

United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

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June 11, 2015

The Honorable Julian Castro
Secretary
U.S. Department of Housing and Urban Development
451 7th St., S.W.
Washington, D.C. 20410

Dear Secretary Castro:

As Ranking Member of the Senate Special Committee on Aging, I take very seriously this Committee's role to protect the economic well-being and quality of life of our nation's seniors. It is for this reason that I write you today to ask you to take immediate action to protect the estimated 12,000 seniors who face eviction from their homes as non-borrowing spouses in reverse mortgages made prior to August 4, 2014. Congress has provided your agency the statutory authority to prevent these foreclosures. As you have already fixed this problem for today's borrowers, I know that you understand the dangers of this policy; I ask that you ensure that all surviving spouses be treated equitably and protected from the losing their homes.

Reverse mortgages, or Home Equity Conversion Mortgages (HECMs), can in certain circumstances be a useful tool that enables seniors to continue living in their homes as they age by tapping their home equity. As more Americans choose to age in place, they often take advantage of HECMs to live independently. Unfortunately, some loan originators have advised couples to remove the younger spouse from the deed either to meet the age 62 eligibility requirements or simply to access more funds from the loan. However, because of regulations and required loan documents issued by HUD, these actions mean that those younger spouses face foreclosure when their borrowing spouses die.

Congress passed the Reverse Mortgage Stabilization Act of 2013 to give the Department of Housing and Urban Development (HUD) the authority to address this issue, among others. I applaud your agency for recognizing the real impact its policies had on non-borrowing spouses. Mortgagee Letter 2014-07, effective August 4, 2014, declared that, moving forward, non-borrowing spouses could remain in the house even after the death of their borrowing spouse, provided some requirements were met. This makes sense as a matter of public policy. But it does not make sense that HUD fails to provide similar protections to non-borrowing spouses whose partners entered into a reverse mortgage prior to August 4, 2014.

According to the National Reverse Mortgage Lenders Association, at least 12,000 older Americans are surviving non-borrowing spouses of HECM borrowers who entered into contracts prior to August 4, 2014. Pursuant to HUD guidelines, these spouses will be evicted if they are unable to pay the full balance due on the loan or 95% of the value of the property in order to remain in their homes after the death of their borrowing spouse. Very few widowed, elderly spouses will be able to afford to pay off these amounts, and thus the majority of these seniors will lose their homes. This undermines the entire purpose of the HECM program, which is to enable America's seniors to age in place.

Congress clearly declared that a homeowner's spouse should be treated in the same manner as the homeowner, and that neither the death of the homeowner nor the homeowner's spouse should not trigger

repayment of a reverse mortgage. Indeed, this legislative intent was upheld by the U.S. District Court for the District of Columbia in 2013.¹ The same court later allowed the six named plaintiffs – non-borrowing spouses for reverse mortgages entered into prior to August 4, 2014 – to remain in their homes, and asked your agency to consider applying a remedy known as the “trigger inapplicability decision,” or TID, to other surviving spouses who had not filed suit.² The Court called failing to apply this remedy to others “unfathomable,” and I agree. These thousands of surviving spouses should not have to engage in the lengthy and expensive process of litigation in order to be granted the same rights as the plaintiffs in the court cases, as well as the surviving spouses whose partners entered into reverse mortgages after August 4, 2014.

On January 29, 2015, HUD issued Mortgagee Letter 2015-03, allowing lenders to either foreclose on non-borrowing spouses for HECMs originated before August 4, 2014, or to use what HUD calls the Mortgagee Optional Election (MOE). The MOE, however, requires that lenders apply a multiple factor test which makes it extremely unlikely that most non-borrowing spouses would be able to use to remain in their homes. This letter was rescinded on April 30, 2015, and lenders have been granted a 60-day extension to take first legal action to begin foreclosure. However, I have already heard from some constituents that foreclosures in these cases have nonetheless resumed.

In a letter to Congress last month, HUD claimed it “has no legal authority to interfere in the valid, private mortgage contracts that have been entered into between the lender and the borrower.”³ However, I do not believe HUD has to interfere in a contract to make things right for these seniors. HUD could, for example, offer lenders the option to assign the loan to the agency, which it already has done for roughly 30,000 reverse mortgages in which the loan balance has reached 98% of the maximum claim amount.

This is just one option available to you, and ultimately it is within your power to ensure that all surviving spouses are treated equitably, regardless of when their partners entered into a reverse mortgage. I therefore ask that your agency immediately act to temporarily prevent imminent foreclosures on surviving spouses and ultimately issue a rule declaring that lenders should not foreclose on non-borrowing spouses if the only reason for the foreclosure is the death of the borrowing spouse.

I am very concerned about this issue, and I hope that HUD will follow the intent of Congress when enacting the HECM statute and protect non-borrowing spouses from foreclosure. As these foreclosures are proceeding already, I would very much appreciate a quick response.

Thank you for your consideration of my request.

Sincerely,



Senator Claire McCaskill
Ranking Member
Special Committee on Aging

¹ *Bennett v. Donovan*, 4 F.Supp.3d 5 (D.D.C. Sept. 30, 2013) (citing 12 U.S.C. § 1715z-20(j)).

² *Plunkett v. Castro*, 2014 WL 4243384 (D.D.C., Aug. 28, 2014)

³ Letter from HUD to Rep. John Lewis, et al., April 3, 2015