

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

May 27, 2015

The Honorable Julián Castro
Secretary
U.S. Department of Housing and Urban Development
450 Seventh Street, SW
Washington, DC 20410

Dear Mr. Secretary:

I write to you on behalf of thousands of senior citizens who are facing foreclosure, or who likely will face foreclosure soon after the death of their spouse, as a result of fraudulent lending practices and flawed administration of the Home Equity Conversion Mortgage (HECM) program. The Department of Housing and Urban Development (HUD) has taken a number of steps in order to address this issue, but has fallen short of providing meaningful relief or transparency in its decision-making process. As such, first, I urge the Department to carefully study this issue, and recalibrate the Department's response based on the concerns articulated in this letter. Secondly, I urge you to share the data requested herein with my office so that Congress and the public can better understand the scope of the challenges facing impacted senior homeowners.

As you are aware, until last year, HUD instructed lenders to use the age of the youngest borrower in order to calculate the size of the reverse mortgage payout. This created a perverse incentive on the part of lenders to encourage couples applying for a HECM loan to remove the younger spouse from the home's title in order to obtain a larger reverse mortgage payout. Further, HUD adopted an erroneous interpretation of the HECM statute as providing no protection to non-borrowing spouses, despite the seemingly clear intent of the statute to provide such protection.¹ According to both press accounts, as well as my conversations with community groups aiding borrowers impacted by this issue, many seniors were deceived or not fully informed of the consequences that such a decision would have on their younger spouses. A federal court has since overturned HUD's interpretation²; but as a result of this history, we are now aware of several tragic incidences in which a non-borrowing spouse of a HECM borrower, usually a widow, is confronted with foreclosure soon after the death of their spouses.

In the face of a court ruling, striking down HUD's interpretation of the HECM statute as providing no protection for non-borrowing spouses, HUD has taken a number of steps to address this issue. However, I continue to have concerns regarding the adequacy of the solutions that HUD has implemented thus far. For example, HUD has addressed this issue *prospectively* for HECM loans with case numbers issued after August 4, 2014, by requiring lenders to base the

¹ 12 U.S.C §1715z-20(j), providing that "the Secretary may not insure a home equity conversion mortgage under this section unless such mortgage provides that the homeowner's obligation to satisfy the loan obligation is deferred until the homeowner's death," and specifying that "for the purposes of this subsection, the term 'homeowner' includes the spouse of a homeowner."

² *Bennett v. Donovan*, 4 F. Supp. 3d (D.D.C. 2013).

principal limit on the age of the youngest spouse, whether or not they are on the title to the home. However, there remains no protection for non-borrowing spouses that marry their spouse after the HECM loan has closed.

Even more concerning is the lack of relief provided to the vast majority of non-borrowing spouses that are affected by HECM loans originated *prior to* August 4, 2014, and HUD's lack of transparency in its decision-making process. HUD currently has the authority to provide widespread relief to these non-borrowing spouses by either allowing the lenders to assign those mortgages to HUD upon the death of the borrowing spouse (Mortgagee Optional Election), or allowing the lender to defer the payment of the loan until the death of the non-borrowing spouse (Hold Election). HUD has only made the Hold Election available to certain plaintiffs in the ongoing litigation, and has recently rescinded eligibility for the Mortgagee Optional Election that it had formerly extended to a very narrow subset of non-borrowing spouses who are not involved in the litigation.

I understand HUD's concerns that providing widespread relief could have a potentially significant negative impact on the Mutual Mortgage Insurance Fund (MMIF). However, the ability for Congress and the public to judge that potential impact, as well as find ways to potentially mitigate such impact, is made difficult by the fact that we lack the relevant data. For example, in a February 6, 2014 Determination on Remand related to the ongoing litigation, HUD estimates that providing relief through the Mortgagee Optional Election would cost \$439 million. However, it is unclear what assumptions it is making in this determination, including whether this cost estimate is based on a restrictive eligibility criteria.

I urge you to reconsider the limited scope of relief that HUD has offered thus far in response to the concerns raised by senior borrowers and advocates working on their behalf. While I understand the tension created by the need to balance the fiscal condition of the MMIF, and to protect borrowers who have been victimized by unfair lending tactics, I hope that HUD will do everything in its power to provide much needed relief to these senior citizens.

In the interim, as the Department works towards that comprehensive solution, I request that HUD provide me with better data on the scope of the problem, and the financial cost of the different options that the Department has at its disposal for providing relief. Specifically, I request the answers to the following questions according to HUD's best estimations:

- For HECMs with case numbers issued before August 4, 2014, how many borrowers have a non-borrowing spouse that is younger?
- Annually, how many households with HECM loans find themselves in a situation in which the borrowing spouse predeceases the non-borrowing spouse?
- What are the assumptions that HUD is making in its calculation of the financial cost of providing the Mortgagee Optional Election, as it is stated in the February 6, 2014, Determination on Remand, including details on the eligibility criteria that the calculation assumes?
- For HECMs with case numbers issued after August 4, 2014, how many borrowers does HUD expect will later re-marry, and therefore have a non-borrowing spouse that is not covered by Mortgagee Letter 2014-07?

The Honorable Julian Castro

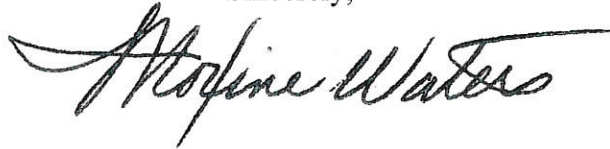
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- What would be the fiscal impact of providing either the Mortgage Election Option or the Hold Election option prospectively to all HECM loans in which the borrowing spouse marries or re-marries after the HECM loan has closed, and the borrowing spouse predeceases the non-borrowing spouse?

Thank you for your attention to this important issue. If you have any questions about this letter, please contact Esther Kahng with my Committee staff at Esther.Kahng@mail.house.gov, or 202-225-4247.

Sincerely,

A handwritten signature in black ink that reads "Maxine Waters". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

MAXINE WATERS
Ranking Member