaska, Financial Crime Fraud Victims (2020), https://www.justice.gov/usao-ak/financial-fraud-crimes.

[44] See Federal Trade Commission, Report to Congress, *Protecting Older Consumers, 2019-2020*, October 2020, at 8, available at https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2019-2020-report-federal-trade-commission/p144400_protecting_older_adults_report_2020.pdf

[45] Vaca, Monica, et al., *Protecting Latino Communities, Information from the FTC*, NACA Webinar Series, September 2020, at slide 8.

[46] Id. at 12-15.

[47] *See, e.g., HUD files charge alleging California foreclosure rescue companies scammed Hispanic homeowners*, HUD archives, HUD No. 16-002 (Jan. 12, 2016), https://archives.hud.gov/news/2016/pr16-002.cfm.

employees at financial institutions are not able to report suspicious activities or warn elder customers of possible fraud.[48]

The impact of financial fraud and scams on older adults is devastating. Depending on the amount of money or assets taken, older adults can fall into poverty or homelessness. Older adults may be forced to rely on family members and friends, or need government assistance. Unlike their younger peers, older adults have less time and resources to rebuild their nest egg or otherwise recover financially from the scam. Financial scams also impact the emotional and physical health of victims as they struggle to live with fewer resources for food, medicine, housing and other basic necessities. The financial strain and embarrassment may cause older victims to become fearful, depressed or suicidal.

Scams are perpetrated by a wide variety of individuals and businesses, including family members and caretakers. Scams perpetrated by strangers and businesses, and financial exploitation by family members, caretakers or trusted advisors share similar features. The Elder Justice Coordinating Council has long focused on elder financial exploitation. However, scammers are renowned for their creativity. The Council should redouble its efforts on this topic. In addition to ongoing efforts to prevent, detect and respond to frauds and scams, Council members should:

- Refine and improve coordination, information sharing and cooperation on frauds and scams among federal agencies including federal banking agencies, the agencies that oversee payment systems, the Department of Justice, the Department of Treasury, and state attorneys general;
- Improve access to the Federal Trade Commission's (FTC) Consumer Sentinel Network, simplify fraud reporting for consumers, and promote effective responses consumer complaints;
- Address fraud facilitated by payment systems, including through interagency task force established to address fraud; and
- The FTC should adopt the recommendations developed by the National Consumer Law Center and other stakeholders regarding the FTC Collaboration Act of 2021 Study.

Conclusion

Coordinated action across the federal government can stem the tide of elder abuse, neglect and exploitation. The Elder Justice Coordinating Council plays a key role in identifying and responding to abusive practices that harm the health, dignity and autonomy of older victims. The Council should expand the scope of its work to effectively address the challenges elder victims face, and prioritize communities of color and other older adults most at risk.

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[48] *See Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends*, Consumer Financial Protection Bureau, Office of Older Americans, February 2019.

We look forward to following up on these recommendations. For more information contact Odette Williamson, Senior Attorney and Director of the Racial Justice and Equal Economic Opportunity Project at owilliamson@nclc.org.