



# Protecting Senior Homeowners from Reverse Mortgage Foreclosure

## Policy Brief, August 2017

By Courina Yulisa and Caroline Nagy<sup>1</sup>

### INTRODUCTION

One 68-year-old woman nearly lost her home after her lender determined that she was dead — even though she was very much alive. Another senior in her mid-80s also faced default on her mortgage and displacement from her home after her lender prematurely paid her property taxes. And, in another case, an 82-year-old disabled woman was blindsided by the threat of foreclosure when a line of credit used for paying property taxes and insurance ran out without her knowledge. Luckily, through the work of legal services and housing counselors, each was able to hold onto their homes.

All three women had reverse mortgage<sup>2</sup> loans — special financial products that allow homeowners 62 and older to tap into their home equity while remaining in their homes. This product is a useful and necessary resource for many senior homeowners with incomes that are insufficient to cover their living expenses. In ideal cases, reverse mortgages are not due and payable until the borrower dies or moves out of the home. However, if a borrower falls behind on property taxes, homeowners insurance, or necessary home repairs, the lender will move to foreclose.

In recent years, reverse mortgage defaults and foreclosures have dramatically increased both in New York and nationwide, putting many senior homeowners at risk of displacement. Elderly homeowners who have invested their life savings in their communities are now being foreclosed upon for minimal sums, bank errors, and their failure to sign a form proving their occupancy, with some having no knowledge that they may lose their home.

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<sup>2</sup> Reverse mortgages are predominantly Home Equity Conversion Mortgages (HECM) loans, which are insured by the FHA and regulated by HUD.

## THE RISE IN REVERSE MORTGAGE DEFAULTS AND FORECLOSURES

Starting in June of 2016, the Center began examining the causes of this spike in reverse mortgage foreclosure, tapping into its network of 29 housing counseling and legal service providers to gather case studies and analyzing data from the U.S. Department of Housing and Urban Development (HUD).

Nationwide, reverse mortgage defaults from taxes and insurance have doubled from 2015 to 2016. According to HUD, 89,064 were reported for Fiscal Year 2016<sup>3</sup>, while only 45,381<sup>4</sup> were reported for the previous fiscal year. The steep increase has surpassed the rate of increase for the previous five years.

At the state level, reverse mortgage Due and Payable Notices have soared within the past two years. Due and Payable notices are filed by reverse mortgage lenders when the balance of the reverse mortgage becomes due, either because the homeowner died or sold the property, or because the homeowner has defaulted on the terms of the reverse mortgage by failing to pay taxes and insurance, or failing to maintain the property. Within the past year, one major lender with 10,000 reverse mortgages in New York State estimated that a third of their loans were in default.<sup>5</sup>

HUD reports that Due and Payable Notices in New York were 52 percent higher in the first five months of fiscal year 2016 than the entire 2015 fiscal year. More than 325 notices were filed within the first five months of fiscal year 2016, compared to a mere 39 notices filed for the entire 2014 fiscal year. Although these numbers also include reverse mortgages that become due and payable because of a borrower's death, property sales, or lack of occupancy, the rate of increase is disturbing and is not explained by any similar increase in senior homeowner mortality.

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<sup>3</sup> Integrated Financial Engineering, Inc. (2016). Appendix D of Actuarial Review of the Federal Housing Administration Mutual Mortgage Insurance Fund HECM Loans for Fiscal Year 2016. Rockville, MD: IFE, Inc.

<https://portal.hud.gov/hudportal/documents/huddoc?id=ActuarialMMIFHECM2016.pdf>

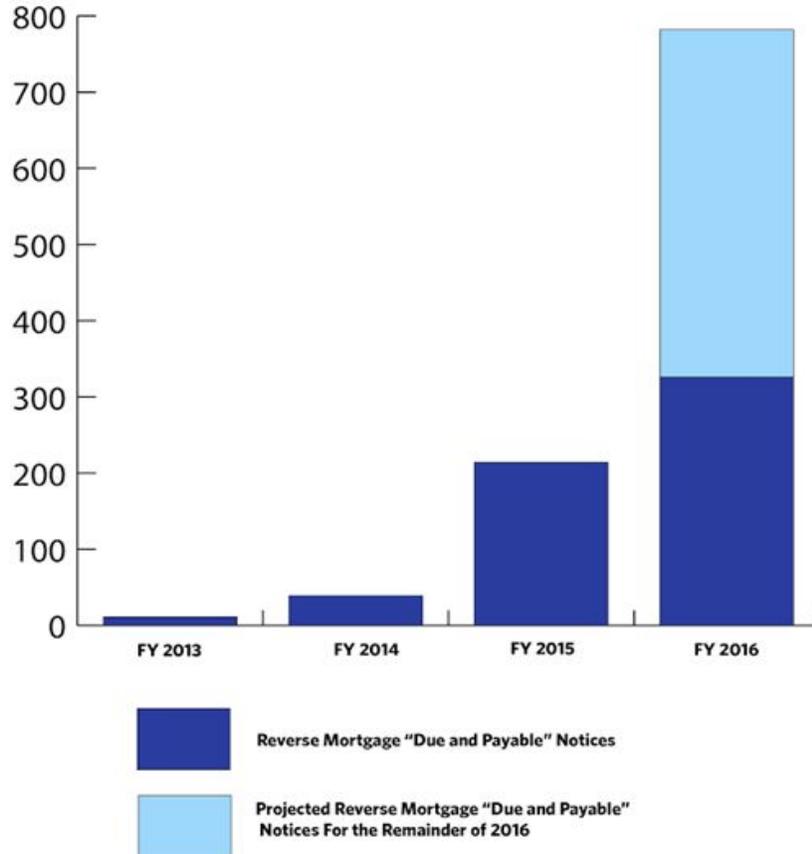
<sup>4</sup> Integrated Financial Engineering, Inc. (2015). Appendix D of Actuarial Review of the Federal Housing Administration Mutual Mortgage Insurance Fund HECM Loans for Fiscal Year 2015. Rockville, MD: IFE, Inc.

<https://portal.hud.gov/hudportal/documents/huddoc?id=AR2015MMIHECMRpt.pdf>

<sup>5</sup> Interview notes on file.

## The Exponential Rise of Reverse Mortgage “Due and Payable” Notices in New York State (2013-Present)

Reverse mortgage “Due and Payable” notices are rising at an exponential rate in New York State. This graph depicts the rise in “Due and Payable” notices, including a projection of reverse mortgage notices through the end of 2016 in New York State. “Due and Payable” notices result from borrower default as well as the death of a borrower.



Source: Dept. of Housing and Urban Development

In New York City and Long Island, the Center’s legal services partners reported that their foreclosure units’ reverse mortgage caseloads either doubled or tripled over the last year, and now comprise about a quarter to a third of their foreclosure cases. In the Center’s Escalations Program, which works directly with financial institutions to resolve complex or otherwise difficult cases, reverse mortgage caseload has tripled.

### FACTORS CONTRIBUTING TO THE RISE IN REVERSE MORTGAGE FORECLOSURES

The Center identified seven factors that we believe are contributing to recent increases in reverse mortgage defaults in New York:

1. **HUD regulations do not encourage lenders to work with homeowners in default.** Lenders do not typically work with homeowners who have defaulted on their reverse mortgages on alternative

solutions that avoid foreclosure — known as loss mitigation.<sup>6</sup> The 2015 HUD rules also limit loss mitigation options available to homeowners and require lenders to call the loan due and payable before being able to offer a repayment plan<sup>7</sup>.

2. **Lender communication to borrowers about defaults and options are inadequate and inconsistent.** In New York State, homeowners are not receiving crucial information from lenders about their tax obligations, payments advanced by the lenders, and options to resolve their defaults. Even when borrowers receive the foreclosure and default notices from the lender that HUD requires,<sup>8</sup> the notices generally fail to include the most important information that would allow for easier resolutions to issues, such as amount owed or the reason for the default.<sup>9</sup>
3. **Lenders are paying property taxes prematurely or failing to recognize municipal payment arrangements.** We believe that poor coordination with municipalities regarding the payment of delinquent taxes and the lack of recognition of payment agreements and/or senior exemptions is another factor leading to reverse mortgage borrower defaults statewide. For example, some lenders have repeatedly paid taxes on the homeowners' behalf even before they become due, creating additional debts.<sup>10</sup> Existing HUD regulations do not specify the level of contact required with municipalities and borrowers before advancing funds. Furthermore, HUD requires lenders to advance for charges for the next 90 days after the original default, which can lead to a greater repayment amount than what is owed<sup>11</sup>. A borrower who has resolved her first quarter's default may continue to be in default because the corporate advance also paid for the next quarter.
4. **Surviving spouses and heirs do not receive notice about their rights.** When the younger spouse of the borrower is not included in the mortgage and note, issues can arise when the borrower dies or relocates. In many instances, the non-borrowing spouse or the borrower's heirs are not advised or notified about their right to remain in the property and what steps they need to take after the borrower's death.<sup>12</sup> During origination, these spouses or co-inhabitants are not given an explanation

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<sup>6</sup> With HUD issuing stricter guidelines for loss mitigation starting in 2015, some lenders and brokers have attributed the rise of foreclosures to compliance of these rules. U.S. Department of Housing and Urban Development, "Mortgagee Letter 2014-21," Nov. 10, 2014, <https://portal.hud.gov/hudportal/documents/huddoc?id=14-21ml.pdf>

<sup>7</sup> U.S. Department of Housing and Urban Development, "Mortgagee Letter 2015-11," April 23, 2015, <https://portal.hud.gov/hudportal/documents/huddoc?id=15-11ml.pdf>.

<sup>8</sup> Ibid

<sup>9</sup> Redacted documents on file. Default notices sent to borrower do not specify which property charge caused the default and when the payment for that property charge became due.

<sup>10</sup> In NYC, municipalities give a grace period between when property taxes are due and when they are considered in default. It's common for servicers to advance funds to municipalities before borrowers have a chance to pay the property taxes within the grace period, generating additional fees and charges that the senior must pay.

<sup>11</sup> Ibid

<sup>12</sup> A Queens Village borrower passed away and the reverse mortgage loan was immediately called due and payable, resulting in the servicer advancing funds to pay for all the property charges. Her non-borrowing spouse did not receive any notices or explanations about his rights and obligations, and only received the Due and Payable Notice with the amount owed for the advanced funds, leading to a legal foreclosure action with multiple complications.

of the consequences of being omitted from the mortgage and note and the rights they are giving up.

5. **Property inspection fees are unregulated.** Once a reverse mortgage goes into default, lenders can send property inspectors to assess the condition of the property, and then pass on the inspection fee to the borrower. There is no regulation limiting the frequency of these inspections, so lenders can easily tack on fees to increase their balance.<sup>13</sup>
6. **Strict requirements for proof of occupancy can lead to foreclosure.** Reverse mortgage borrowers must prove every year that they continue to live in their home as their primary residence. However, lenders only accept a Certificate of Occupancy as proof. If the homeowner fails to return this certificate, the lender can move to foreclose.
7. **Tax exemption programs are underutilized.** Many seniors are unaware of the available exemptions for them or may not even know how to dispute the assessed value of their property for tax purposes. Receiving the exemptions could mean the difference between a homeowner going into foreclosure or remaining financially stable.

## RECOMMENDATIONS

Fortunately, the spike in reverse mortgage foreclosures has prompted policy reforms in New York State law. As part of the April 2017 State budget negotiations, legislation was passed that will grant senior homeowners in reverse mortgage foreclosure proceedings the same legal protections that homeowners receive in conventional foreclosure proceedings.<sup>14</sup> This will include access to mandatory settlement conferences, where lenders and borrowers are obliged to negotiate in good faith to seek an alternative to foreclosure. Assemblymember Helene E. Weinstein and State Senator Jeff Klein have also introduced a comprehensive set of reverse mortgage reform bills in the New York Legislature that would provide greater information to consumers considering reverse mortgages and require enhanced notification to homeowners before initiating reverse mortgage foreclosure proceedings, in addition to requiring settlement conferences.

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However, confronting the reverse mortgage foreclosure challenge will require the concerted efforts of not only policymakers, but also regulators, lenders, service providers, and advocates to ensure existing rules are enforced, enhance important lines of communication, create better protections, and improve outreach and education for existing and prospective borrowers. Together, they can effectively mitigate the tide of reverse mortgage foreclosures and safeguard senior homeowners from displacement.

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<sup>13</sup> A statement from a mortgage servicer shows monthly property inspection charges as well as 2-3 inspections within one month in some cases. Redacted document on file.

<sup>14</sup> "FY 2018 New York State Budget Transportation, Economic Development, and Environmental Conservation Article VII Legislation, Part FF, NY Assembly Bill 3008-C, NY Senate Bill 2008-C (2017). The legislation provides a right to settlement conferences for reverse mortgage holders, their surviving spouses, and heirs if they reside at the property subject to the foreclosure action.

<sup>15</sup> NY Senate Bill S1992, S4452, S4453, S4483, and S4494 (2017)

### **Reform HUD regulations to encourage or require loss mitigation**

To avoid displacement of homeowners, HUD regulations should require reverse mortgage lenders to engage in loss mitigation with borrowers in default and to take extra steps to seek exemptions from the HUD foreclosure timeline. There should be more flexibility and fewer obstacles for lenders to offer loss mitigation options, such as repayment plans.

### **Enforce and clarify existing HUD notice regulations for loss mitigation**

It is essential that senior homeowners at risk of reverse mortgage foreclosure and surviving non-borrowing spouses receive adequate and timely notice from their lender of any amounts past due and their loss mitigation options. To avoid inconsistencies among lenders about what options they are allowed to offer, HUD needs to clarify its rules and provide regular trainings.

### **Reform the state's reverse mortgage foreclosure processes**

While the reforms passed by the New York State Legislature were a crucial step that will allow borrowers to understand their rights in the foreclosure process and obtain legal counsel, more reforms could go further. For instance, lawmakers could address unnecessary foreclosures from occupancy certification issues by requiring lenders to implement other forms of verification, such as phone calls or having the lenders' property inspectors verify occupancy when they do their routine property inspections. They could also add a requirement that lenders meet with borrowers face-to-face before instituting a foreclosure. Lawmakers should also amend New York Civil Practice Law and Rules to require that each summons and complaint include detailed default amounts and a specific reason for default.

### **Enhance communications with senior homeowners**

Current New York law requires lenders to provide notice to local or county offices for the aging (such as the Department for the Aging in New York City) when they are seeking to foreclose on a homeowner who has not designated an additional point of contact.<sup>16</sup> Recent New York legal reforms to reverse mortgage foreclosures created additional notice requirements, and lenders must now send 90-day pre-foreclosure notices to borrowers and file them with the New York State Department of Financial Services. However, reforms could go further by requiring notices to borrowers about each advancement of corporate funds and requiring notices to non-borrowing spouses and heirs of their rights and options.

### **Require lender accuracy in municipal tax payments**

Lenders and municipalities must develop a stronger line of communication to share information about property tax defaults. This should include whether or not the borrower is already in a repayment plan, receives or qualifies for exemptions, or has made payments to the municipality to avoid any duplication in

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<sup>16</sup> N.Y. RPP §280(f).

payments and/or overcharging of the borrower. HUD guidance or state regulators should clearly specify that lenders must only pay the amount that is due on the borrower's behalf after the due date and its grace period, taking any exemptions and existing repayment plans into account.

**Increase access to housing counseling and legal services assistance**

Navigating through complex foreclosure litigation and loss mitigation options can be overwhelming for many borrowers, and many of them may not know that they have options to save their home from foreclosure. Counseled homeowners are nearly twice as likely to receive a cure for their serious delinquency or foreclosure as non- counseled homeowners<sup>17</sup>. That's why it's critical that funding for housing counselors, specifically trained in guiding homeowners through complex reverse mortgage foreclosure, should be increased statewide.

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<sup>17</sup> Temkin, Kenneth M., et al. 2014. "National Foreclosure Mitigation Counseling Program Evaluation Final Report, Rounds 3 Through 5." Washington DC: Urban Institute.