COMMENT

REVERSE MORTGAGE COMPLEXITY IS NEGATIVELY IMPACTING OLDER AMERICANS*

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* Special thanks to Professor Jim Hawkins at the University of Houston Law Center for his advice throughout this writing process.

I. INTRODUCTION

America is getting older. The number of Americans eligible for reverse mortgages is rapidly rising as the baby boomer population ages.[1] The latest census data estimates that there are about 45 million people 65 and over.[2] According to Harvard University's Joint Center for Housing Studies, the population over the age of 65 is projected to jump to over 73 million Americans by 2030.[3] This number is projected to represent one in every five Americans by 2030.[4]

The large projected increase of older Americans, both in number and in proportion to the overall population, presents questions about the "social, economic, and physical 'health' of the Nation."[5] A top concern of professionals who work with older Americans is their financial health.[6] In a recent study, the National Council on Aging found that only three percent of professionals say that they are very confident older Americans will be able to afford healthcare costs as they age and 86 percent stressed that older Americans need help managing their finances.[7]

One tool to increase liquidity for older Americans is a reverse mortgage. Reverse mortgages are a special kind of loan and are only available to homeowners aged sixty-two and over.[8] Reverse mortgages are not novel—the first reverse mortgage was executed in 1961.[9] Since then, reverse mortgage market has dramatically expanded.[10] However, even with this increase, reverse mortgages only represent one percent of the traditional

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1. Baby boomers are defined as the population born between 1946 and 1964. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., HOUSING AMERICA'S OLDER ADULTS: MEETING THE NEEDS OF AN AGING POPULATION 2 (2014), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf.

2. U.S. Dep't of Health and Human Services, *Aging Statistics*, ADMIN. FOR CMTY. LIVING, http://www.aoa.acl.gov/Aging_Statistics/index.aspx (last visited Mar. 22, 2016).

3. HOUSING AMERICA'S OLDER ADULTS, *supra* note 1, at 2.

4. SANDRA L. COLBY & JENNIFER M. ORTMAN, U.S. CENSUS BUREAU, PROJECTIONS OF THE SIZE AND COMPOSITION OF THE U.S. POPULATION: 2014 TO 2060 1 (March 2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf.

5. Jacob Siegel, *Aging into the 21st Century*, ADMIN. FOR CMTY. LIVING (May 31, 1996), http://www.aoa.acl.gov/Aging_Statistics/future_growth/aging21/aging_21.aspx.

6. *'Health or Finances? Older Americans and Professionals Who Support Them Disagree on Needs of Growing Aging Population*, NAT'L COUNCL ON AGING (July 7, 2015), https://www.ncoa.org/news/press-releases/2015-united-states-of-aging/.

7. *Id.*

8. 24 C.F.R. § 206.33 (2015).

9. Andrew C. Helman, *Putting Equity Back in Reverse Mortgages: How State Legislatures Can Bring Fairness to Home Equity Conversion Mortgages*, 12 MARQ. ELDER'S ADVISOR 415, 433 (2011).

10. Wendy Little Schieke, *The Advisability of Reverse Mortgage to Pay for Care Needs,* MD. B.J., May-Jun. 2014, at 26, 28 (2014).

mortgage market.[11] Reverse mortgages are expected to increase both because of the large baby boomer population and the fact that older Americans have the lowest median income of the U.S. population.[12]

This special tool for older Americans is complex and is accompanied by many risks.[13] Because of the projected large increase in both the number of older Americans and the proportionate share of the population they encompass, understanding reverse mortgages and the underlying policy behind them can help Americans enact the right regulations for the future. Thus, a special focus of this Comment is the regulatory scheme surrounding reverse mortgages. The sheer complexity and ever-changing state and federal regulations surrounding reverse mortgages are often at odds with the primary purpose of consumer protection laws—to help and protect consumers.

In order to realize fully the important policies behind existing reverse mortgage regulation, the Consumer Financial Protection Bureau (CFPB), the federal unit charged with regulating these loans, should do two things. First, the agency should either amend the Truth-In-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) integrated disclosure rule to make it applicable to reverse mortgages, or it should create a separate integrated disclosure rule specifically for reverse mortgages. Second, the CFPB should create a report that details the basic eligibility requirements, loan characteristics, and risks to consumers that is updated at least on a yearly basis.

This Comment proceeds as follows: Part II gives a basic overview of the central design features of reverse mortgages. It provides a concise overview of the eligibility requirements and conditions needed to obtain a reverse mortgage. Then, it discusses the many options borrowers face in selecting the loan, including types of reverse mortgages, payment plans, interest rates, and fees.

Part III of this Comment explores the risks of reverse mortgages. As the CFPB explained in its 2012 Report to

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11. *CFPB Report Highlights Consumer Frustration Around Reverse Mortgages*, CONSUMBER FIN. PROT. BUREAU (Feb. 9, 2015),http://www.consumerfinance.gov/newsroom/cfpb-report-highlights-consumer-frustration-around-reverse-mortgages/.

12. Roger Beane, *Despite Changes, the Future is Bright for Reverse Mortgages*, MORTGAGEORB 2 http://www.mortgageorb.com/issues/SME1308_1309/FEAT_04_Despite_Changes_Future_Is_Bright_For_Reverse_Mortgage_Industry.html.

13. *See generally* CONSUMER FIN. PROT. BUREAU, REVERSE MORTGAGES: REPORT TO CONGRESS (2012), http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf (describing the product in chapter two and the risks to consumers in chapter three).

Congress, "As a product targeted specifically at an elderly, vulnerable population, the risk of fraud, scams, discrimination, and poor financial decisions is particularly acute."[14] This Comment will discuss the consequences of default (foreclosure), the impact reverse mortgages may have on Supplemental Social Security (SSI) and Medicaid, and finally, the danger of deceptive or misleading advertisements.

Part IV provides an overview of the regulatory scheme surrounding reverse mortgages. It examines the agencies responsible for promulgating reverse mortgage rules, the CFPB and the U.S. Housing & Urban Development Department (HUD). Part IV then discusses the major federal consumer financial protection laws for reverse mortgages and the counseling requirement and mandatory disclosures under TILA and RESPA. An overview of state regulations follows.

Part V offers solutions to reduce reverse mortgage complexity, principally advocating for more simplicity through integrated disclosures and regularly updated information from the most trustworthy source, the CFPB. Part VI concludes with a brief overview of the many alternatives to reverse mortgages.

II. BACKGROUND INFORMATION

A. *What is a Reverse Mortgage?*

A reverse mortgage is a special type of loan that does not require monthly payments and allows borrowers to remain in the home until they repay the loan or until they die.[15] The borrower is still responsible for paying property taxes and insurance and must keep the home in good repair.[16] Repayment of the loan is typically triggered if borrowers neglect these conditions or do not live in the home for twelve months.[17] Borrowers may face foreclosure if they cannot repay the loan.[18]

The loan is called a reverse mortgage because it is juxtaposed to a traditional or "forward" mortgage.[19] As the CFPB explains,

> With a traditional mortgage, borrowers' home equity increases and the loan balance decreases over time as the

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14. *Id.* at 110.

15. Tara Twomey, *Reverse Mortgages in Bankruptcy*, AM. BANKR. INST. J., Aug. 2014, at 18, 18 (2014).

16. REPORT TO CONGRESS , *supra* note 13, at 21.

17. *Id.*

18. *Id.*

19. Paul V. Black, *Reverse Mortgage and the Current Financial Crisis*, 8 NAELA J. 87, 92 (2012).

> borrower makes payments to the lender. With a reverse mortgage, borrowers' home equity *decreases* and the loan balance *increases* over time as borrowers receive cash payments from the lender and interest accrues on the loan.[20]

Reverse mortgages, however, "are more complicated than forward mortgages" and are less widely used.[21]

Reverse mortgages have many advantages. It allows borrowers to access built-up home equity and are non-recourse in nature.[22] If the loan balance exceeds the value of the home, the borrower or the borrower's heirs are under no obligation to repay this amount.[23] Borrowers also have a right to remain in the home providing they meet the conditions set out above.[24] There is also no prepayment penalty for partial or full repayment.[25] Reverse mortgages do not require monthly payments, unlike traditional mortgages.[26] In contrast, reverse mortgages can provide a steady payment stream similar to an annuity.[27]

Borrowers have a lot of choice regarding their reverse mortgage loans. However, because more than 90% of all reverse mortgages are Home Equity Conversion Mortgages (HECMs), insured by the Federal Housing Administration (FHA), this Comment's focus is on HECMs.[28] There are a great variety of options even among HECMs, and it is important for borrowers to know all the options in order to choose the best combination to fit their specific needs.

B. Central Features of Reverse Mortgages

In order to qualify for a reverse mortgage, the borrower or the youngest co-borrower must be at least sixty-two years old.[29] Additionally, reverse mortgages are only available for borrowers who own the title to their home, so renters are ineligible for a reverse mortgage.[30] If borrowers have an existing mortgage, they

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20. REPORT TO CONGRESS, *supra* note 13, at 13.
21. Annie E. Nelson, *Reverse Mortgages: Changes Brought About by the Housing and Economic Recovery Act*, 13 N.C. BANKING INST. 337, 362 (2009), http://scholarship.law.unc.edu/ncbi/vol13/iss1/17.
22. Black, *supra* note 19, at 92.
23. REPORT TO CONGRESS, *supra* note 13, at 22.
24. *Id.* at 21.
25. *Id.* at 22.
26. Twomey, *supra* note 15, at 18.
27. REPORT TO CONGRESS, *supra* note 13, at 29.
28. Debra Pogrund Stark et al., *Complex Decision-Making and Cognitive Aging Call for Enhanced Protection of Seniors Contemplating Reverse Mortgages*, 46 ARIZ. ST. L. J. 299, 301 (2014).
29. 24 C.F.R. § 206.33 (2015).
30. § 206.35; *see also Housing America's Older Adults*, *supra* note 1, at 3 (discussing the financial difficulties of older Americans who are renters).

must use the proceeds from their HECM loan to pay off their existing mortgage at closing.[31] The reverse mortgage must therefore be the first lien on the property.[32] The FHA has placed a home value loan limit of $625,500, meaning borrowers will not be able to borrow more than authorized proceeds on $625,500.[33]

As of March 2, 2015, prospective borrowers must also complete a financial assessment before entering into a reverse mortgage.[34] Lenders review prospective borrowers' credit history and financial assessments; however, the borrower's age and equity are still the primary factors used to determine if a borrower can qualify for a reverse mortgage.[35] If, after the financial assessment, the lender determines the prospective borrower may not be able to pay for ongoing obligations such as insurance or property taxes, the law authorizes the lender to set aside certain loan funds to ensure the borrower will be able to pay these ongoing obligations in the future.[36] The financial assessment was a response to the large amount of defaults among reverse mortgage borrowers, which caused strain on the federally insured program.[37]

There are three obligations on an HECM loan. If borrowers fail to follow any of these three obligations, they may face foreclosure.[38] The first obligation is the reverse mortgage must be on the borrowers' primary residence.[39] Repayment is triggered if borrowers or the remaining co-borrower does not occupy the home for more than twelve consecutive months.[40] This obligation applies even if borrowers receive hospital or nursing home care.[41] The second obligation is the home must meet the minimum

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31. § 206.32.

32. Robert T. Cannon, *Keeping Grandma Off the Street: Can HECM Reverse Mortgages Keep More Seniors from Becoming Homeless?*, 8 NAELA J. 67, 68 (2012).

33. Stark, *supra* note 28, at 304.

34. U.S. DEP'T OF HOUS. & URBAN DEV., MORTGAGEE LETTER 2014-22 at 1 (Nov. 10, 2014), http://portal.hud.gov/hudportal/documents/huddoc?id=14-22ml.pdf.

35. CONSUMER FIN. PROT. BUREAU, SNAPSHOT OF REVERSE MORTGAGE COMPLAINTS: DECEMBER 2011 – DECEMBER 2014 at 5 (2015), http://files.consumerfinance.gov/f/201502_cfpb_report_snapshot-reverse-mortgage-complaints-december-2011-2014.pdf.

36. Nat'l Reverse Mortg. Lenders Ass'n, *Most Frequently Asked Questions*, REVERSE MORTGAGE, http://www.reversemortgage.org/gethelp/mostfrequentlyaskedquestions.aspx (last visited Mar. 22, 2016).

37. The HECM default rate was ten percent in 2012. SNAPSHOT OF REVERSE MORTGAGE COMPLAINTS, *supra* note 35, at 14 (citing Stephanie Moulton et al., *An Analysis of Default Risk in the Home Equity Conversion Mortgage (HECM) Program*, J. URB. ECON., Nov. 2015, at 17, http://www.clearpoint.org/wp-content/uploads/OSU-Reverse-Mortgage-Default-Study.pdf).

38. REPORT TO CONGRESS, *supra* note 13, at 21.

39. 24 C.F.R. § 206.39 (2015).

40. Black, *supra* note 19, at 92.

41. *Id.*

property standards set by the FHA.[42] If the property does not meet the minimum requirements before closing the reverse mortgage, borrowers must use loan funds to repair the property.[43] Third, borrowers must continue to pay all property taxes and required insurance.[44]

Borrowers also choose between a HECM Standard and a HECM Saver reverse mortgage. Generally, the HECM Saver offers lower loan limits and lower fees.[45] However, the HECM Saver only offers a fixed interest rate.[46] In contrast, adjustable interest rates are only offered through the HECM Standard option.[47]

There are five payout options if borrowers choose to structure the reverse mortgage as an adjustable interest rate.[48] They are: (1) line of credit, accessible at borrower's discretion; (2) term (a fixed monthly payment for a fixed number of years); (3) tenure (a fixed monthly payment as long as borrowers live in the home); (4) modified term (a smaller monthly payment for a fixed number of years in combination with a line of credit); (5) modified tenure (a smaller monthly payment as long as borrowers live in the home in combination with a line of credit).[49]

As of September 30, 2013, there are also limitations on the amount of proceeds that can be withdrawn in the first twelve months.[50] The proceeds cannot "exceed the greater of: 60% of the Principal Limit; or Mandatory obligations . . . plus 10% of the Principal Limit."[51] If borrowers choose a lump-sum payout option, the first twelve-month disbursement rule is not applicable.[52]

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42. § 206.47; *see* U.S. DEP'T OF HOUS. & URBAN DEV., FHA SINGLE FAMILY HOUSING POLICY HANDBOOK (Aug. 27, 2014), http://portal.hud.gov/hudportal/documents/huddoc?id=SFH_POLI_APPR_PROP.pdf (articulating minimum property requirements).

43. § 206.47.

44. § 206.205(a).

45. Michael Kitces, *HUD Eliminating Fixed-Rate HECM Standard Reverse Mortgages, But HECM Saver Option Remains*, 'KITCES (Feb. 27, 2013 12:04 PM), https://www.kitces.com/blog/HUD-Eliminating-Fixed-Rate-HECM-Standard-Reverse-Mortgages,-But-HECM-Saver-Option-Remains/.

46. *Id.*

47. U.S. DEP'T. OF HOUS. & URBAN DEV., MORTGAGEE LETTER 2013-01 at 1 (Jan. 30, 2013), http://portal.hud.gov/hudportal/documents/huddoc?id=13-01ml.pdf.

48. Andrew M. Hyer et al., *Paying for Long-Term Case in the GEM State'*, 48 IDAHO L. REV. 351, 384 (2012).

49. *Frequently Asked Questions about HUD's Reverse Mortgages*, U.S. DEP'T. OF HOUS. & URBAN DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm/rmtopten (last visited Mar. 22, 2016).

50. U.S. DEP'T. OF HOUS. & URBAN DEV., MORTGAGEE LETTER 2013-27 at 5 (Sept. 3, 2013), https://portal.hud.gov/hudportal/documents/huddoc?id=ML13-27.pdf.

51. *Id.* at 6.

52. *Id.* at 7.

Reverse mortgages also come with many fees, which can be categorized into upfront fees and ongoing fees. Upfront fees include a mortgage insurance premium (MIP), origination fees, and closing costs.[53] For loans less than sixty percent of the principle limit, the upfront MIP is 0.5 percent of the maximum claim amount.[54] For loans more than sixty percent of the principle limit, the upfront MIP is 2.5 percent of the maximum claim amount.[55] Origination fees are capped at a $6,000 maximum.[56] Borrowers typically pay the origination fee out of loan proceeds, reducing the actual amount received.[57] The origination fee can represent a huge overall percentage of the loan, because borrowers only receive a fraction of their home's value and the fee is large.[58]

In addition to upfront fees, borrowers are also responsible for ongoing fees. Ongoing fees include monthly MIP fees, servicing fees, and interest.[59] The monthly MIP fee is equal to 1.25 percent of the loan balance per year.[60] The MIP fee compounds each month and adds to the existing loan balance.[61] In other words, the amount of MIP charged increases as the loan balance grows and continues to increase over time.[62] A servicing fee is added to the interest fee each month, as in a traditional mortgage.[63] Finally, and perhaps most importantly, interest accrues on the existing loan balance each month.[64] Interest can represent at large portion of the loan, particularly if borrowers take out reverse mortgages at a young age and have it for a number of years.[65]

In sum, reverse mortgages are a special type of loan that comes with many options and fees. The complexity and fees, however, are not the only costs of reverse mortgages. Borrowers

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53. *FHA Reverse Mortgages (HECMs) for Seniors*, U.S. DEP'T. OF HOUS. & URBAN DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm/hecmabou (last visited Mar. 22, 2016).

54. *Id.*

55. *Id.*

56. REPORT TO CONGRESS , *supra* note 13, at 33.

57. AARP, REVERSE MORTGAGE LOANS: BORROWING AGAINST YOUR HOME 13 (Oct. 2010), https://www.greenpath.com/sites/default/files/AARP%20Reverse%20Mortgage%20 Loans.pdf.

58. *Id.*

59. REPORT TO CONGRESS , *supra* note 13, at 34–35.

60. *FHA Reverse Mortgages (HECMs) for Seniors*, *supra* note 53.

61. REPORT TO CONGRESS , *supra* note 13, at 34.

62. *FHA Reverse Mortgages (HECMs) for Seniors*, *supra* note 53.

63. REPORT TO CONGRESS, *supra* note 13, at 34.

64. *What Are the Costs I Will Have to Pay for a Reverse Mortgage?*, CONSUMER FIN. PROT. BUREAU (Aug. 14, 2014), http://www.consumerfinance.gov/askcfpb/237/what-are-the-costs-i-will-have-to-pay-for-a-reverse-mortgage.html.

65. *Id.*

must also avoid the many risks that reverse mortgages come with.

III. RISKS ASSOCIATED WITH REVERSE MORTGAGES

Three broad categories of reverse mortgage risks will be discussed in this Comment: foreclosure, loss of SSI and/or Medicaid, and false or misleading advertising. However, it is important to first emphasize behavioral economics theories as applied to reverse mortgage borrowers to better understand why borrowers would accept such risks.

Although consumer behavior is difficult to generalize, behavioral economics suggests that consumers have predictable responses to two contract features: cost-deferral and complexity.[66] Consumers often misperceive important aspects of consumer contracts and misjudge how they will behave in the future.[67] The complexity of reverse mortgages and the fact that it is exclusively used by older Americans amplify these problems.[68]

Loans that provide immediate benefits and deferred costs are appealing to borrowers with an impaired ability to rationally evaluate complicated contract terms. Studies in a variety of consumer credit contexts have found that consumers have a tendency to be overly optimistic.[69] As consumers age, they have a greater propensity to focus more on positive information and less on negative information.[70] The fact that people in general and older Americans specifically are overly optimistic may explain why reverse mortgages are attractive despite their high cost and risks. Consumers underestimate the likelihood of a negative outcomes from a reverse mortgage, so they fail to assess the true costs of the transaction.

The second feature that is common to many consumer contracts is complexity. Complex contracts are reactions to consumer's inability to "effectively aggregate multiple price and non-price dimensions and discern from them the true total cost of the mortgage product."[71]

Complexity is a particular concern in reverse mortgage contracts, especially in regard to older American's cognitive and

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66. OREN BAR-GILL, SEDUCTION BY CONTRACT: LAW, ECONOMICS, AND PSYCHOLOGY IN CONSUMER MARKETS 121 (2012).

67. *Id.*

68. Stark, *supra* note 28, at 300.

69. *E.g.*, BAR-GILL, *supra* note 66, at 51 (credit cards); Ron Harris & Einat Albin, *Bankruptcy Policy in Light of Manipulation in Credit Advertising*, 7 THEORETICAL INQ. L. 431, 434 (2006) (student loans); Jim Hawkins, *Credit on Wheels: The Law and Business of Auto-Title Lending*, 69 WASH. & LEE L. REV. 535, 556 (2012) (auto-title loans).

70. Stark, *supra* note 28, at 332.

71. BAR-GILL, *supra* note 66, at 121.

decision-making ability.[72] Studies show it is difficult for older Americans to concentrate on a task at hand and combine multiple pieces of information together.[73] This fact is extremely problematic in the reverse mortgage context, where borrowers must weigh the many options available and select the best option to suit their individual needs. With this behavioral economics framework in mind, this Comment will now discuss three risks of reverse mortgages.

The first, and probably most apparent risk, is foreclosure.[74] Foreclosure is a serious risk of reverse mortgages because borrowers can lose the physical embodiment of their emotional and financial stability, their home. Borrowers who take out reverse mortgages at a young age and those who stay in the home for many years are more at risk of depleting their home equity, amplifying the severity of foreclosure because they may be unable to finance moving.[75]

Perhaps one of the most important, but often overlooked risks of reverse mortgages is the impact it will have on borrowers' eligibility for government assistance such as Supplemental Social Security Income (SSI) and Medicaid.[76] Because these kinds of assistance programs are based on older Americans' financial position, those who take loan proceeds that exceed the designated monthly limit might jeopardize their eligibility for assistance.[77] For instance, borrowers with liquid resources more than $2,000 for individuals and $3,000 for couples lose eligibility for SSI.[78] Borrowers must ensure they will not lose eligibility by selecting the best payout option to fit their needs.

The third reverse mortgage concern discussed in this Comment is deceptive or misleading advertising. It is often difficult for borrowers to recognize misleading or deceiving advertisements because of reverse mortgage complexity.[79] Advertisements often feature a celebrity, such as Henry Winkler from the popular television show Happy Days, and leave consumers confused about basic features of the loan.[80] A 2009

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72. REPORT TO CONGRESS, *supra* note 13, at 111.

73. Stark, *supra* note 28, at 329.

74. SNAPSHOT OF REVERSE MORTGAGE COMPLAINTS, *supra* note 35, at 11.

75. REPORT TO CONGRESS, *supra* note 13 at 41.

76. Stark, *supra* note 28, at 319–20.

77. Elliot Wong & Ingrid Evans, *Protecting Borrowers from the Pitfalls of Reverse Mortgages,* EXPERIENCE, Summer 2014, at 20, 22.

78. Stark, *supra* note 28, at 325.

79. REPORT TO CONGRESS, *supra* note 13, at 118.

80. Jill Schlesinger, *Reverse Mortgages: Don't Let the Fonz Sell You*, CBS MONEYWATCH (May 12, 2012 7:58 AM), http://www.cbsnews.com/news/reverse-

Government Accountability Office study found borrowers are frequently misled by advertisements, thinking that reverse mortgages were government programs and that borrowers "could never lose their home."[81] These misconceptions, according to the CFPB, "undoubtedly contribute to consumers not understanding that taking out a reverse mortgage in their early eligibility years has risks."[82] Prospective borrowers who do not understand basic reverse mortgage features cannot effectively weigh their options to decide if a reverse mortgage is best for them.[83]

Borrowers must be especially cognizant of their own behavior, particularly in how they respond to cost-deferral and complex contract features. Borrowers should also evaluate the risks of taking out a reverse mortgage, including foreclosure; loss of SSI or Medicaid; and the possibility that they are being misled.

IV. CURRENT REGULATION OF REVERSE MORTGAGES

As older Americans have increasingly turned to reverse mortgages in order to maintain their lifestyles, the industry has come under increased consumer protection scrutiny.[84] Regulation at the federal level aims to help borrowers understand reverse mortgages through mandatory counseling and disclosures. However, the very purpose of the consumer protection laws is thwarted by the complicated and disjointed regulatory structure. In fact, the complexity of the reverse mortgage product is perhaps only matched by the complexity of the laws governing it. This Part examines the current regulatory regime at both the federal and state levels. It begins with an overview of federal regulatory agencies and describes the counseling and disclosures required by law. Four categories of state regulations follow.

A. Federal Regulation

The CFPB, created by the Dodd–Frank Act in 2010, has broad regulatory authority over consumer financial products.[85]

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mortgages-dont-let-the-fonz-sell-you/; CONSUMER FIN. PROT. BUREAU, A CLOSER LOOK AT REVERSE MORTGAGE ADVERTISEMENTS AND CONSUMER RISKS 3 (2015), http://files.consumerfinance.gov/f/201506_cfpb_a-closer-look-at-reverse-mortgage-advertising.pdf [hereinafter A CLOSER LOOK].

81. U.S. GOV'T ACCOUNTABILITY OFFICE, REVERSE MORTGAGES: PRODUCT COMPLEXITY AND CONSUMER PROTECTION ISSUES UNDERSCORE NEED FOR IMPROVED CONTROLS OVER COUNSELING FOR BORROWERS (2009), http://www.gao.gov/assets/300/291790.pdf.

82. A CLOSER LOOK, *supra* note 80, at 11.

83. *See generally* BAR-GILL, *supra* note 66, at 118–24 (describing how mortgage contracts' complexity thwarts borrowers' ability to make rational decisions).

84. A CLOSER LOOK, *supra* note 80, at 14–15.

85. *See About Us*, CONSUMER FIN. PROT. BUREAU, https://www.federalregister.gov/agencies/consumer-financial-protection-bureau (last visited Mar. 22, 2016); *see also*

The CFPB's authority is a consolidation of many agencies' (including the Federal Reserve, the FDIC, and HUD, among others) consumer financial protection powers.[86] However, agencies other than the CFPB still retain some regulatory power over reverse mortgages. HUD, the parent agency of the FHA, continues to promulgate reverse mortgage regulations through Mortgagee Letters, which amend or clarify existing rules.[87] The FHA insures HECMs, but does not itself make loans.[88]

The Dodd–Frank Act tasked the CFPB with implementing new rules for the U.S. mortgage market.[89] The CFPB was called upon to integrate federal mortgage disclosures "in order to facilitate compliance with the disclosure requirements and to improve borrower understanding by simplifying the technical language of the disclosures."[90] However, the new integrated financial disclosures do not apply to reverse mortgages.[91]

What then, are the reverse mortgage regulations? This Comment divides reverse mortgage regulations into two categories. First, it will explain the mandatory counseling requirement and then it will discuss disclosure regulation under the Truth in Lending Act and the Real Estate Settlement Protection Act.

1. Counseling. Mandatory counseling has been a part of the HECM program since its inception.[92] HUD established a network of approved HECM counselors and the HECM Counseling Protocol.[93] According to the HECM Counseling Protocol, the

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Christopher K. Seide, *Consumer Financial Protection Post Dodd–Frank: Solutions to Protect Consumers Against Wrongful Foreclosure Practices and Predatory Subprime Auto Lending,* 3 U. PUERTO RICO BUS. L.J. 219, 241 (2012).

86. Seide, *supra* note 85, at 241.

87. Black, *supra* note 19, at 109.

88. Sierra Sterling, *Balancing Risk and Opportunity: The Status and Future of FHA's Mutual Mortgage Insurance Fund Following the Mortgage Crisis,* 23 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 49, 53 (2014).

89. Richard Cordray, *Consumer Protection in the Financial Marketplace*, 9 HARV. L. & POL'Y REV. 307, 307 (2015).

90. *Id.* at 310.

91. *Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/ (last visited Mar. 22, 2016).

92. REPORT TO CONGRESS, *supra* note 13, at 110.

93. REPORT TO CONGRESS, *supra* note 13, at 122; *see also HUD Intermediaries Providing HECM Counseling Nationwide*, U.S. DEP'T. OF HOUS. & URBAN DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hcc/hccprof18 (last visited Mar. 22, 2016) [hereinafter HUD INTERMEDIARIES]; U.S. DEP'T. OF HOUS. & URBAN DEV., HECM COUNSELING PROTOCOL, http://portal.hud.gov/hudportal/documents/huddoc?id=7610-0_COMBINED.PDF (last visited Mar. 22, 2016) [hereinafter HECM COUNSELING PROTOCOL].

objectives of HECM counseling are to educate prospective borrowers on "how reverse mortgages work and their implications, the appropriateness of a reverse mortgage for their personal and financial situations, and possible financial alternatives to reverse mortgages."[94]

Currently, those on HUD's list of counseling intermediaries can conduct the counseling session either in person or on the telephone.[95] There are a number of required discussion subjects in the counseling session including prospective borrowers' "needs and circumstances," reverse mortgage features and costs, prospective borrowers' responsibilities, alternatives to reverse mortgages, and warnings of reverse mortgage schemes and elder abuse.[96]

The HECM Counseling Protocol explicitly states that the counselor is not permitted to tell the prospective borrower whether they should proceed with a reverse mortgage or which combination of reverse mortgage options to choose.[97] Although this prohibition is designed to prevent bias, some commentators criticize it, insisting counselors need to provide further guidance due to the complexity of reverse mortgages and older Americans' cognitive limitations.[98]

The counselor is required to create a budget with the prospective borrower using the Financial Interview Tool (FIT) based on the prospective borrower's income, assets, debt, and expenses.[99] Counselors are also encouraged to make reasonable efforts to follow up with the prospective borrower within sixty days of the counseling session.[100]

Reverse mortgage lenders must provide the prospective borrower with a list of HUD-approved counseling agencies, five of which must be in the prospective borrower's local area or state.[101] Lenders are prohibited from contacting counseling agencies on behalf of the prospective borrower or to check on the progress of the prospective borrower.[102]

2. Disclosure Regulations. The CFPB gained authority over the Truth-in-Lending Act (TILA) and the Real Estate Settlement

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94. HECM COUNSELING PROTOCOL, *supra* note 93, at 1.1a.
95. HUD INTERMEDIARIES, *supra* note 93.
96. HECM COUNSELING PROTOCOL, *supra* note 93, 1.1b.
97. *Id.* at 1.2a.
98. Stark, *supra* note 28, at 338.
99. HECM COUNSELING PROTOCOL, *supra* note 93, 4.1.d, 5.B.4, 7.B.12.
100. *Id.* at 6.2.c.
101. *Id.* at 1.5.a.
102. *Id.* at 1.5.b–c.

Procedures Act (RESPA) in July 2011.[103] Congress instructed the CFPB to integrate the TILA and RESPA disclosure forms by mid-2012 and the CFPB succeeding in the mandate.[104] The TILA–RESPA integrated disclosure is effective as of October 3, 2015.[105]

According to the CFPB, the information on the separate TILA and RESPA disclosures is "overlapping and the language inconsistent."[106] "Not surprisingly," the CFPB adds, "consumers often find the forms confusing . . . [and] lenders and settlement agents find the forms burdensome to provide and explain."[107] Despite these important observations, the TILA–RESPA integrated disclosure does not apply to reverse mortgages.[108] Prospective reverse mortgage borrowers, therefore, will continue to receive separate disclosures under TILA and RESPA, including the Truth-in-Lending disclosures, a Good Faith Estimate (GFE), and a HUD-1 Settlement Statement.[109]

Borrowers receive disclosures at two phases in the loan process, first during the application period and second, at closing. The Truth-in-Lending disclosures and the GFE are provided to the prospective borrower within three days of the loan application.[110] The GFE is a disclosure that provides a good faith estimation of the closing costs.[111] The Truth-in-Lending disclosures provide the prospective borrower with information such as the annual percentage rate (APR) and the amount financed.[112] However, for reverse mortgage transactions, the

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103. Patricia A. McCoy, *The CFPB After a Year*, 7 BROOK. J. CORP. FIN. & COM. L. 1, 4–5 (2012).

104. *Id.*

105. CONSUMER FIN. PROT. BUREAU, TILA–RESPA INTEGRATED DISCLOSURE RULE: SMALL ENTITY COMPLIANCE GUIDE 13, http://files.consumerfinance.gov/f/201508_cfpb_tila-respa-integrated-disclosure-rule.pdf (last visited Mar. 22, 2016).

106. CONSUMER FIN. PROT. BUREAU, TILA–RESPA INTEGRATED DISCLOSURE: GUIDE TO THE LOAN ESTIMATE AND CLOSING DISCLOSURE FORMS 6, http://files.consumerfinance.gov/f/201503_cfpb_TILA–RESPA-integrated-disclosure-guide-to-the-loan-estimate-and-closing.pdf (last visited Mar 22., 2016) [hereinafter GUIDE TO THE LOAN ESTIMATE AND CLOSING DISCLOSURE FORMS].

107. *Id.*

108. Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 78 Fed. Reg. 7973 (2013), https://www.federalregister.gov/articles/2013/12/31/2013-28210/integrated-mortgage-disclosures-under-the-real-estate-settlement-procedures-act-regulation-x-and-the (last visited Mar. 22, 2016).

109. *Will I Receive the New Know Before You Owe Disclosures When I Shop for a Mortgage?*, CONSUMER FIN. PROT. BUREAU (Jan. 28, 2016), http://www.consumerfinance.gov/askcfpb/2009/Will-I-receive-the-new-Know-Before-You-Owe-disclosures-when-I-shop-for-a-mortgage.html.

110. McCoy, *supra* note 103, at 3.

111. *Id.* at 3 n.9, 4.

112. *Id.* at 3.

creditor must also provide the prospective borrower with other disclosures, including:

> (1) . . . A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosures required by this section or has signed an application for a reverse mortgage loan[;]
>
> (2) . . . A good-faith projection of the total cost of the credit . . . expressed as a table of "total annual loan cost rates[;]" . . .
>
> (3) . . . An itemization of loan terms, charges, the age of the youngest borrower and the appraised property value[; and]
>
> (4) . . . An explanation of the table of total annual loan cost rates[113]

The total annual loan cost (TALC) rates must be based on three "assumed loan periods": two years, the estimated life expectancy of the youngest borrower, and the estimated life expectancy of the youngest borrower multiplied times 1.4.[114]

At closing, the borrower will receive a HUD-1 Settlement Statement under RESPA and a final TILA disclosure.[115] The HUD-1 Settlement Statement shows the actual costs of the loan, broken down into separate charges.[116] It is a standardized form that can be used to compare the actual costs (located in the HUD-1) to the estimated closing costs in the GFE.[117]

To conclude, federal regulations, particularly mandatory disclosures, are complex. Although federal regulations require counseling prior to entering into a reverse mortgage, presumably to reduce borrower confusion, more needs to be done to reduce reverse mortgage complexity. Some states have their own regulations on reverse mortgages, as federal regulations set a floor which state regulations can expand upon.

B. State Regulation

States differ in their regulatory approaches to reverse mortgages. Generally, state laws on reverse mortgages can be broken down into four categories: creditor disclosures, consumer

113. 12 C.F.R. §§ 226.33(b)(1)–(4) (2015).

114. § 226.33(c)(6).

115. McCoy, *supra* note 103, at 3–4.

116. *More Information About RESPA*, U.S. DEP'T. OF HOUS. & URBAN DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/ramh/res/respamor (last visited Mar. 22, 2016).

117. Ellen Beth Gill, *Home Buyers: How to Read Your HUD-1 Statement*, NOLO, http://www.nolo.com/legal-encyclopedia/home-buyers-how-read-your-hud-1-statement.html (last visited Mar. 22, 2016).

counseling, lender default, and repayment.[118] Some states do not have any regulations specific to reverse mortgages.[119] Others have laws governing all of the four categories listed above.[120] Still others have statutes on some, but not all, of the categories.[121] Even among those states that do have reverse mortgage regulations, the substance of the regulations can differ significantly.[122] Discussing state regulations is therefore complicated because of the unique combination of regulations to each of the fifty states.

1. Creditor Disclosures. As of October 2014, twenty-two states had statutes governing creditor disclosures.[123] As illustrated in the example of Arizona and Indiana, the substance of the regulations can differ significantly.[124] Borrowers should not rely on information from other states because there is a high probability that the specific law does not apply.

Some states' creditor disclosure statutes mandate that the loan conspicuously state "This deed of trust secures a reverse mortgage" or "This mortgage secures a reverse mortgage loan."[125] Most states that have a creditor disclosure statute mandate that the creditor disclose the interest rate or other fees charged before closing.[126] Some statutes specify that the loan's "total cost" must

118. *Reverse Mortgages: 50 State Statutory Surveys*, 0090 SURVEYS 74 (2014) [hereinafter *50 State Statutory Surveys*].

119. Alabama, Alaska, the District of Colombia, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Michigan, Mississippi, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Texas, Utah, Virginia, and Wyoming do not have statutes offering protection to reverse mortgagors. *Id.*

120. Arkansas, California, Colorado, Missouri, North Carolina, South Carolina, Tennessee, and West Virginia. *Id*.

121. *Id.*

122. *Id.* For example, both Arizona and Indiana have regulations on the same three categories— creditor disclosure, consumer counseling, and repayment. However, the creditor disclosure regulation differs. *Compare* ARIZ. REV. STAT. ANN. § 6-1703 (2015) (requiring creditors to provide borrowers with a list of five housing counseling agencies; a statement disclosing the borrower's liability under the reverse mortgage; an accounting of all costs charged by the loan originator; all terms and provisions regarding maintenance of the house, including maintaining insurance and paying applicable taxes; and the projected total cost of the loan) *with* IND. CODE 24-4.4-2-503 (2015) (requiring creditors to provide a pamphlet describing available reverse mortgage counseling services).

123. Arizona, Arkansas, California, Colorado, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New York, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, and West Virginia have reverse mortgage statutes related to creditor disclosures. *50 State Statutory Surveys*, *supra* note 118.

124. *See id; see supra* note 122.

125. Arkansas, California, and Louisiana mandate this language. *Id.*

126. Arizona, Arkansas, California, Massachusetts, Minnesota, Missouri, New York, North Carolina, Oklahoma, South Carolina, South Dakota, and West Virginia use this approach. *Id.*

be disclosed before closing, although they define total cost in different ways.[127]

Needless to say, it is important for borrowers to familiarize themselves with the unique creditor disclosure statute of their state. Borrowers must understand how much the loan will cost them, measured in different ways in order to make an informed decision about the loan.[128]

2. Counseling. Like creditor disclosures, consumer-counseling statutes vary among states. Twenty states have counseling statutes.[129] Just over half of these statutes parallel federal regulations, stating that borrowers are required to attend counseling before closing and that the counselor must be an independent third party, approved by HUD.[130] Some statutes merely require that the creditor provide the borrower with a list of approved counselors in their area.[131] A couple of states authorize the borrower to waive counseling, although the waiver must be in writing.[132]

Because only a small number of states have counseling statutes that differ from federal regulations, there is less non-uniformity in this area of reverse mortgage regulations. However, states are free to enact laws above the minimum floor set by the federal scheme. For instance, Vermont and California require counseling be in person, rather than over the telephone.[133]

3. Lender Default. Only eleven states have statutes related to lender default.[134] Lender default, as described in some

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127. *50 State Statutory Surveys*, *supra* note 118. *Compare* COLO. REV. STAT. § 11-38-109 (2013) (requiring only that "the projected total loan cost rate" be disclosed before closing in Colorado) *with* OKLA. STAT. tit. 14A § 3-309.5 (West 2015) (specifying that the "good faith estimate of the projected total cost of the mortgage . . . [be] expressed as a table of annual interest rates" in Oklahoma) *and* TENN. CODE ANN. § 47-30-109 (West 2015) (mandating creditors disseminate "either the projected total annual percentage rate . . . or a table of projected 'Total Annual Loan Cost Rates'" to borrowers in Tennessee).

128. *See generally* BAR-GILL, *supra* note 66.

129. *50 State Statutory Surveys*, *supra* note 118.

130. Arizona, Arkansas, California, Delaware, Hawaii, Indiana, Massachusetts, Minnesota, North Carolina, Tennessee, and Vermont statutes require counseling prior to receiving a reverse mortgage. *Id.*

131. Illinois, Louisiana, Missouri, New York, South Carolina, Washington, and West Virginia. *Id.*

132. *See id.* Colorado requires waiver in writing. COLO. REV. STAT. § 11-38-111. New York requires a signed affidavit that the consumer has waived counseling services. N.Y. REAL PROP. LAW §§ 280, 280-a (McKinney 2015).

133. Only California and Vermont have the face-to-face requirement. CAL. CIV. CODE § 1923.2 (West 2015); VT. STAT. ANN. tit. 8 § 10702 (West 2015).

134. Arkansas, California, Colorado, Missouri, Nebraska, North Carolina, South Carolina, South Dakota, Tennessee, Washington, and West Virginia. *50 State Statutory Surveys*, *supra* note 118.

statutes, occurs when lenders fail to make loan advances to the borrower in the loan documents and fail to cure their mistake.[135] There are two categories of damages available to borrowers in states that have a lender default statute.

First, some statutes provide that lenders must pay borrowers a specified amount of liquidated or treble damages for advances wrongfully withheld.[136] Other statutes specify that lenders must forfeit the right to collect interest arising from the reverse mortgage.[137] The interest on a reverse mortgage, as described above, can amount to a substantial sum of money, especially if borrowers keep the loan for a number of years. Lender default statutes are a unique type of regulation because they provide aggrieved borrowers with specific remedies, though they are unlikely to apply very often.

4. Repayment. The final category of state reverse mortgage regulation pertains to repayment of the loan. Nineteen states have statutes governing accelerated repayment.[138] State statutes are relatively uniform in this category of reverse mortgage regulation and generally specify that repayment becomes due if:

> 1. The property is not the principal residence of at least one borrower.
>
> 2. A borrower conveys all of the borrower's title in the property and no other borrower retains title.
>
> 3. For a period of longer than twelve consecutive months, a borrower fails to occupy the property . . .
>
> 4. A borrower does not perform an obligation under the mortgage.[139]

These state repayment provisions mirror those of federally insured HECM reverse mortgages.[140]

A few statutes specify that repayment can be triggered by a fixed maturity date that was mutually agreed upon by the lender

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135. *See, e.g.*, S.D. CODIFIED LAWS § 54-12-21 (2015) (stating "failing to cure the default *after notice as required in the loan documents*" in South Dakota) (emphasis added). Tennessee's statute that specifies that default occurs when a reverse mortgage lender "fail[s] to make loan advances to the borrower under the reverse mortgage loan contract." TENN. CODE ANN. § 47-30-111. *50 State Statutory Surveys*, *supra* note 118.

136. Arkansas, California, Missouri, Nebraska, and Washington. *50 State Statutory Surveys*, *supra* note 118.

137. Colorado, North Carolina, South Carolina, South Dakota, Tennessee, and West Virginia. *Id.*

138. Arizona, Arkansas, California, Colorado, Iowa, Louisiana, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, South Carolina, South Dakota, Tennessee, West Virginia, and Wisconsin. *Id.*

139. *See* ARIZ. REV. STAT. § 6-1705(C).

140. Black, *supra* note 19, at 92.

and borrower.[141] Other statutes specify that repayment is triggered when an occurrence specified in the loan documents "jeopardizes the lender's security."[142] Notice these two provision are not mutually exclusive; some states have both.[143]

Ultimately, state regulations are complex and intertwined with federal regulations. Although it is important for borrowers to know exactly what reverse mortgage laws are in effect in their state, it is a daunting task even for sophisticated borrowers. Complex regulatory schemes place borrowers at risk because they may not understand the laws and the interaction between them. Borrowers may even disregard information intended to help them because they perceive the process as too complex and burdensome.[144]

V. SOLUTIONS

I have two straight-forward solutions to reducing reverse mortgage complexity. First, the CFPB should be included in the newly-enacted TILA–RESPA Integrated Disclosure, of which it is currently specifically excluded. Second, in light of the complexity of reverse mortgages and the frequent changes in the HECM program, the CFPB should produce a concise overview of reverse mortgage eligibility requirements, loan characteristics, and risks on a yearly basis so that borrowers can consult the most trustworthy source for current information.

A. *Reverse Mortgages Should be Included in the TILA–RESPA Integrated Disclosure*

Reverse mortgages are complicated products, used by a vulnerable population of consumers. Reverse mortgages should not be exempt from the TILA–RESPA integrated disclosure that makes it "easier for consumers to locate key information" in disclosure documents.[145] The TILA–RESPA integrated disclosure simplifies disclosures by combining important information into two disclosures, the Loan Estimate and the Closing Disclosure.[146]

The Loan Estimate must be given to prospective borrowers no later than three business days after prospective borrowers

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141. Arkansas, California, Colorado, Louisiana, South Carolina, South Dakota, and West Virginia. *50 State Statutory Surveys*, *supra* note 118.

142. Arkansas, California, South Carolina, South Dakota, and West Virginia. *Id.*

143. *Id.*

144. *See* BAR-GILL, *supra* note 66, at 121.

145. GUIDE TO THE LOAN ESTIMATE AND CLOSING DISCLOSURE FORMS, *supra* note 106, at 7.

146. *Id.*

complete a loan application.[147] It is designed "to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage loan for which they are applying."[148] The Closing Disclosure, in contrast, must be given to prospective borrowers three days before closing.[149] This disclosure is designed to inform borrowers of all the costs of the loan.[150]

The CFPB issued a guide for consumers on the new TILA–RESPA integrated disclosure.[151] This guide details a long list of "specific benefits" of the new rule for the consumer, including

> reduce[d] paperwork and consumer confusion[;] . . . clear language and design that will help consumers understand complicated mortgage loan and real estate transactions[;] [h]ighlighting the information that has proven to be most important to consumers[;] and [w]arning consumers about features they may want to avoid.[152]

The TILA–RESPA integrated disclosure is preferable to the current separate disclosure scheme because it is simpler, alerting borrowers to the key information in a manner that will not over burden or confuse them. Older Americans especially need this simplified guidance as cognitive abilities decline.

If the CFPB does not amend the TILA–RESPA integrated disclosure to include reverse mortgages, the agency should undertake a similar streamlined disclosure rule specifically for reverse mortgages.[153]

B. Regularly Updated Guidance from the CFPB

As noted throughout this Comment, reverse mortgages are complex. The CFPB recognizes this, saying "[m]any older consumers and their families are confused and frustrated by the terms and conditions of reverse mortgages."[154] In the same document, the CFPB stated that between December 2011, when the CFPB began accepting reverse mortgage complaints, and

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147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. CONSUMER FIN. PROT. BUREAU, WHAT THE NEW SIMPLIFIED MORTGAGE DISCLOSURES MEAN FOR CONSUMERS (2013), http://files.consumerfinance.gov/f/201311_cfpb_TILA–RESPA_what-it-means-for-consumers.pdf.

152. *Id.* at 2.

153. Reverse mortgages, home equity lines of credit, and mortgages "secured by a mobile home or by a dwelling that is not attached to real property (i.e., land)" do not apply to the new TILA–RESPA Integrated Disclosure. GUIDE TO THE LOAN ESTIMATE AND CLOSING DISCLOSURE FORMS, *supra* note 106, at 7.

154. SNAPSHOT OF REVERSE MORTGAGE COMPLAINTS, *supra* note 35, at 3.

February 2015, the time of its publication, HUD issued more than ten major changes to the reverse mortgage program.[155] Ten changes in a span of less than four years is quite a lot, even for professionals, to keep up with.

The CFPB's Report to Congress, probably the most comprehensive guide to reverse mortgages, was published in June 2012, in the midst of HUD changes to the program. The Report to Congress contains a great deal of outdated information, which can further confuse prospective borrowers.[156] Similarly, internet sources contain a lot of outdated information, which can further confuse borrowers. Because of the frequent changes to HECM reverse mortgages, the CFPB should publish an updated manual of the basic eligibility requirements, loan characteristics, and consumer risks at least on a yearly basis. This would provide borrowers with a predictable and updated guide explaining what a reverse mortgage would entail for them.

VI. CONCLUSION

To summarize, reverse mortgages are a special tool for older Americans. They are complex, come with many risks, and are regulated at both the federal and state levels. The ideal reverse mortgage borrower is a person who intends to stay in the home for the rest of his or her life, who needs an income supplement for everyday expenses rather than for luxury items or a vacation, and who is unable to qualify for other, perhaps less expensive and risky financial loans.[157]

Although this Comment's focus is on reverse mortgages, it is important for borrowers and their families to know that there are other options. Older Americans should seriously consider changing their behavior, especially their spending habits. Housing expenses can be a large drain on resources in retirement, so older Americans should consider downsizing into smaller, less costly homes; sharing living space with family

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155. *Id.* at 15.

156. For instance, the CFPB's Report to Congress describes the HECM Standard and HECM Saver options and its information on non-borrowing spouses is now inaccurate. *Compare* REPORT TO CONGRESS, *supra* note 13, at 8–9, 59 *with* Alicia H. Munnell & Steven A. Sass, *The Government's Redesigned Reverse Mortgage Program*, CTR. FOR RETIREMENT RES. B.C., Jan. 2014, at 1, 3 (2014) (reporting the replacement of HECM Standard and HECM Saver with a single HECM program) *and* U.S. DEP'T. OF HOUS. & URBAN DEV., HOME EQUITY CONVERSION MORTGAGE (HECM) PROGRAM: POLICY GUIDANCE AND CERTIFICATIONS FOR ELIGIBLE AND INELIGIBLE NON-BORROWING HECM SPOUSES AND SEASONING REQUIREMENTS GUIDANCE (Jan. 9, 2015), http://portal.hud.gov/hudportal/documents/huddoc?id=15-02ml.pdf (describing new guidelines related to non-borrowing spouses' liability under the HECM program).

157. REPORT TO CONGRESS, *supra* note 13, at 35.

members; or possibly renting if it is more affordable in their area.[158]

In addition to behavioral changes, there are other ways to increase liquidity. Home equity lines of credit (HELOCs) are another type loan that requires using the home as collateral.[159] They are different from reverse mortgages, however, in that borrowers typically repay lenders accumulated interest on a monthly basis. HELOCs also have a set time period in which the borrower can withdraw money.[160] HELOCs may be cheaper for older Americans, but come with increased risks, principally the risk of foreclosure due to default on monthly payments.[161]

Additionally, older Americans may be able to refinance their traditional mortgage.[162] Credit unions may offer smaller loans with reasonable rates and no upfront costs.[163] Older Americans should also research whether they qualify for public assistance such as Supplemental Social Security or Medicaid.[164] Finally, state or local governments may offer deferred payment loans to repair the home.[165]

A reverse mortgage should not be the first option for older Americans. If they do decide to apply for a reverse mortgage, they should research the many options available and not hesitate to contact an approved counselor in their area. Although reverse mortgages are complex, we should strive to create a system that works now so that the growing numbers of older Americans who take out reverse mortgages will be protected and secure.

Jennifer Juergens

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158. Stark, *supra* note 28, at 324.

159. *Learn More About: Differences Between a Reverse Mortgage (HECM) Line of Credit and a Home Equity Line of Credit (HELOC),* AMERICAN ADVISORS GROUP, https://www.aag.com/news/differences-reverse-mortgage-hecm-line-credit-home-equity-line-credit-heloc (last visited Mar. 22, 2016).

160. *Id.*

161. REPORT TO CONGRESS, *supra* note 13, at 37.

162. *Id.* at 40.

163. Deanne Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 HARV. J. ON LEGIS. 167, 197–98 (2007).

164. According to the AARP, a consumer's "single best source for a wide variety of public benefit programs" is the Area Agency on Aging (AAA). AARP, *supra* note 57, at 22.

165. Stark, *supra* note 28, at 326.