January 30, 2012

"Should I Stay or Should I Go: Promoting the Sustainability and Suitability of Reverse Mortgages"

Debra P. Stark
Jessica M. Choplin, *DePaul University*

"Should I Stay or Should I Go: Promoting the Sustainability and Suitability of Reverse Mortgages"

By:
Debra Pogrund Stark,[1] Dr. Jessica M. Choplin[2], Dr. Joseph A. Mikels[3], and Amber Schonbrun McDonnell[4]

INTRODUCTION

It was the best of loans it was the worst of loans. For many seniors who are living on inadequate fixed income but the value of their home far exceeds any mortgage debt on it, a "reverse mortgage" might be a good method to address these chronic cash shortages because under it the lender makes payments to the borrower which are generally not payable back until the senior passes away or moves from the home. Many seniors have come to this conclusion, with the number of seniors entering into reverse mortgages increasing 1,300 % from 2001 to 2008.[5] But, as will be explained in this article, a reverse mortgage loan can for many seniors be a very costly and ineffective way to address their income needs or to tap into the equity in their home for other purposes. The decision for any given senior on whether a reverse mortgage is the best method to address inadequate fixed income or otherwise wisely use the equity they have in their home is a highly complicated one involving numerous factors, including a knowledge of other lower cost options that might be available and an understanding of the numerous risks inherent in this type of loan. Recognizing the complicated, high cost, and potentially unsuitable nature of reverse mortgages for many seniors, Congress enacted laws that require seniors to receive counseling to better understand its features before seniors can enter into this loan product when federally insured.[6] To better promote the goal of ensuring that seniors receive adequate counseling on the nature of the loan product they are contemplating entering into and other lower cost options they could pursue instead, Congress amended the law in 2008 to require that counseling be performed by independent counselors,[7] and in 2010 HUD enacted a counseling protocol to further improve the quality of the counseling seniors receive.[8] Nevertheless, currently eight percent of federally insured reverse mortgage loans are in default, jeopardizing the continued sustainability of the entire program.[9]

This article analyzes the factors that affect the effectiveness of the current rules and counseling protocol in enabling seniors to make well-informed decisions on whether to enter into a proposed reverse mortgage in light of cognitive barriers consumers in general and seniors in particular face. The article then proposes further changes to these rules and the counseling protocol to better enable seniors to determine whether entering into reverse mortgages are in their best interests in light of their specific financial situations and goals. Section I provides an overview of the current status of the law relating to reverse mortgages and their basic features, including the most current rules relating to the counseling requirement. Section I also summarizes the advantages and disadvantages of entering into a reverse mortgage, notes some of the other lower cost options, and presents a picture of the characteristics of an appropriate candidate for a reverse mortgage. Section II provides an analysis of the cognitive barriers consumers in general and seniors in particular face when considering a reverse mortgage. As detailed in Section II, there are numerous cognitive processes seniors need to go through to evaluate a reverse mortgage: (i) learning about and understanding how reverse mortgages operate, (ii) estimating quantitative values such as the money they need, when they will need it, and the ongoing expenses of insurance, real estate taxes, and repairs, (iii) evaluating attributes of reverse mortgages such as the money they will obtain and the costs for obtaining this money, (iv) identifying which attributes of reverse mortgages are important, (v) judging the likelihood of events such as the likelihood that the senior will be involuntarily away from the home for more than twelve months; and (vi) integrating all of that information to make a decision. Section II explains the psychological phenomena that make it difficult for anyone, especially seniors in many cases, to perform these cognitive processes and provides recommendations to mortgage counselors to best address these phenomena. Finally, Section III details law reforms the authors propose to address gaps in existing legal protections identified in this article, including, and in particular, modifying the 2010 mortgage counseling protocol to require mortgage counselors to make a finding based on certain specified criteria we detail as to whether the proposed reverse mortgage loan is likely to best meet the senior's needs and goals (the "suitability finding") and related reforms.

I. CURRENT STATUS OF REVERSE MORTGAGES

The most common type of reverse mortgage loans is the Home Equity Conversion Mortgage (HECM), insured by the Federal Housing Administration (FHA) (constituting over 90% of all reverse mortgage loans originated in the U.S. market).[10] Because of its popularity and the overwhelming number of seniors who enter into this type of loan, this article focuses on HECMs and whenever this article refers to "reverse mortgages" it is specifically discussing the HECM.[11]

A. Basic Features

a. The Loan

Chapter 13 of the National Housing Act (12 U.S.C. 1715z-20) regulates HECMs. HECM's are a special type of home loan for people ages 62 and older to convert a portion of the equity in their home into cash. Unlike certain lower cost state and local based reverse mortgages which must be used for certain purposes, the proceeds under a HECM can be used for anything the borrower desires (unless the lender determines that certain repairs need to be made to the home, in which case a portion of the loan must be utilized for that).[12] But unlike a traditional home equity loan or second mortgage, the borrower under a HECM is not required to make any monthly payments of principal and interest, and no repayment of the funds advanced is required until the borrower(s): (i) no longer use the home as their principal residence (including being away from the home for more than twelve months due to illness), (ii) sell the home, (iii) pass away or (iv) fail to meet certain obligations of the mortgage such as paying real estate taxes, casualty insurance premiums, and performing repair/maintenance obligations.[13] The payments on the mortgage flow "reverse" - from the lender to the homeowner.[14] The lender sends the borrower cash and the amount the borrower owes (their debt) gets larger as they get more cash and to pay for monthly interest on the debt and monthly servicing fees and mortgage insurance premiums. As the debt grows, the senior's equity shrinks. In short, a reverse mortgage is a "rising debt, falling equity" type of deal. This is exactly what some informed reverse mortgage borrowers want, to "spend down" their home equity while they live in their homes, without having to make monthly principal and interest repayments.[15] This works if the amount to be spent down is adequate to satisfy their future needs and if their life situation, including their health, permits them to remain living in the home for the period they had anticipated; if not, then entering into a HECM is a very high cost means to obtain cash that will not ultimately satisfy the senior's goals.

A reverse mortgage loan is secured by a lien on the home. It doesn't involve the transfer of title of the home to the mortgage lender in exchange for monthly payments, which is a common misconception.[16] The accruing interest, monthly servicing and mortgage insurance, any payments for real estate taxes, insurance or maintenance of the home paid by the lender, and the principal amount of the payments to the borrower are all sums secured by a lien on the home held by the lender that has to be paid when the borrower dies, sells the home, or no longer resides there.[17] If a senior hasn't lived in their home for 12 consecutive months it is no longer considered to be their primary residence.[18] Prior to closing, the house is appraised to determine its value and to make sure that it meets FHA minimum property standards. In cases where repairs are needed, the cost of these repairs may be financed as part of the loan so long as they do not exceed fifteen percent of the loan amount. Reverse mortgage borrowers continue to own the home and are responsible for paying property taxes, hazard insurance and any repairs needed to maintain the home, but can arrange to have the servicer pay for the taxes and insurance from the loan proceeds if there are loan proceeds that have not yet been drawn upon to the maximum amount of the loan.[19] As discussed in Section II, seniors may not adequately take these continuing home expenses into account when they decide to enter into a reverse mortgage—they will not be able to live at their home for "free" as they may incorrectly think or they may not recognize the extent to which these expenses can increase over time.

The total amount a lender is able to loan to the borrower under the reverse mortgage is based on current appraised value, anticipated appreciation, and life expectancy of the borrower.[20] In addition, the borrower's age, equity in the home, current interest rates, and FHA loan limits decide the borrower's loan amount.[21] The older the borrower is, the more cash she can get. If there is more than one owner/borrower, the age of the youngest is the one that is used to make the calculations.[22] Also, the lower the interest rate the greater the loan amount will be. As of October 4, 2010, HUD lowered the effective interest rate floor from 5.50 to 5.00 percent. Because interest rates are lower, many reverse mortgage borrowers will receive more money than previously available.[23] As will be discussed, because the calculation of the total amount of the loan is complicated, many seniors may be confused by this and may not understand how much money they are entitled to receive under the reverse mortgage.

Congress enacted important reforms to HECM's in 2008 with the passage of the Foreclosure Prevention Act and the Housing and Economic Reform Act (HERA).[24] Under this comprehensive housing finance law: (1) counseling must now be done by an independent third party; (2) the annual funding cap of $ 1,000,000 for counseling was removed and instead allows the HUD Secretary to use his or her discretion "to adequately fund" the counseling program;[25] (3) the maximum loan limit for reverse mortgages increased to $417,000 for a single-family residence (and a maximum of $625,500 for a loan secured by a single-family residence in high-cost areas);[26] (4) there is a maximum cap on origination fees set at $6,000;[27] (5) third-party counseling can't be performed by a party who sells an annuity; (6) no one who participated in origination of the FHA reverse mortgage can be involved in, or require, other financial or insurance activities/products; (7) a borrower can't be required to purchase an annuity in order to also purchase a reverse mortgage;[28] and (8) a "mortgage" includes pledges of shares of stock so that homeowners who own interests in a cooperative building, as contrasted with a condominium form of ownership, can also obtain a reverse mortgage.[29]

b. Eligibility

To be eligible for a reverse mortgage the FHA requires that the borrower be a homeowner 62 years of age or older, live in the home as a principal residence, and own their home outright or have a low mortgage balance that can be paid off at closing with proceeds from the reverse loan.[30] The home has to be either a single-family residence in a 1-4 unit dwelling and must pass the standards for safety and structure, or HUD-approved condominiums, cooperatives or manufactured homes that meet FHA requirements.[31] There is no minimum income requirement, as with a conventional home loan, which makes this type of loan ideal for the elderly homeowner who might not satisfy minimum income requirements for a conventional loan because they are retired, do not have a steady stream of income, and are unable to qualify for many job opportunities.[32]

The borrower is also required to receive consumer information and counseling (for free if there is federal funding available to cover the cost, or at very low cost--currently at $125 per counseling session) from an approved reverse mortgage counselor prior to closing on the loan.[33] As discussed in section f below, the borrower is required to receive a counseling certificate from the counselor in order to apply for the HECM and must demonstrate a rudimentary understanding of reverse mortgages at the end of the counseling session to obtain this certificate. The protocol describes this understanding—answering five out of ten basic questions about reverse mortgages correctly—as “basic,” but in our view this low level of understanding should be considered inadequate.

c. Payment Plans

The borrower can choose from five payment plans when receiving their reverse mortgage payments. The first option is tenure. Under this plan the borrower will receive equal monthly payments from the lender for as long as the borrower lives and continues to occupy the property as her principal residence. Because the monthly payments are determined based on the maximum loan amount being paid over the period when the youngest borrower would turn 100, the monthly amount under a tenure plan will be much lower than under the other payment plans which would typically be calculated over a shorter term. Consequently, the term plan is not the most popular, although it is the most prudent since the payments will continue for so long as the borrower or co-borrower lives at the home. The tenure payment plan is also called “reverse annuity mortgage” due to its resemblance to an annuity product.[34] The second option is term, or equal monthly payments for a fixed period of months selected by the borrower.[35] Even though payments stop at the end of the selected term, the loan is not due until the borrower dies or moves out of her home,[36] but this is still a riskier choice for a senior since without continued payments they may not be able to afford to remain in the home. Under the line of credit plan, the borrower will receive the mortgage proceeds in unscheduled payments or in installments, at times and in amounts of the borrower’s choosing, until the line of credit is exhausted. This is the most popular plan chosen by borrowers,[37] with 75% of borrowers selecting this option, perhaps because under it the borrower would have immediate access to a large sum rather than continuing small payments across time.[38] The fourth option is a modified tenure plan, which is a combination of a line of credit with monthly payments for as long as the borrower remains in the home and is alive. A modified term plan allows a combination of a line of credit plan with monthly payments for a fixed period of months selected by the borrower.[39] The homeowner can choose any combination of payment terms and change their cash advance choices at any future time.[40] The cost to change a payment plan throughout the life of the loan is $20.[41] Notwithstanding the flexibility of choice among payment terms, it appears that in some circumstances a senior would not be able to change from a term type plan to a tenure one.[42] Since the non-tenure form of line of credit is the one most seniors enter into, this raises a concern whether mortgage counselors are adequately warning seniors that the loan amount cap might run out under it before the senior has passed away and while the senior is still in need of funds. Also, although having five different payment plans provides flexibility and choice to seniors to best tailor the reverse mortgage to suit their specific needs and goals, the presence of so many choices adds to the cognitive complexity of the decision making that seniors must undertake and may cause many seniors to be unable to process all of the information they need to when deciding whether the offered reverse mortgage is suitable for them. Rather than limit their choices, we recommend other means to address this problem in Section III. It should also be noted that while lenders are supposed to offer both fixed and adjustable rate loans under HECM's, in practice the loans accrue interest at a floating rate because the interest rates for a fixed rate loan (unless the entire amount of the loan is funded immediately) are offered at a significantly higher rate than the initial floating rate. If interest rates over the term of the loan rise significantly, this will cause the HECM to be even more costly than anticipated and reduce the amount of money the senior can draw on the loan, causing the senior to receive less than they expected and might need. This, then, is another risky feature of HECM loans versus a conventional loan where it is not uncommon for that loan to accrue interest at a fixed rate, especially when, as now, interest rates are at historic lows.

d. Costs

The costs of a reverse mortgage loan are quite high compared to a conventional mortgage loan and include: (i) a potentially very high origination fee of $6,000,[43] (ii) expensive mortgage insurance premiums (2% of the home's value at closing, plus an annual premium of 1.25% of the loan balance)[44] which expense can be avoided completely with a conventional loan where the borrower has contributed at least 20% in equity, (ii) monthly servicing fees, (iii) third-party closing costs,[45] and (iii) interest charges.[46] So, for example, if a senior who is 72 years old with a home valued at $250,00 sought a HECM loan, the senior would receive at most loan disbursements in the sum of $135,000[47] and would be charged approximately $25,000 in the above described costs, not including interest, for this loan, according to AARP's calculations.[48] Thus, the senior would be paying costs, not including interest, of over 18% of the loan amount in order to obtain and retain the loan! Although all of these costs can be "financed," which means they can be paid from the proceeds of the loan to reduce the senior's out of pocket expenses at closing, this will reduce the net loan amount available to the borrower and increase the debt ultimately due if the senior's heirs wish to keep the home after the senior dies and the debt becomes due. Another problem with financing these costs is that the senior might not notice how high these costs are when they are not coming out of her pocket directly at closing. Most importantly, as noted above, these costs are much higher than one would find for a conventional mortgage loan, due in large part to the high origination fees and very expensive mortgage insurance premium paid up front and each year to obtain a HECM. According to a Freddie Mac report issued in 2011, conventional mortgage origination fees and points in 2010 were at less than 1% of the loan amount.[49] Seniors should be made aware of the much higher costs to obtaining a HECM versus a conventional mortgage loan and not assume the costs are similar as they otherwise might, a point discussed in Section II.[50]

e. Repayment and Default

No monthly payments of principal and interest are due on a reverse mortgage while it is outstanding, theoretically until the death of the last co-borrower of the reverse mortgage loan.[51] However, the entire loan may become due and payable if any one of several events occur: (i) if the borrower allows the property to deteriorate and fails to correct a documented problem; (ii) if all co-borrowers cease to occupy the home as a principal residence by permanently moving to a new principal residence; (iii) if the last surviving borrower fails to live in the home for 12 consecutive months even if due to physical or mental illness; and (iv) if the borrower fails to pay property taxes or hazard insurance, or violates any other borrower obligation under the loan documents. [52] Upon the death of the last borrower, the loan balance is also due and payable. The senior's heirs may (i) repay the loan in full and keep the home if they possess the funds to do so, or are able to obtain a refinance of the loan to pay it off in full, or (ii) sell the home and pay off the loan balance, keeping any remaining proceeds, and if insufficient to pay off the loan in full the sale must be for at least 95% of the appraised value or (iii) provide the lender with a deed in lieu of foreclosure, or (iv) do nothing and allow the home to be foreclosed.[53] However, as noted in Section III, the standard form loan documents for HECM loans provide for only thirty days for the heirs to repay, refinance or sell, [54] a likely inadequate time to do so for most heirs and loss of equity if the home is actually worth more than the loan balance. Lenders may extend this period to six months, but are not obligated to.[55] If the loan balance is more than the proceeds from the home sale, the FHA insurance will cover any unpaid balance, releasing the heirs from any further financial obligations.[56]

As noted above, it is an event of default if the senior fails to pay property taxes or hazard insurance. This failure to pay can occur if the senior fails to budget adequate funds for this purpose when determining whether with funds from the reverse mortgage the senior will have adequate income to meet all of her obligations to continue to live in the home and otherwise meet her needs. Before June 2010, Fannie Mae elected not to have servicers follow the established guidelines – that is, beginning foreclosure when taxes, insurance or maintenance are not current – because of so-called "headline risk" (the risk that the story of Fannie Mae kicking seniors out of their home would have a negative effect on their image).[57] Starting June 2010 servicers were instructed to submit troubled loans to HUD to obtain approval to start the foreclosure process.[58] Once approved, a demand letter is sent to the borrower(s) who under current practice has six months to cure the default if they immediately begin to take necessary curative actions[59] (although the form loan documents only require a 30- day cure period before foreclosure can be initiated).[60] After that, the servicer must start the foreclosure process. A recent report from HUD indicated that borrowers under 46,000 HECM loans, which represents 8 percent of all such outstanding loans, were delinquent on their tax/insurance payments as of July 2011, underscoring the risk of failing to adequately budget for such payments when first determining the suitability of the reverse mortgage loan.[61]

f. Counseling

As previously noted, as early as 1988 prior to closing on a reverse mortgage loan, federal law required that borrowers be provided with counseling on the financial implications of entering into a reverse mortgage. This included other suitable options.[62] However, the counseling was not very effective in large part because the lender or other interested parties who were trying to sell the HECM to the borrower was the source of the counseling and very little time was spent in the counseling (in some case just five to ten minutes).[63] In reaction to the failure of interested parties to provide adequate counseling, Congress amended Section 255 of the National Housing Act (12

U.S.C. 1715z-20) in 2008 to require that the HECM counseling be done by an independent third party that isn't "directly or indirectly, associated with or compensated by a party" involved in originating the mortgage, servicing the mortgage, funding the loan in anyway, or selling add-ons such as annuities, long-term care insurance, and investments.[64] In addition to the counseling agencies that currently provide this counseling, potentially attorneys who specialize in elder law could be very effective in providing this required counseling function if the attorneys satisfy HUD's requirements so they can be put on the list of approved counselors and if they make sure to comply with the requirements of the counseling protocol when they perform the counseling. Such attorneys could not only inform seniors of the advantages and disadvantages of reverse mortgages and alternative options and provide the suitability determination we propose in this article, but they could also, as the senior's attorney, assist the senior in structuring, negotiating and implementing the reverse mortgage or alternative option the senior is considering to obtain needed/desired cash, keeping in mind various relevant laws such as property and tax law.

In addition to the important reform of requiring independent counselors, HUD released in July 2010 a new HECM Counseling Protocol that provides very detailed procedures for the counselors to follow to enhance the counseling that seniors receive. Under the 2010 protocol, counselors are required to use the National Council of Aging web- based Financial Interview Tool (FIT) to create a budget for the client based on their income, assets, debts and expenses.[65] According to the counseling protocol, using FIT, counselors ask a series of questions to help the client report income, debt, and expenses to illustrate their current financial situation and determine how a reverse mortgage might assist them in meeting their needs and goals.[66] FIT also requires that the counselor discuss life factors such as declining health, limitations in the home environment, or recent life transitions that would make a reverse mortgage an inappropriate method to address cash needs or for other purposes.[67] According to Reverse Mortgage Daily, these issues are marked with a yellow flag since they can affect the financial sustainability of the loan for the borrower.[68] FIT provides a summary of factors, which, according to the mortgage protocol, are intended to help counselors identify features of a reverse mortgage that might benefit the client, assess the impact of their financial needs on remaining equity over time, and consider other options.[69] According to Reverse Mortgage Daily, the FIT program generates a FIT review number which takes into account the total number of yellow flag issues that were raised during counseling and coincides with how carefully clients should consider a reverse mortgage. [70] The mortgage protocol requires mortgage counselors to use the FIT program to create a budget, but the protocol does not mention the yellow flag feature of it or how counselors can use the yellow flags to help seniors to be able to evaluate the reverse mortgage decision. As discussed in Section II, the use of yellow flags can potentially be very helpful to senior decision-making.[71] If only a few items are flagged, highlighting the few important items will reduce memory demands to a more manageable size.[72] If many items are flagged, then the individual items may not be remembered, but the fact that so many items were flagged will likely be remembered. In addition, the FIT Review number could be an important criteria relating to the "suitability" finding we are proposing in Section III, but more information is needed on how the FIT Review Number is calculated, including what factors it is based upon, the weight of these factors, and what conclusions are drawn from different FIT Review Numbers to see how much the counseling can rely on the FIT Review Number for the suitability finding we propose in Section III.

In addition to using FIT, counselors are required under the 2010 protocol to complete a Benefits Check Up (BCU) for clients whose income falls below 200% of the Federal Poverty

Level (FPL) or who are disabled to determine if the senior's need could be met through these programs rather than through the expensive option of a HECM loan.[73] According to the HECM Counseling Protocol, using BCU, counselors can quickly screen more than 1,800 public and private benefits programs, including tax relief, energy assistance, health care and in-home services, prescription drugs, nutrition programs, housing, and other programs for which a client may be eligible, and provide contact information to help them apply for these benefits.[74]

Under the HECM Counseling Protocol, a reverse mortgage counselor must provide seniors with five required handouts: 1) *Preparing for Your Counseling Session,* which is a guide prepared by HUD to help seniors prepare for their counseling session with the reverse mortgage counselor; it provides an overview of the counseling process, a high level understanding of what a reverse mortgage is and how it works, a brief overview of the types of reverse mortgages and payment plans, the costs generally associated with obtaining a reverse mortgage, and alternatives to a reverse mortgage; 2) a printout of loan comparisons, which compares the option of obtaining all of the cash upfront or a monthly payout of the loan proceeds from generic examples; 3) a printout of the total annual loan cost calculation based upon a generic example of a HECM loan; 4) a loan amortization schedule for a generic example of a HECM loan; and 5) the National Council on Aging (NCOA) Booklet, *Use Your Home to Stay at Home - A Guide for Homeowners Who Need Help*,[75] which is intended to help seniors understand and assess the range of options that allow them to continue to live in their own homes while being able to pay for the services and support they need as they age.[76] The booklet attempts to get seniors to think about whether or not entering into a reverse mortgage and staying in their home is right for them, what are the various ways they can pay for help at home, and where they should turn to for more information [77] The counselor may send these documents to the client by regular mail, priority mail, fax or email.[78] Loan printouts of the loan comparison and the annual loan cost calculation are required to be relevant to the client's situation to facilitate the counseling session.[79] If a senior has received loan numbers from the lender for the proposed loan to the senior, the mortgage counselor may review those with the senior, but there is no requirement for the lender to provide loan numbers for the loan being offered to the senior before the counseling session.[80] Indeed, the counseling is to take place before the borrower has made application for the reverse mortgage.[81] Because we believe it to be very helpful to seniors to have the counselor review the actual loan numbers for the proposed loan with the senior, we recommend in Section III that the counseling take place in two phases rather than one; the first would take place as is currently done pre-loan application; the second to take place after loan application, appraisal and, if applicable, lock in of the interest rate so that the senior can obtain the loan numbers for the loan they will obtain at closing and review them with the counselor before the closing. Under the HECM Counseling Protocol, the counselor must establish that the client has received and thoroughly reviewed the educational materials before the counseling session.[82] The counseling protocol does not address what happens if the client hasn't thoroughly reviewed these materials, but as discussed below, the senior is required to answer at least five of ten questions correctly to verify that they understand the basic aspects of the reverse mortgage before the senior can enter into the loan.[83]

The protocol states that clients must be asked ten general questions (provided in the counseling protocol from a list of sixteen questions) about reverse mortgages and questions appropriate to each individual's unique situation.[84] These questions explore some of the most fundamental facts about reverse mortgages – things that every adequately informed client must know when entering into this loan. The counselor must disclose to the client that questions will be asked during the counseling session to determine if the client understands the information being discussed.[85] The counselor will ask questions conversationally throughout the counseling session, rather than an exam at the end of counseling, in order to avoid intimidating the client, according to HUD guidelines.[86]

Since February 1, 2011, lenders are required to provide each borrower with a list of HECM Counseling agencies and it must include no fewer than nine HUD-approved counseling agencies; lenders are also required to provide information to HUD on the housing counseling agencies the borrower was referred to and certain other information relating to the borrower.[87] As discussed in Section III, having the lender create the list of nine counseling agencies is very problematic since it is likely to impact on the independence of the counseling agency, which is crucial to the success of the counseling and the creation of the list should be modified as noted in Section III to address this problem. In our view, it is very important that the counseling agencies remain truly independent from the lender and that the agency not feel pressured to provide counseling in a way that is favorable to the lender in order for the agency to be selected by the lender as part of the nine agencies they include in the list to the borrower. In addition, as will be discussed in Section III, we recommend that HUD use computer randomization to select and order five local and four national agencies so that the lender cannot use ordering to favor certain agencies over others by placing them at the top of the list.[88] Within one business day of a lender's request of a case assignment for a new application, a lender is required to complete the HECM referral list update in "FHA Connection" (an online computer system of HUD providing FHA approved lenders and business partners with direct, secure, online access to the HUD computer system).[89] The lender is required to complete the information required in the FHA Connection before HUD can endorse the HECM loan for insurance.[90] HUD also addressed the potential increase in the cost of the counseling itself in light of the new requirements, including the use of FIT and BCU which will cause the counseling sessions to last longer than before. In 2010 HUD provided $8 million in HECM counseling grants that provided free counseling sessions for most seniors throughout the year at the larger agencies.[91] Once those grants were used, most agencies started charging $125 for each session.[92] The maximum allowable fee in 2009 was $125 or the actual cost of providing the counseling.[93] For 2011, HUD just announced it will provide $9.5 million in HECM counseling grants, an increase of 21% from 2010.[94]

C. Advantages of Reverse Mortgages

There are numerous advantages to seniors in entering into a HECM: (1) there is no risk of default for the senior not paying monthly principal and interest (as with a conventional mortgage loan); (2) the lender has no claim on the senior's income or other assets (as with many conventional mortgage loans); (3) there are no restrictions on the use of the funds as with some state or local reverse mortgages (except to make necessary repairs and pay for insurance and real estate taxes); (4) there are flexible payment options, with the senior electing to receive the loan advances in the form of a lump sum, annuity type payment, credit line or combination of the two; (5) there are no minimum income qualifications to obtain the loan (as with a conventional loan); (6) the senior retains home ownership, can enjoy an independent lifestyle and delay or avoid the trauma of moving, so long as the funds from the reverse mortgage are adequate to meet their future needs and their other life situations do not require a move from the home; (7) the loan is federally insured, meaning even if the reverse mortgage lender defaults, the senior still receives their payments; (8) there is a potential ability of a senior through a reverse mortgage to have cash available to them for future economic needs;[95] and (9) upon the death of the senior, the heirs have the possibility of still keeping the home in the family[96] if they are able to pay off the loan balance within thirty days (or such longer period that HUD agrees to) or during any state statutory redemption periods after the lender commences a foreclosure action.

D. Disadvantages/Risks of Reverse Mortgages

There are several major disadvantages to a senior entering into a reverse mortgage. The first is the high cost of obtaining a HECM loan. As previously noted, it can cost much more to have a HECM loan than a conventional mortgage loan due to the high mortgage insurance premiums and the servicing fees required to be paid throughout the term of the loan and the high underwriting fees, leading to costs, exclusive of interest, of 18% of the loan amount in the AARP Booklet example noted earlier. If the senior can obtain the needed or desired cash through a less expensive means this would be preferable. Although choosing the "HECM Saver" would lead to lower costs than an ordinary HECM loan, it also leads to a lower loan amount that may be insufficient to meet the senior's needs.[97]

A second major disadvantage to a senior entering into a reverse mortgage is the surprising fact that they will be in default and will have to repay the debt if they fail to live in the home for more than twelve months, even if this failure is due to the fact that the senior becomes sick or injured and needs care outside of the home.[98] The standard form note and mortgage for HECM loans not only provides that if a senior fails to maintain the home as their "primary residence" the debt will become due, these documents also provide that a home is no longer considered a "primary residence" when a senior hasn't resided in that home for a consecutive 12 month period of time.[99] So, for example, if an elderly homeowner has to move to an assisted living home or the hospital due to physical or mental illness or injury, if it is for more than 12 consecutive months, their home is no longer considered their primary residence, constituting an event of default which can trigger the entire debt to become due, even if this unanticipated injury or hospitalization is temporary in nature.[100] Only if there is a co-borrower who is still living in the home would this not be an event of default.

A third major disadvantage is the risk of the senior defaulting on the obligation to pay real estate taxes and casualty insurance or failing to perform required repairs and maintenance on the home, leading to the entire debt becoming due and the senior's loss of the home. [101] Although the homeowner is not obligated to make monthly payments of principal and income under a reverse mortgage, the senior is still responsible for all these other obligations. If the anticipated costs for these items and how they can increase over the senior's life are not properly budgeted for when the senior takes out the loan, the loan amount might not be adequate to make these payments.[102] As previously noted, while in the past Fannie Mae elected not to have servicers begin foreclosure proceedings when taxes, insurance or maintenance obligations were not met, since February 2010 servicers have been instructed to submit troubled loans to HUD to get approval to start the foreclosure process.[103]

A fourth disadvantage is the risk that the receipt of the loan proceeds may affect the borrower's eligibility for federal or state assistance. Medicaid, Supplemental Social Security Income (SSI) and medical benefits will no longer be available to the senior if their reverse mortgage proceeds are kept in a checking or savings account past the end of the calendar month in which it is received. [104] The SSI program makes payments to people with low income who are age 65 or older or are blind or have a disability.[105] SSI depends on a senior's income and resources (including real estate, bank accounts, cash, stocks and bonds). Any reverse mortgage proceeds that a borrower receives must be used immediately, because retained funds would count as an asset and could impact Medicaid and SSI eligibility. For example, if a borrower receives

$4,000 in a lump sum for home repairs and spends it all the same calendar month, this would have no impact on their receipt of Medicaid and SSI eligibility. Any residual funds remaining in their bank account the following month would count as an asset. If the total liquid resources (including other bank funds and savings bonds) exceed $2,000 for an individual or $3,000 for a couple, they would then become ineligible for Medicaid. [106] To avoid this it is best to choose the line of credit option.[107] With this method the homeowner can minimize the amount of money received on a particular period of time and get only the amount that the elderly homeowner urgently needs. [108] It is important that mortgage counselors review this issue with the senior and make sure to structure the method of receipt of loan payments to avoid this problem. Since the counseling is supposed to include the Benefits Check Up described earlier, this issue should already be covered under the existing mortgage protocol.

Finally, due to the higher complexity of a HECM loan compared with a conventional home loan, the diminishing cognitive abilities of many seniors, and some flaws with how the counseling is currently structured, a senior is at great risk of not understanding basic aspects of the HECM she is entering into such as the total amount of money that will be disbursed to her (discussed below), the total costs of the loan (discussed below), and the amount of debt and remaining equity projected over time,[109] making deception on these matters easier to accomplish. For example, in a Detroit-area fraud case, a corrupt lender was able to keep the borrower in the dark about the amount she was eligible to borrow (perhaps because she was dependent upon the lender for the needed money and was, therefore, motivated to trust; see *Motivation to trust* in Table 1). She thought her loan would be for $61,000 when she was actually borrowing $103,000. The corrupt lender kept the difference. Although a counseling session was mandatory, the corrupt lender allegedly informed Ms. Schultz, the borrower, that he would be able to waive the counseling meeting by just asking a few questions over the phone. [110] Although it is unclear from the article if the loan transaction took place before the requirements for independent mortgage counseling, since the counseling under the current rules takes place before the borrower has made loan application, a similar result could occur since the independent mortgage counselor will not know the specifics of the loan the borrower will take out, including the loan amount. The case of *Kennedy v. World Alliance Financial Corp*.[111] provides another example of how fraud becomes easier when it is so difficult for the senior to determine what amount will actually be disbursed to her under the loan. In this case, a senior claimed she was told she would get $150,000 in draws under her reverse mortgage and approximately $100,000 to pay off the existing loan on her home, but in actuality received a loan which would pay off the prior mortgage debt of $100,000 but only $20,000 in draw down funds. Part of the reason she was confused and able to be deceived was the fact that both the Note and Deed of Trust (a form of mortgage) referred to a maximum loan amount of $300,000 (See *Binding difficulties* in Table 1).[112] The insertion of a confusing maximum loan amount in the loan documents, according to the court, was due to the fact that under the HUD handbook, lenders should include a maximum loan amount in states that require this at 150% of the appraised value of the home (even though this figure is not reflective of what the senior can obtain through a draw down of funds).[113] The oral misrepresentations on amount that would be disbursed to the senior was easier to pull off because of the complicated concept of maximum loan amount used in the form loan documents. Indeed, the complicated determination of the maximum loan amount even confused the court upon its review of the pertinent language in the loan documents. "The court must confess that it has required several readings to comprehend the meaning of the quoted language, if in fact I do understand it." [114] As will be discussed in Section III, the mortgage counselors need to be able to review with the senior the applied for loan and an actual loan amortization schedule for this loan to make certain the senior knows how much money they can draw down under it since this is a much more complicated matter with a reverse mortgage than under a conventional mortgage loan (this is especially the case since older adults tend to collect less information than their younger counterparts before making a decision; see *Information gathering* in Table 1). Currently, counseling must take place before the lender can process a loan application and before those numbers can be made available to the senior and be discussed with the mortgage counselor.

Sometimes the deception is of a more subtle nature, with the lender or mortgage broker failing to adequately inform the senior of the high costs of the reverse mortgage or the substantial amount of debt that will accrue under it due to these high costs and accumulated interest over time. An example of this happened to Ms. Baker who owned a home worth about $600,000, but had been living paycheck to paycheck and then lost her job.[115] Months earlier, she had received a mailing from a reverse mortgage company and so she scheduled an appointment with a saleswoman from the company. "This saleswoman was so friendly and personable," Ms. Baker said. "It was like God had sent me a friend to tell me how to survive"[116] (see *Motivation to trust* in Table 1). In the kitchen of Ms. Baker's home, the saleswoman recommended a loan of $218,900, with a variable interest rate initially set at 6.57 percent. The saleswoman did not explain and Ms. Baker did not understand that within 10 years, her $218,900 loan could grow to as much as $400,000, or that the debt would be paid by selling the house when she moved out or died. Nor did the saleswoman emphasize or Ms. Baker scrutinize (see *Information gathering* in Table 1) the high fees; in Ms. Baker's case, the loan's fees alone cost her $17,100, almost 8 percent of the total loan amount, which was paid out of the proceeds as soon as the loan closed.[117] Counseling from an independent highly trained counselor should have prevented Ms. Baker from proceeding with the loan so ill informed, and without shopping around for a loan with much lower fees. This anecdote emphasizes the need for the mortgage counselors to be able to review the economics of the loan that the senior applies for, especially the extent to which the particular loan can grow in amount since this feature is so different from a conventional home loan.

Finally, the case of Mrs. Sally Scott is a good example of how the diminished capacity of some seniors makes them vulnerable to major acts of fraud. Mrs. Sally Scott, a 66 year old, took out a reverse mortgage loan to "make ends meet." She spoke to the mortgage broker about taking out only $10,000 for a reverse mortgage (in and of itself a very expensive method to obtain this amount of money). Instead, the loan papers stated the loan amount was $220,000. The broker explained the discrepancy away (see *Senseless explanations* in Table 1) by admitting that the number was wrong and promising that he would change the figures, but insisted that she sign first. A week later she received a check for $200,000 (an amount more than she wanted to borrow) and contacted the broker who apologized and instructed her to wire the money back (into an account that she did not know was his). She did so (see *Motivation to Trust* in Table 1). He disappeared, leaving her with a mortgage in default and no way to repay the loan.[118]

E. Other Possible Options

Because HECM's are a high cost means of obtaining necessary funds and pose substantial risk of default as currently structured, it is important for seniors to be made aware of other potential options for them to obtain their necessary or desired funds. [119] It should be noted, however, that each of these options present their own set of advantages, disadvantages and risks and may or may not be a better alterative to a reverse mortgage depending upon the borrower's circumstances and goals. Furthermore, because the appropriateness of each alternative is fact sensitive they are not presented in a hierarchical order of preference. They all relate to the situation of when the senior is in need of cash as opposed to the situation where they have the income they need but desire to take advantage of the equity in their home for unnecessary but desired expenditures.

One potential option is for the senior to sell her home, rent a cheaper place to live, and use the proceeds from the sale to pay for her shortfall in cash. Many homeowners who become interested in a reverse mortgage have a desire to remain in their current home, but selling the home and moving elsewhere may be a better option, especially if the senior considers that as she gets older she may have more difficulty in handling the maintenance of the current home or the possibility of other life factors may cause her to need or desire to move from her home. To evaluate this option the borrower should attempt to determine the net income she would get by selling her home, what it would cost her to buy and maintain or rent a new cheaper home, and how much money she could safely earn on any money left over after she buys a new home and whether this additional money is enough to meet all of her needs. [120]

A second possible alternative is a sale-leaseback, assuming it is performed with a trusted family member. With this approach, a family member assumes the role that the bank plays in a reverse mortgage.[121] A homeowner cashes out the equity in their home, typically by selling to a family member or investor, then turns around and leases the home back for a fixed period of time. The advantage of this arrangement is that the benefits that accrue to the bank in a reverse mortgage accrue to the family member, allowing them to provide their parents with a better "deal." Sale-leasebacks avoid many of the fees associated with a reverse mortgage, further reducing the costs, and therefore increasing the return to the elderly homeowner.[122] The sale-leaseback might allow the seller-lessee to deduct 100 percent of all rental payments made under the subsequent leaseback, assuming it is treated similarly to a commercial sale-leaseback, but the senior may potentially recognize gain on the initial sale of the property.[123] This option could potentially make sense if the elderly homeowners have considerable equity built up in their home, the home has enough future value that it makes sense to be part of the family's investment portfolio,[124] and the rental payments under the lease must be in amounts that the senior can afford to pay with sufficient income from the sale and other sources the senior has to cover all of the senior's other projected needs over the projected period of the senior's life.

A third possible option is for the senior to apply for Supplemental Security Income (SSI) if eligible. The additional money the senior would be able to receive from SSI may be enough for some seniors to allow the senior to meet her ongoing cash needs without having to enter into a reverse mortgage. To qualify for this program, the homeowner's liquid resources must be less than $2,000 for an individual, $3,000 for a couple. [125] Home equity up to $500,000 and one car usually do not count as part of the liquid resources.[126] If the senior qualifies for SSI, then she may be automatically eligible for other public benefits as well. The basic monthly SSI payment for 2011 is the same nationwide:[127] $674 for one person or $1,011 for a couple.[128] A senior may get more if they live in a state that adds money to the federal SSI payment.[129] The senior should also seek out other public benefit programs that assist seniors with energy costs, household chores, home health care, prescription drugs, meals, housing and transportation and the AARP Booklet provides information on how to access this information. [130]Since mortgage counselors are required to go through a benefits check up with the senior, this option should already be one that mortgage counselors are addressing with seniors contemplating a HECM.

A fourth potential option for seniors in need of additional income is taking out a home equity line of credit, commonly called a "HELOC", requiring interest-only payments for 10 years.[131] According to one mortgage broker, these loans typically have very low, or zero, upfront costs but the interest rates are usually slightly higher than a reverse mortgage.[132] However, at the end of the ten-year loan term, the senior will have to repay any remaining balance and the senior may not have the means to be able to repay at the time the loan becomes due in which case they will not only lose their home in a foreclosure action, they can also be liable for any deficiency between the loan amount and amount bid at the foreclosure sale, making the HELOC a more risky loan than a reverse mortgage. Also, since monthly payments are required on a HELOC, borrowers need to qualify based on their income and credit score so this type of loan is more likely to only work for seniors who are pre-retirement.[133] Oftentimes, seniors who may be on a limited fixed income can't get approved for a HELOC for this reason.[134]

A fifth option is for the senior to take in a tenant who can live in a portion of the home and pay rent that could go towards the expenses of owning and maintaining the home. It is very important that the tenant be thoroughly checked out first to address potential safety or exploitation issues as well as to make sure that the senior and tenant will get along. It is also important that there is adequate space for the tenant and adequate privacy for both within the home and that having a tenant does not violate any applicable zoning or private use restrictions.

A sixth option is to check if any agency of a senior’s local or state government offers a deferred payment loan for repairing or improving the home, through a one-time, lump sum advance. Similar to a HECM, no repayment is required while the senior is living in the home and this is a much lower cost method to obtain needed funds (generally no origination fee, insurance premium, minimal closing costs and low or no interest).[135] This makes the most sense if the needed cash is for repairs/improvements versus a situation where the senior’s financial needs are more extensive.

Finally, the senior should examine what real estate tax relief might be available to her as a means to address her income deficiencies if they are chronic in nature but relatively minor in amount. The senior should apply for any applicable senior homeowner real estate tax exemptions and should look into the terms of any property tax deferral programs that are available to her.[136] For example, Hennepin County allows seniors over 65 whose household income are $60,000 or less to defer a portion of their property tax on their home.[137] The deferred tax is paid by the state to the county.[138] Interest will be charged on the deferred tax amount with the interest rate adjusted annually, but will never exceed 5% and a lien will be attached to the property.[139] According to the AARP Booklet, which contains a good summary of various types of property tax deferral loans among the states, generally no origination fee is charged and no or a nominal insurance premium is charged, closing costs are minimal if any and no repayment is required for as long as the senior lives in her home, but the amount of the loan is much smaller than a HECM would be.[140]

F. Examples and Characteristics of Appropriate Candidates for a Reverse Mortgage

One example of a potentially suitable candidate for a reverse mortgage loan would be a homeowner in her mid-70s who owns her home outright, or has significant equity in her home, and the equity greatly outweighs her remaining savings. Her current fixed income (she is retired) is insufficient to meet her short term and long term expenses, but with the proceeds of the reverse mortgage she will have sufficient income to meet her current and projected future expenses. She is looking to get a reverse mortgage to help pay her monthly bills while still living in the home that she loves. [141] Another potentially suitable candidate is a senior who describes himself as asset rich but cash poor, who doesn't want to sell his home, needs to increase his income because he is retired and works a part time job, and favors a better standard of living now over leaving a legacy to his heirs.[142] For a senior to most benefit from a reverse mortgage, the person getting the reverse mortgage should be healthy and able to occupy their home for a long time, longer than the actuarial tables estimates, so that all the equity is eaten up by the interest and other loan costs if the senior does not intend for her heirs to inherit the home by paying off the loan when the senior dies.[143]Of course experiencing adequate health over a long term after the HECM is made is not something that is easy to predict will occur, nor is it easy to determine whether other circumstances will change necessitating the senior to have to move from the home, in which case the expensive reverse mortgage will become due and no further advances could be paid to the senior under it.

In considering whether to enter into a reverse mortgage a senior needs to have a very strong desire and, as described above, the capacity, to live in their home for an extended period of time, because moving from their home leads to immediate repayment of their reverse mortgage loan. The desire should be reinforced by the age-in-place suitability of the home and community. It also needs to be practical for the homeowner to manage the home, because the major obligations for entering into this type of loan include making necessary repairs, paying for insurance, and keeping up with payment of property taxes.[144] If the homeowner does not place a high priority in leaving her home to her heirs then this is a more suitable option for her, because, as previously noted, after a senior passes her heirs would need to pay off the reverse mortgage loan in full within a thirty-day grace period in order to prevent foreclosure of the loan and retain ownership of the house under the terms of the standard loan documents for HECMs.[145] Thus, it is best if a parent decides to use a reverse mortgage when they are cash-strapped and their children are better off financially than the parent.[146]

The senior should also focus on whether she really needs a reverse mortgage. If a homeowner is looking to take her dream vacation with the proceeds, this loan is a very expensive way to pay for it. If the homeowner is seeking to invest the money from these loans, the loan is likely to cost more than she could safely earn. If the homeowner is not facing a financial emergency now and can wait because she has a reasonable expectation of securing a better product for lower cost in the near future, then she should postpone entering into this type of loan.[147] The senior should also examine whether there are less expensive alternatives to obtain the needed funds.

II. A Cognitive Analysis of Decision Making By Seniors To Enter Into a Reverse Mortgage

This section explores psychological phenomena that make it difficult for seniors to judge whether it is in their interest to take out reverse mortgages and to make wise decisions regarding reverse mortgages. This exploration starts with an overview of the effects of cognitive aging. It then proceeds to outline the cognitive steps that are necessary to make decisions regarding reverse mortgages and how cognitive aging complicates seniors' attempts to go through these cognitive steps. At times this section will also note possible strategies or legal reforms to address these complications.

A. Overview of Effects of Cognitive Aging

Most contemporary accounts of the age-related changes in processing abilities that occur across the lifespan start with the view that there are two processes that people of all ages use to make decisions: First, there are deliberative processes where people carefully consider all of the details as outlined in the cognitive steps described above; and second, there are affective processes wherein people will use their emotions as a diagnostic cue for the correct decision.[148] Alternatively, people might use mental shortcuts or heuristics to make decisions. Most advice from groups such as the American Association of Retired Persons (AARP) advocates deliberative processing.[149] However, deliberative processes like these are typically prohibitively difficult for many seniors. People's abilities to concentrate and focus on information, keep information in mind, and process that information (called working memory) become progressively compromised across the lifespan. This decline is observable decades before the age at which most consumers who might consider taking out reverse mortgages are faced with this decision. For example, Molander and Bäckman (1990)[150] compared the abilities of highly skilled younger (mean age was 27.8 years) and older (mean age was 53.2 years) miniature golf players to ignore irrelevant stimuli and concentrate on making a shot. They played an audio recording of either a radio broadcast of a soccer game, which was difficult to ignore, or traffic noise, which was easier to ignore. The older players had more difficulties concentrating and had more difficulties recalling the shots they had made when the broadcast of the soccer game was played, but this difference was reduced when the recording of traffic noise was played. That is, the ability to concentrate declines by the time a person has reached their mid-50s. By the time seniors are faced with the decision on whether to take out a reverse mortgage, these abilities are already seriously compromised.

Not only do older adults have more difficulty concentrating on the task at hand and ignoring irrelevant information, they also have more difficulty holding multiple pieces of information in mind at the same time, a skill that is necessary to integrate all of the information about the reverse mortgage they are considering and come to a final decision. Numerous studies have documented that older adults compared to younger adults have a diminished capacity to simply hold information in mind (short-term memory), and even greater difficulties maintaining and manipulating information (working memory).[151] On the simplest of these tasks, when they read a short series of numbers or letters to hold them in mind and then they immediately recall, older adults consistently recall fewer items than their younger counterparts. On more complicated tasks in which the series needs to be repeated in the opposite order, older adults are able to recall even fewer items. Finally, on the most complicated working memory tasks in which individuals are presented with a series of sentences and must continuously answer questions about the sentences while remembering an element of each sentence, the age differences are further exacerbated.[152] Thus, as the task becomes more complicated and taxing on working memory resources – as would be needed when processing and holding in mind all of the complex details regarding reserve mortgages – older adults are especially vulnerable.

One result of this decline in seniors' working memory capacity is decreased deliberative decision-making competence. For instance, Finucane and colleagues (2005)[153] examined age differences in decision comprehension and the factors that contributed to such age differences. They presented older and younger adults with details relevant to a series of health, finance, and nutrition decisions. As the information was presented, the participants responded to a series of literal and inferential questions about the material. For instance, information comparing four different HMOs on premiums, co-payments, and satisfaction was presented, and then participants had to indicate the plan with the lowest premium as well as which plan had the highest quality as determined by integrating several different dimensions of the plans. Not surprisingly older adults made more errors on all questions relative to the younger adults, and importantly short-term memory capacity accounted for a significant amount of this age difference.[154] Thus, age differences in short-term memory processes have been linked to important decreases in decision-making competence. Age-related changes in other memory processes also have implications that expose important vulnerabilities when older adults face complicated decisions.

People's abilities to remember information that they are supposed to remember such as that the interest rate on their reverse mortgage was 4.91% (called retrospective memory)[155] and their abilities to remember to do something when they are supposed to do it such as paying their real estate tax bill (called prospective memory)[156] also slowly become compromised across the lifespan. In some respects, these declines make reverse mortgages particularly appropriate for elderly consumers. The fact that consumers with reverse mortgages do not need to remember to pay the mortgage every month, for example, means that these seniors whose prospective memory capabilities are compromised do not need to rely as much on their declining prospective memory abilities. In other respects, however, reverse mortgages leave seniors still vulnerable. In particular, the requirement that to keep their homes seniors need to continue to pay their real estate taxes, home insurance, and repair bills leaves seniors still reliant on their declining prospective memory capabilities. The fact that they are not making a monthly mortgage payment might make it more likely that they will forget to make other payments that they need to make such as real estate taxes, insurance, and repair expenses.[157] We therefore recommend that mortgage counselors emphasize to seniors they are counseling of the benefits of opting into the existing program of having the servicer pay these expenses from the proceeds of the loan.

In contrast to these declines in deliberative processing abilities, people's abilities to process emotional information remains well-preserved across the lifespan, which is evident even in working memory. For instance, Mikels et al. (2005)[158] presented younger and older individuals with pairs of images that varied in emotional intensity or brightness separated by a delay. In support of the findings described above, when older adults had to hold in mind and compare the brightness of two images, they were less accurate than their younger counterparts. However, in stark contrast, older adults performed just as well as the young when holding in mind and comparing their emotional reactions.

Unfortunately, these preserved abilities to process emotional information may not help protect seniors from ill-advised reverse mortgage products, because there is a profound change in the type of emotional information that people attend to across the lifespan. In particular, as people get older they have a tendency to focus more and more on positive information and to focus less on negative information. In the working memory tasks just described, for example, older adults actually were better than the young at maintaining and comparing positive emotional images. This developmental shift in information processing toward the positive with advancing age (called the positivity effect) has been observed to occur in multiple psychological processes. With respect to attention, Mather and Carstensen (2005)[159] presented older and younger adults with pairs of emotional and neutral faces for 1000 milliseconds, after which a dot would appear behind one of the two pictures. For younger adults, they were equally fast to respond to the location of the dot when it was behind either positive or negative faces. In contrast, older adults were faster to respond to the dot when it appeared behind a positive versus negative face.

This positivity bias has a profound impact on the decisions seniors make. In a few cases, this positivity bias may help protect elderly consumers. Sunk cost effects might be an example. In sunk cost effects, people become more willing to devote resources toward pursuing a goal after they have already devoted some resources toward pursuing that goal, because they do not want to write off as a loss the resources they have already devoted. Stark and Choplin (2010) raised the concern that some consumers might become more vulnerable to predatory lending after devoting resources toward obtaining a loan and that even costs such as time spent going to appointments and reading promotional materials might trigger such sunk cost effects. Research suggests that older consumers might be less vulnerable to sunk cost effects. For instance, Strough and colleagues (2008)[160] found that younger adults were more likely to continue watching a boring and bad movie on pay television if they paid ten dollars for it than if it were free. In contrast, under the same conditions, older adults were more likely to stop watching the movie. That is, even though a prior investment had been made, older adults relative to younger adults were less influenced by the loss of those previously invested resources with a greater ability to "let go." If seniors are less susceptible to sunk cost effects, they might be more willing to walk away after sinking costs such as time spent going to appointments and reading promotional materials on reverse mortgages than their younger counterparts would be.

In other cases, the positivity effect may bias the decision making of older adults in inadvertent ways. Specifically, in a study examining age differences in decision making for physicians and health care plans, Loeckenhoff & Carstensen (2007)[161] presented older and younger adults with hypothetical decision scenarios. For example, participants were presented with a choice among four health care plans with several details for each plan. The details were presented in a grid and were obscured by colored boxes that denoted whether the detail was positive, negative, or neutral. Participants were instructed to choose an option after reviewing as many details as they liked by clicking on cells in the grid. When reviewing the details, older adults viewed and later recalled a higher proportion of positive to negative details relative to younger adults. Thus, older adults may be biased to consider and ultimately remember positive information about financial products such as reverse mortgage products when making decisions about these products. We thus recommend that mortgage counselors be made aware of the positivity bias and usefulness of framing important information in a positive manner so that seniors are more likely to remember this information. For example, one key piece of information is that reverse mortgages are a high cost form of obtaining needed funds and seniors are better off considering other lower cost options to obtaining necessary funds first. To take advantage of the positivity bias we recommend that the counselor should emphasize the advantages of the lower cost options, rather than emphasize the disadvantages of the high cost reverse mortgage.

In the next section, we explore the cognitive steps seniors need to go through to make decisions on reverse mortgages and how psychological changes across the lifespan—such as seniors' reduced deliberative processing abilities and the positivity bias—complicate seniors' attempts to go through all of these cognitive steps.

B. Cognitive Steps in Reverse Mortgage Decision Making and How Counselors Might Aid Seniors

Seniors need to go through a number of cognitive steps to make wise decisions regarding whether or not to take out a reverse mortgage. As a basic starting point, seniors need to understand how reverse mortgages operate. What are the costs and benefits? What is expected of them, if they do choose to take out a reverse mortgage? What will they receive? Cognitive psychologists call the knowledge structures that hold information like this schemas and scripts. Schemas are data structures with slots in which specific types of information can be stored. If consumers have a schema for reverse mortgages, then when they are trying to understand a new reverse mortgage they will know to look for a variety of attributes such as its interest rate, its origination fees, its closing costs, its servicing fees, etc. Without this schema, consumers would not even know that they should look for this information. Scripts are a type of schema that encode time sequences. If consumers have scripts for reverse mortgages, then they know what happens first, second, third, etc.; so they would know that counseling will occur prior to closing on the loan and they would know the time sequences of the various payment plan options. Without these scripts, consumers would be disoriented. A senior faced with the task of learning about a reverse mortgage before deciding to take it out, then is faced not only with the difficulty of learning the facts about this particular reverse mortgage, but also with the difficulty of learning these general reverse mortgage schemas and scripts prior to learning about this particular one. This involves holding multiple pieces of information in their minds and integrating them to form coherent schemas and scripts for how reverse mortgages work. They will also have to verify what they have been told about the reverse mortgage by the broker or lender so that they are not misled into taking out a reverse mortgage that is not in their interests.

Learning all of this would be a difficult task for anyone regardless of age. Due to the decline in deliberative processing abilities across the lifespan, however, seniors will have even greater difficulties than will younger adults. In particular, research has found that older adults gather less information than younger adults.[162] They also have more memory difficulties[163] such that they remember gist rather than verbatim details[164] and they have greater binding difficulties[165] (e.g., knowing which attribute value goes with which of the reverse mortgages that they considered). Many seniors know a lot about conventional mortgages and so may try to understand how reverse mortgages operate by making interferences from their previous knowledge and drawing analogies from conventional mortgages.[166] Seniors are also often dependent upon brokers and lenders to "give" them the loan and so often have a greater motivation to trust[167] and are in greater danger of inappropriately trusting untrustworthy sales people. These sales people might mislead them in a variety of ways, including framing messages in ways that will cause seniors to ignore negative information,[168] using confirmation biases,[169] immunizing them from counterarguments,[170] and presenting senseless explanations[171]. A summary of the difficulties seniors face in building reverse mortgage schemas and scripts as well as some suggestions for how counselors might help seniors in this regard is presented in Table 1.

After seniors understand how reverse mortgages in general and the proposed reverse mortgage in particular work, they will face another difficulty. Namely, to judge whether the proposed reverse mortgage will suit their needs, they need to estimate a number of quantitative values including the length of time that they need to budget for, how much money they will need given this length of time, when they will need this money, and how much to budget for costs such as insurance, real estate taxes, and repairs. Calculating exact values is impossible and many expenses are simply unforeseeable. Nevertheless, seniors must estimate these values and these estimates must be close enough to enable them to live within their budgets. Because of their greater experience[172] and the fact that they are often in communities of peers who also have a great deal of experience[173], seniors enjoy some advantages in estimating these values. On balance, however, seniors will likely have considerable difficulties. In particular, seniors' declining deliberative processing abilities undermine many of the strategies that people typically use to estimate values. Older adults' decline in memory for specific details despite preserved memory for the gist[174] could cause seniors to neglect some budget items altogether. After seniors recall budget items (e.g., that the roof will need to be replaced in the next few years because it has not been replaced in 25 years), if they do, they will have to estimate the costs of each of those budget items (i.e., the cost of the roof). Fortunately, experience and expertise can assuage some of these age-related memory changes as long as they can rely on prior knowledge and schematic supports in familiar domains, but they are likely to have difficulties when they cannot rely on these supports.[175] In addition, because accurate estimates are extremely difficult and often impossible, people use cognitive short-cuts called heuristics to estimate values.[176] Some of these heuristics include the anchoring and adjustment heuristic (under which if people compare the to-be-estimated value to an arbitrary number or even if they merely hear an arbitrary number presented in an unrelated context, their estimates will be biased towards the arbitrary number[177]) and the availability heuristic (under which people estimate the budget items that come to mind most easily to be the largest budget items and assume that budget items that do not come to mind are likely to be small)[178]. These heuristics often produces reasonable results, but they can also lead people wrong.[179] People of all ages use these heuristics. Because of reduced deliberative processing abilities, however, seniors are likely to be even more reliant on them than their younger counterparts especially in unknown domains where seniors are unable to utilize prior knowledge and schematic supports.[180]

A summary of the difficulties seniors face in estimating the quantitative values they need to estimate as well as some suggestions for counselors is presented in Table 2. In particular, the 2010 mortgage counseling protocol helps seniors estimate these values by having the mortgage counselor review the budget with the senior using the FIT software. However, it is possible that the senior may have expenses or sources of income not part of the FIT software for creating a budget and so the counselor should endeavor to find out from the senior any such additional sources of income or expenses in the senior's life so as not to miss any budget items.

Next, when considering a reverse mortgage, seniors need to evaluate how good or bad the attributes of the reverse mortgage are. How good is the amount of money that they will be receiving from the reverse mortgage? How good or bad is the interest rate? How bad are the fees such as the origination fees, closing costs, servicing fees, and the mortgage insurance premiums? How good is it to be able to stay in their homes? How good or bad are alternatives such as selling the home and downsizing to something that is more affordable? These judgments are difficult and require substantial cognitive processing abilities. They are, therefore, vulnerable to biases and other types of misjudgments. The positivity effects described above are central to seniors' difficulties evaluating these attributes[181] as they cause seniors to focus more on positive information and to evaluate attributes more positively than younger adults do. In addition, seniors are typically on a low fixed income and have made some adjustments (perhaps insufficient) to adapt to lower fixed income.[182] Once this process of adaptation to lower incomes is complete, then any small increase will be considered good relative to this now lowered standard[183] and small improvements will be disproportionately valued relative to larger improvements[184]. Other difficulties that seniors face in evaluating the attributes of proposed reverse mortgages include temporal discounting effects (wherein consumers overvalue money received immediately and undervalue money that they could receive later)[185], Range effects (wherein extremely bad attribute values will appear less bad, if they are presented next to even worse values)[186], Endowment effects (wherein consumers overvalue things that they already own and undervalue things that they do not)[187], and binding errors (the memory error described above wherein seniors are in greater danger of confusing attribute values would cause difficulties for evaluation, because evaluating the wrong attribute value will often make the evaluation drastically incorrect)[188].

A summary of the difficulties seniors face in evaluating the attributes of reverse mortgages as well as suggestions for counselors are presented in Table 3. In particular, mortgage counselors may be able to help seniors avoid adaptation effects by asking seniors to evaluate the income from the reverse mortgage relative to the income they were earning at the peak of their earnings history, especially if the increased income is not adequate to cause the senior to be able to afford all of her expenses while staying in the home.[189] In addition, counselors can help reduce these effects by unbundling expenses and pointing out the utility of that money in other contexts.[190] If a poor interest rate has been made to appear less bad next to an extremely bad interest rate, Counselors might present an extremely good interest rate to help put the poor interest rate in perspective. Finally, mortgage counselors need to review the basic economics of the reverse mortgage (interest rate, origination and other closing costs, loan amount, mortgage insurance premiums, etc.) with the senior to make sure that what the senior thought she was getting as the economic terms of the loan is consistent with the loan being proposed.

Once they have evaluated how good or bad these attributes are, they will need to judge how important each attribute is to making a decision, because in making a decision regarding whether or not to take out a reverse mortgage, some attributes will be more important than others. For example, attributes like the specific total loan amount that can be funded to the senior (if a term loan, rather than a tenure plan where there is no cap on the loan amount) and whether this amount will be adequate to pay for the senior's current and projected future expenses is likely to be more important for the senior to be thinking about than the attribute that the loan proceeds can be used for any purpose. Yet it is the latter point that some lenders and mortgage brokers emphasize to the prospective borrower than the former. Yet it will often be difficult for consumers to determine how important each attribute of the reverse mortgage is. How important is the interest rate? How important are the third party closing costs? The task of making this determination is difficult and liable to biases because it requires a great deal of deliberative processing that requires considerable working memory capacity. People of all ages struggle with this issue, but it is likely to be even more difficult for seniors whose deliberative processing and working memory capacity has become compromised.[191]

Ideally, consumers would weight attributes in a compensatory manner so that positives such as a relatively good interest rate would compensate for negatives such as higher origination fees, but weighing attributes in this manner is computationally complex, so consumers, especially seniors[192], have to adopt non-compensatory choice strategies. The difficulties seniors face in using compensatory weighing strategies underscores the need for mortgage counselors to provide an overall finding on whether the reverse mortgage proposed appears to meet the senior's goals or not based on their performance of a weighing process (a recommended change to the mortgage counseling protocol discussed in Section III).

Short of this reform, seniors are vulnerable to placing inappropriate weight on attributes. One decision-making strategy that would lead to inappropriate weighting is called elimination-by-aspects.[193] Under this strategy, consumers chose between options such as the choice between reverse mortgages or between reverse mortgages and alternative ways to obtain the money they need by focusing on one dimension (i.e., the one they judge to be the most important) first and eliminate options that are low on that dimension. Once those options are eliminated, the choice set is smaller. If there is more than one option remaining, they will choose another dimension (i.e., the second most important) and repeat this process until the choice set is narrowed down to one option. This strategy will inevitably neglect some dimensions as consumers will likely not even look at dimensions below the few they assume are the most important. Another strategy that would lead to inappropriate weighting is known as "Take The Best," which involves choosing an option based on one discriminating attribute (e.g., how one attribute, such as interest rate, may be desirable, and failing to consider other important attributes of the offered loan, such as total amount of money that will be made available to the senior).[194] Research suggests that older adults use simpler strategies like these more often than the younger adults.[195] In addition, factors such as evaluability (judging how important an attribute is by how easy it is to evaluate that attribute)[196], dominance (overvaluing attributes in which one attribute is clearly better than another, even if that attribute is not very important)[197], and conversational norms (assuming that if a speaker talks at length about an attribute, then it must be important; and if a speaker does not talk about an attribute, then it must not be important)[198] can cause seniors to place inappropriate importance on some attributes over others. A summary of these difficulties seniors face in placing proper importance on attributes as well as techniques counselors can use to help seniors accomplish this goal are presented in Table 4.

Seniors who are considering taking out a reverse mortgage have to judge the likelihood or probability of various events. For example, they are responsible for the upkeep and maintenance of their homes and their home will very likely need repairs at some point. What is the likelihood that those additional repairs will be necessary within the next 5 years or the next 10 years? How much are these repairs likely to cost and what is the likelihood that the senior will have enough money to cover these costs? If the senior fails to make these repairs, the loan originator technically has the right to accelerate the indebtedness. What is the likelihood that the originator would learn about the failed maintenance and do so? What is the likelihood that the municipality through its building department might cite the property owner for violations of building code and require the homeowner to correct those violations and subject the homeowner to penalties and liens, which might be the basis to accelerate the indebtedness? As a senior who takes out a reverse mortgage ages, there is an increased likelihood that she or he will become ill. What is that likelihood and how will that likelihood change as she or he gets older? If or when a senior does become ill, what is the likelihood that they will be away from their home for more than 12 months (under the terms of the loan documents this is a basis for the lender to accelerate the indebtedness)[199]? How long are they likely to live and how much money are they likely to need to support themselves during that period? If a senior chooses a line of credit payment plan, what is the likelihood that the money will fail to cover the expenses that they are planning to use those proceeds to cover? If a senior chooses a term payment plan, what is the likelihood that they will outlive the length of the term and find her or himself without that source of income? If a senior chooses a tenure payment plan, what is the likelihood that the monthly payments will become insufficient? Might inflation drive a senior who relies on these fixed payments into poverty?

Judging the likelihood of these events is critical for wise reverse mortgage decision-making and, unfortunately, there are many biases that affect people's judgments of likelihood and probability. Some of these biases include: optimistic biases (under which people have a tendency to be overly optimistic—overestimating the likelihood that good things will happen to them and underestimating the likelihood that bad things will happen to them)[200], risk-as-feelings and affect heuristics (under which people's emotional reactions and momentary feelings can affect cognitive probability judgments of risk and the degree to which they behave in risky ways; note that because seniors often have more experience they often have better-tuned emotional reactions and this strategy can be a strength)[201], biases produced by fallible memory (wherein people judge probability by retrieving cognitively available[202] or representative[203] exemplars)[204], unpacking biases (under which people judge outcomes as more likely if the scenarios under which those outcomes could occur are unpacked)[205], and uncertainty discounting (under which consumers minimize or even ignore the risks associated with uncertain events)[206]. One potentially protective phenomenon is risk aversion (under which consumers fear losses such as losing their homes more than they appreciate gains such as the money that they could receive from taking out a reverse mortgage). [207] This phenomenon could potentially be protective, if it were to cause elders to avoid reverse mortgages on the grounds that they are too risky when the reverse mortgage would in fact not best meet the senior's needs.

A summary of the difficulties seniors face in judging the likelihoods and probabilities associated with reverse mortgages is presented in Table 5 as well as techniques mortgage counselors night use to help seniors accomplish this task. For example, mortgage counselors might capitalize on seniors' greater experiences by describing risks using frequencies (e.g., 10 out of 100 people encounter difficulties) rather than probabilities (e.g., 10% encounter difficulties) because raising frequencies creates a greater emotional reaction.[208] Similarly, using yellow flags as is currently done on the FIT[209] can also create a greater emotional reaction that will assist the senior in utilizing their emotional reaction in a constructive fashion.[210] Mortgage counselors might also keep objective base rate information on the likelihood of bad and good events happening to seniors as they age.

Finally once all of these cognitive steps have been completed, the senior needs to integrate all of this information in mind to make a decision. It is extremely difficult for people of any age to hold all of this information in mind, but it is especially difficult for seniors due to diminished deliberative processing abilities.[211]. Research has documented that older adults have a greater tendency than their younger counterparts to avoid making decisions and instead defer to authority figures.[212] People of all ages simplify complicated decisions by shortcutting some of these cognitive steps and looking for a simple reason or justification to simply go with an option[213] (a shortcut called reason-based decision making[214]) or using other fast and frugal heuristics[215] such as going with the option that is recognized (a shortcut called that recognition heuristic[216]) or relying on ones mood or emotional state when considering that option (a shortcut called the affect heuristic[217]). Older adults show a reduced ability to suspend the use of these heuristics compared to their younger counterparts. [218]

A summary of the difficulties seniors face in integrating information and making decisions regarding proposed reverse mortgages is presented in Table 5 as well as techniques mortgage counselors night use to help seniors. The phenomenon wherein seniors defer to authority figures underscores the need for the senior to also meet with an independent mortgage counselor whose presentation of information and findings are not tainted by self-interest. Presenting likelihoods in frequency formats, rather than probability formats, can help tap into the senior's beneficial use of the affect heuristic as can the yellow flags used in the FIT. Most notably, we recommend in Section III that the independent mortgage counselor present a finding to the senior, based on the FIT and Benefit Check up, whether the mortgage loan proposed is likely to meet the senior's needs and goals, as this would be a single attribute that the senior can focus on. This suitability finding would take advantage of the tendency of seniors to focus on only one ore two attributes when coming to a decision by presenting a single factor that integrates multiple factors.

III. Proposed Law Reforms to Better Protect Seniors

A. *Require mortgage counselors to make a finding on the suitability of the proposed HECM for the senior and have HUD, rather than the lender, create the list of nine counseling agencies for the senior to choose from.*

As detailed in Section II, the decision on whether a reverse mortgage is the best available means for a senior to obtain needed funds is multi-faceted, highly complicated, and beyond the ability of many seniors to adequately perform. To address the problems discussed in Section II especially difficulties in using compensatory strategies to weigh the importance of the various loan attributes, difficulties integrating and remembering information, and the use of heuristics and reason-based decision making, we propose that the reverse mortgage counselor be required to specifically indicate to the senior on a form whether the counselor has determined that the loan "is likely to best address the senior's described goals in light of the borrower's disclosed circumstances" (a finding of "suitability" of the proposed reverse mortgage loan). Without this finding of suitability or non-suitability, many seniors following the counseling as currently performed will use strategies that fail to take into account all of the important factors noted during the counseling session. We strongly recommend that the mortgage counseling protocol be revised to authorize and require mortgage counselors to provide a suitability finding to the senior in order to capitalize on the manner in which seniors make decisions described in Section II. By providing a suitability finding, seniors will have one central attribute to focus on from the counseling session should she choose to use it when making her decision, in addition to all of the other information that the counselor currently reviews with the senior. By design, the suitability finding will be compensatory, will easily be evaluated as good or bad, and can be used to justify a choice. The suitability finding will also allow the senior to gather less information and rely upon an unbiased authority should the senior choose to do so.

We recommend that the criteria for the suitability finding be clearly set forth in the revised mortgage counseling protocol and the criteria can be based in large part on the Financial Interview Tool and Benefits Checkup described in Section I that mortgage counselors are already required to perform.[219] To make a finding of "suitability," the mortgage counselor would need to conclude based on information received from the senior that: (i) the reverse mortgage proposed is likely the lowest cost means for the senior to obtain the necessary funds to meet all of their expenses and live in the home, (ii) the senior's reported physical condition and appraiser's reported condition of the senior's home make it likely that the senior can remain in the home for the period of time the senior hopes to be able to, (iii) the funds to be received under the reverse mortgage will be adequate for the senior to pay for all of her reasonably anticipated expenses to be able to live in the home for the period she desires,[220] and (iv) the senior is aware that by entering into this loan there is less chance the senior's heirs will inherit any equity in the home. To avoid concerns of mortgage counselors that they will have personal liability for the suitability findings they make, the statute requiring independent counseling would be amended to clarify that the counselor would have no liability for the suitability finding so long as the finding was made in good faith compliance with the protocol and statutorily enumerated factors the counselor is instructed to follow in making this finding. The senior could still proceed with entering into the loan even when there is a finding that the loan is not suitable but this finding, should she choose to use it, will give seniors a clear signal that they should more carefully think through this transaction and consider other options. Indeed, the protocol should be amended to require the counselor to indicate why she has made a negative finding on the suitability issue and to specify what other options she recommends for the senior in its place. Because the senior ultimately will make the decision and may choose to proceed with the reverse mortgage, we also recommend that HUD keep track of these recommendations and what happens in cases when the senior proceeds despite a finding that the reverse mortgage loan was not suitable (i.e. what percentage of those cases end up in foreclosure for failure to pay taxes/insurance or failure to maintain or sale of the home) and what happens when the counselor finds that the proposed loan was suitable, to determine how well the counselors have assessed the situation.

Due to the intended reliance of seniors on this finding it is critical that the counselors completely maintain their objectivity, independence and training so that they will be able to perform their duties as envisioned in the 2010 mortgage protocol and as additionally recommended in this article. Under the current mortgage counseling protocol, mortgage counselors are not allowed to give their opinion about whether the senior should or should not enter into the proposed loan due to fear that the counselor would through such recommendations steer the senior into a loan product or other financial products out of self-interest.[221] In the past, this was a real problem, with lenders or other parties offering products to seniors and hence providing the counseling in a self-interested fashion. When counseling was performed by parties with an economic interest in the proposed loan it made sense not to allow an opinion on whether the senior should enter into the loan and instead mandate providing information only on reverse mortgage loans; now that the counseling is being undertaken by specially trained counselors who should have no economic interest in the recommendation it should be safe to provide this recommendation. Having said that, there is still the possibility that mortgage lenders will try to only recommend to seniors mortgage counselors who are more likely to find that the proposed loans are suitable based upon prior experiences with these mortgage counselors and not recommend those counselors who might in the lender’s eyes too often find the loans unsuitable. Under the 2010 HECM counseling protocol rules, the mortgage lender the senior is working with creates a list of nine HUD approved mortgage-counseling agencies for the senior to choose from.[222] This may be convenient, but it is a major potential impediment to the goal of independent counseling. It is likely that mortgage lenders will only list or put on the top of the list those counselors who they view as likely to find the reverse mortgage loan as suitable, causing the mortgage counselors to have an economic interest in making recommendations that the proposed loans are “suitable” rather than providing an objective finding of suitability.[223] Even under the current protocol, lenders may be cherry picking counseling agencies based on which agencies’ counseling sessions tend to be followed with the senior making loan application with them. To combat this problem, we strongly recommend that HUD, rather than the lender, prepare the list of nine counseling agencies and that the selection and ordering of the list be determined by computer randomization.[224] HUD can create the list in the same fashion that it instructed lenders to do so, with a certain number of agencies located near the senior and a certain number that are nationwide, and can create the list based on a random process from among the applicable local and nationwide agencies.

B. *Split the counseling into two sessions with the second session taking place after loan application to enable the counselor to review the loan numbers for the applied for loan and require the counseling to be in-person rather than by telephone, except in limited circumstances*

We strongly recommend that the counseling be split into two sessions. We do so for two reasons. First, under the current rules, counseling is required to take place before the lender can process the loan application.[225] Consequently, the mortgage counselor is unable to review with the senior the actual loan they will be receiving at closing in terms of basic information such as the amount that will be disbursed to the borrower and when, the interest rate on the loan and how it can adjust if applicable, the closing costs, how the principal amount of the loan will increase over time, etc. As currently structured, the counselor reviews numbers from a generic example rather than the actual loan the senior will receive.[226] In light of the anecdotes of seniors being surprised regarding the terms of the loans they entered into and the complicated ways in which these basic economic terms are determined, it is imperative that the senior to be able to review the basic economics of the actual loan they have applied for and will obtain at closing with the mortgage counselor. Indeed, the counselor in the second session can compare the generic financial scenarios they reviewed with the senior in the first counseling session (which are supposed to walk the clients through relevant examples to the client's needs and circumstances) with the loan figures for the actual loan the senior will receive to make sure the senior is getting a loan with terms they understand and desire.

To save on time and costs from having two sessions, some might say that the counseling could be done in one session performed after loan application. However, it makes sense to have a counseling session performed before processing of the loan application so that if the senior discovers during that first session that it does not make sense for her to enter into a reverse mortgage she will learn this before she has expended any funds in connection with a processed loan application, such as the costs for an appraisal of the home. In further response to the objection to a second session due to the time and costs in this follow up session (which would only take place if the senior decided to go ahead with the loan application after the first session) it is noteworthy that counselors under the current counseling protocol are required to perform various follow up correspondence and contact with the senior for a period up to six months after the counseling session.[227] Consequently, instead of performing this type of follow-up, under our proposed changes to the counseling protocol the counselor would instead hold a brief second session with the senior during which time the counselor would focus on the actual loan the senior will be getting from the lender at closing. The lender would be required to have already performed its appraisal and any other requirements to be able to generate loan figures and the disclosure documents that the senior would obtain at the closing of the loan for this second counseling session.[228] It should be noted that current levels of HUD funding for the counseling may not be adequate to cover the additional costs from having two sessions, even with the savings from dropping the follow up activities currently mandated. We believe, however, that the value of performing the counseling in two phases is very valuable and the overall additional costs, after taking into account savings of time/effort from dropping the current follow up activities counselors are required to perform, should lead to a very small additional cost for the counseling, especially relatively to the other closing costs borrowers incur when entering into a reverse mortgage and could potentially be capped by statute or regulations as certain other closing costs are.

At this second session, where the lender would have sent to the borrower and counselor the actual loan terms, the counselor can compare the economic terms being offered (origination fees, servicing fees [both subject to statutory caps but negotiable below these caps], interest rate, and closing costs with the prevailing market rates for these items at the time and provide this information to the senior. At the first session the counselor should recommend to the senior that she shop around for quotes on these basic loan terms, but if the senior is unsuccessful in doing so, the counselor can provide some information on this. To prevent any steering, HUD could compile monthly averages for these items by region for the preceding month that the counselor could then use and show to the senior.

Another reason to perform the counseling in two rather than one session is that due to the additional counseling requirements under the 2010 protocol, counseling sessions now can take up to two hours to perform, [229] creating a likelihood that seniors will experience information overload and "senior fatigue" (an inability to sit through such a long session and absorb the information being presented).[230] Providing two counseling sessions will give the senior more time to process the information, reduce information overload effects[231], and produce better learning of the material.[232] This also would allow the client to come back to the second session better informed, resulting in a more educated consumer asking questions about the loan.

We also recommend that the counseling protocol should clarify that counseling should not be performed over the telephone (as may currently be done)[233] except in extreme circumstances, such as if the senior is experiencing limited mobility or other health problems that would make the senior traveling for an in-person session very difficult. We recommend this because counseling over the telephone is likely to be less effective than in-person counseling. For example, only in an in-person meeting can the mortgage counselor read the client's body language to gage their level of understanding.[234] Currently, mortgage counselors must advise potential clients that they have a choice to have a face-to-face session or counseling through another mutually agreed upon format such as telephone counseling, with the choice to be documented in the client's case file.[235]" It might be valuable to do a follow up of the cases where the counseling took place by telephone to see how often in those cases the senior took out a reverse mortgage, and when they did, how often in those cases the senior ended up with a loan in default than in cases where the counseling was in-person. If a follow up with the senior were possible, it would be valuable to compare the satisfaction level of seniors who took out reverse mortgages based on telephone counseling versus in person counseling several years after taking out these loans. If such data reflects better understanding of the loan and satisfaction with it when in person counseling was used versus over the telephone this would support mandating in person counseling which could be performed by counselors making the trip if necessary.

C. *Revise certain events of default provisions under the loan documentation for HECM's*

As currently structured, federally insured HECM loan documents contain an unfair event of default triggering the obligation to repay the entire debt which could potentially cause many seniors to lose their homes unnecessarily. Currently the standard form loan documents for a HECM provide that if "For a period of longer than twelve (12) consecutive months, a Borrower fails to physically occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other Borrower" then this is an event of default.[236] It is certainly possible that a senior could become ill or injured and require more than 12 months to get better and then be able to return to her home. In our opinion, this should not be an event of default unless the mortgage lender's interest in the mortgage property has been impaired as a result. This would occur if during the senior's absence the home was deteriorating or if taxes and insurance relating to the home were not being paid. This event of default should be revised to clarify that such absence from the home would not trigger an event of default unless the remaining loan proceeds are inadequate to pay any real estate taxes or insurance premiums that are due and delinquent. Indeed, the loan documentation already requires the mortgage lender to use the loan proceeds to pay for insurance and real estate taxes, ensuring that those expenses would be paid when there are undisbursed loan proceeds. Also the loans are structured to permit the senior to elect to have these payments made by the loan servicer at the time the loan is first made or thereafter. As for handling necessary repairs while the senior is absent from the home due to physical or mental injury, the rules relating to reverse mortgages should be modified to allow seniors at the time the loan is first made or thereafter to appoint a person to act as her fiduciary to make the decision to draw on the loan to pay for maintenance or to make repairs if the senior is absent from the home for more than twelve months due to physical or mental injury or after receiving a notice of default from the lender relating to deterioration of the condition of the home. The form loan documents should be revised to require that the lender is obligated to give notice of any alleged default for failure to maintain or make repairs to the named fiduciary as well as the borrower and a reasonable period to cure the default in light of the nature of the default before the lender can accelerate the debt and foreclose (versus the currently required thirty day cure period which may not be an adequate period depending on the nature of the repair work to be performed).[237]

Another important problem with the terms in the current form loan documents for HECMs is that they provide that once the senior, and if applicable, her co-borrowing spouse have passed away (an event of default leading to a termination of the loan term), the heirs would only have 30 days to cure the default by: (i) paying off the balance of the loan in full, (ii) selling the home at the lesser of the balance of the loan or 95% of the appraised value, applying the net proceeds to the loan balance, or (iii) providing the lender with a deed in lieu of foreclosure, before the lender can begin foreclosure proceedings.[238] This is not enough time for the heirs (or a spouse or partner of the senior/borrower who was not a co-borrower under the loan) to obtain a refinance or try to sell the home in the event there is still some equity in the home,[239] before additional costs relating to the foreclosure are added to the debt amount. A more appropriate procedure would be to require a grace period of at least ninety days before the foreclosure proceedings could commence if an appraisal at that time reflects there is equity in the home and the form loan documents should be revised to reflect this. Furthermore, sometimes seniors do not include their younger spouses on the HECM because they are advised not to do so in order to obtain a higher loan amount than they could if their younger spouse were included as a co-borrower. Mortgage counselors need to warn seniors that if their spouse or partner is not a co-borrower, the surviving spouse/partner might not be able to continue to live in the home after the older spouse/partner passes away unless they are able to pay off the loan in full. In the past, HUD allowed surviving heirs to pay off the debt by tendering to the lender the appraised value of the home, but in 2008 HUD issued a letter changing this policy and requiring a payment of the entire loan balance rather than the appraised value of the home, perhaps because property values were declining so much.[240] On April 5, 2011, HUD withdrew this change of policy, [241] perhaps in response to a lawsuit filed by AARP on behalf of three surviving spouses over the policy change[242] or in response to pressure from some members of Congress.[243] However, because it is possible that HUD may change course again on this issue, the HECM form loan documents should be revised to provide that spouses/partners of the deceased senior-borrower may pay the appraised value of the home in order to stay in the home or mortgage counselors need to warn seniors of this problem.

D. *Additional changes to the mortgage counseling protocol; best practices for mortgage counseling and training of mortgage counselors*

The main additional change to the mortgage counseling protocol we recommend is to modify the requirements for the counselor to issue a certificate of completion of the counseling. As noted earlier, currently the senior only needs to answer five of ten questions correctly. The questions are very basic and so in our opinion only requiring that the borrower get half of them correct is not adequate to obtain a certificate of completion of counseling. We also recommend that two very important questions be added and asked in every situation: "What happens if I get injured/sick and live away from my home for more than 12 months?" and "What do my heirs need to do to keep the home after I die?" to ensure that the senior is aware of both of these common situations. With the now expanded twelve questions that would be asked, we recommend that the protocol be revised to require that the senior correctly answer at least nine of the twelve to receive the certificate of counseling and be able to proceed with the loan application. We also recommend that the counseling protocol require counselors to inquire whether the senior has any children living with them at home, and if so, if the child or children are disabled or on social security income to alert the senior to the risk of the child being forced out of the home in the event of a default under the loan. We also recommend that the "Preparing for Your Counseling Session" which is an exhibit to the mortgage counseling protocol be revised where it describes the costs to obtain a HECM. Currently, it states "Costs associated with HECMs are generally higher than those for "forward" mortgages used to purchase a home." This is an understatement. Due to the typically much higher origination charges and servicing fees and mortgage insurance payments, a HECM is typically much more costly than a typical "forward/conventional" home loan and the description of the costs to obtain a HECM loan should be revised to better reflect that. Finally, we recommend that the counseling protocol require the counselors to determine if English is a second language for the borrower and if there is any need for a translator for the counseling. HUD should endeavor to provide translations of the pre-counseling materials and loan documents for the most common non-English languages for seniors where English is a second language.

Section II provides numerous tips on improving counseling in light of the cognitive barriers described in that section (summarized in Tables 1 through 6) and some key cognitive limitations that the counselors should be trained to be aware of to improve the effectiveness of the counseling. We consider these tips to be in the nature of best practices rather than formal requirements.

CONCLUSION

A reverse mortgage loan can be a beneficial product for some seniors to meet their cash needs in light of their circumstances and goals. However, due to the high cost of this method of obtaining necessary or desirable funds and the various risks currently associated with this complicated product, for many other seniors it would be a serious mistake to enter into a reverse mortgage loan. Exacerbating this is the fact, as detailed in Section II, that the decision making that seniors need to go through to determine if a reverse mortgage loan would truly be beneficial to them is beyond the cognitive abilities of most seniors (indeed most consumers in general), even with the required mortgage counseling as currently structured and reformed by Congress in 2008 and by HUD in 2010.

To address the cognitive barriers detailed in Section II, this article proposed several changes to the protocol on counseling so that the counseling can be even more effective. The most important reform proposed is modifying the counseling protocol to require the mortgage counselor to make a finding to the senior on whether the proposed reverse mortgage loan is likely to meet the senior's described needs and goals in light of the borrower's circumstances as disclosed to the mortgage counselor (the "suitability" finding described in Section III). We envision that the broad based suitability finding that we propose would not be binding on seniors but would be used as an essential guide to help seniors by integrating a great deal of information that needs to be taken into consideration when making the complicated decision of whether to take out a reverse mortgage loan to meet cash needs or desires. Currently, the mortgage counseling protocol prohibits mortgage counselors from providing advice on whether to enter into a reverse mortgage loan to avoid improper steering, but this leaves seniors in the difficult position of having to wade through an enormous amount of complicated information to make the decision without any beneficial heuristic devices to assist them. The proposed, clearly defined, suitability determination would provide seniors with one important factor that they can place emphasis on (rather than overwhelming them with a maze of information of indeterminate importance to the senior) and should enhance their decision making by reducing cognitive barriers such as difficulties gathering and remembering information, reliance on untrustworthy heuristics, use of non-compensatory weighting strategies, and the complexity of integrating information. The article also provided in Tables 1-6 a list of tips to mortgage counselors on ways to overcome various cognitive barriers to sound decision making by seniors which we propose as best practices for mortgage counselors to perform. Our proposal on suitability clarifies that the mortgage counselors would be made immune from liability for any alleged mistakes in their suitability finding if it was performed in good faith compliance with the standards we proposed HUD should establish.

Due to the recently disclosed high percentage of federally insured reverse mortgage loans in default, we anticipate that HUD or Congress may consider taking new actions relating to federally insured reverse mortgage loans, but fear they will focus solely on providing a better mechanism to ensure the future payment of real estate taxes and property insurance on the mortgaged property since eight percent of these loans are currently delinquent in making those payments. While we would support changes to the laws regarding HECM's to better safeguard that those payments are in fact made to ensure the continued sustainability of this insured mortgage product, we view a reform so limited to not go far enough to protect seniors. We see a slight parallel between what fueled the subprime mortgage crisis-- yield spread premiums being paid to mortgage brokers to induce borrowers to enter into higher cost loans than they qualified for-- and the very high origination charges and required servicing fees of the federally insured reverse mortgage loan product. Both provide high profits to those marketing the loan products, creating an incentive to induce borrowers to enter into this high cost loan product even when the loan might not be suitable to the borrower for any of a variety of reasons, including the availability of lower cost options that would meet their goals. In light of the financial incentive of mortgage lenders to steer seniors into this high cost and complicated loan product, it is essential that seniors receive an impartial and clear determination of the suitability of the reverse mortgage loan to their situation.

We also proposed that HUD, rather than the lender as currently done, create and order the list of nine counseling agencies supplied to the senior, in order to preserve the independence of the counseling agencies which is particularly essential if the mortgage counselors are required to make a suitability determination. To enhance a senior's understanding of reverse mortgages in general and the specific reverse mortgage loan being offered to her, we also proposed that the counseling be split into two sessions, the second taking place after loan application is made. Currently, the counseling is required to takes place before the senior applies for a reverse mortgage loan. By having a second phase of counseling, the counselor can review with the senior the basic terms of the loan the senior will obtain at closing which might otherwise not be clear to the senior due to the complicated features of this product, including the difficulty of determining how much money the senior will obtain under the proposed loan and what this will cost the senior over time. This article also proposed several other important reforms relating to how reverse mortgages are structured to reduce some of the risks currently facing seniors who take out reverse mortgage loans, including ways to address the issue of future payment of real estate taxes and property insurance. We believe that the reforms proposed in this article will enhance consumer decision making *ex ante*, reduce the number of future defaults on reverse mortgage loans, and help avert a new wave of problematic defaults in the future which could jeopardize the insured program's sustainability.[244]

Table 1. Schema and Script Deficits. Seniors need to learn and understand how reverse mortgages operate.

Phenomenon	Tips to protect seniors
Information gathering—Collecting less information than needed.	• Organize counseling session well • Eliminate less important information • Emphasize important information • Present most important information first
Memory difficulties—Difficulty remembering details (e.g., prices); but remember gist well.	• Give the counseling session a gist by providing written findings on whether the reverse mortgage meets the borrower's goals
Binding difficulties—Confusing attributes of one item with the attributes of another.	• Review loan attributes to ensure seniors have not confused the proposed loan with another, if applicable
Previous knowledge—Mistakenly assume reverse mortgages operate as conventional mortgages do.	• Emphasize how reverse mortgages differ from conventional mortgages
Motivation to trust—Motivation to trust lenders and brokers who are "giving" them a loan.	• Alert seniors when lower cost alternatives are readily available
Framing effects—Better learning and remembering information that is presented in a positive frame.	• Emphasize positive information • Point out problems by stressing the positives of alternatives (i.e., emphasize advantages of alternatives to reverse mortgages)
Confirmation biases—Looking for information that confirms, rather than disconfirms, previous beliefs.	• Present information that disconfirms misinformation
Argument immunization—Presenting weak arguments then presenting stronger counter-arguments immunizes people from further arguments.	• Be aware that seniors may be resistant to arguments against the reverse mortgage. • Assess whether argument immunization was used by the broker or lender. • If argument immunization was used, frame the disadvantages of the reverse mortgage in the form of advantages of alternatives.
Senseless explanations—Concerns can often be allayed by explanations even untrue or non-sensible ones.	• If the counselor learns of a senseless explanation, the counselor should explain how the explanation given was inaccurate. • Emphasize how other alternatives would better address their needs.

Table 2. Estimating Quantitative Values. Seniors need to effectively estimate quantitative values such as the money they need, when they will need it, and the ongoing expenses of insurance, real estate taxes, and repairs.

Phenomenon	Tips to protect seniors
Greater experience, being in a community of peers—Older adults have a lot of experience and they are often in a community of peers who also have a lot of experience.	• Mortgage counselors can call upon this expertise to create realistic budgets as required by the 2010 mortgage counseling protocol.
Memory for budget items—Due to memory deficits, there is a risk that some budget items may be neglected.	• Counselors need to ask probing questions to stimulate seniors' memories for budget items unique to the senior.
Estimating costs of budget items—People estimate numerical values by remembering attributes of the to-be-estimated items (e.g., that the roof is slate) and relying on prior knowledge and schematic supports.	• Seniors excel at this in domains where they can rely upon their experience. • Counselors can call upon this expertise to create realistic budgets as required by the 2010 mortgage counseling protocol.
Reliance on heuristics to estimate values—People use heuristics (e.g., anchoring effects) to estimate values. Because of reduced deliberative processing abilities, seniors are likely to be even more reliant on them.	• Counselors need to be trained to create realistic budgets.

Table 3. Evaluating Attributes. Seniors need to effectively evaluate the attributes of reverse mortgages.

Phenomenon	Tips to protect seniors
Positivity bias—Older adults focus on positive information and ignore negative information.	• When noting negative information about reverse mortgages try to do so in a way that includes an emphasis on the correlative positive aspects of alternatives.
Adaptation effects—Adapting to low fixed incomes might make additional money appear more positive and worth additional costs.	• Have seniors evaluate the income from the reverse mortgage relative to their higher pre-retirement income. • Have seniors evaluate the income relative to their expenses.
Overvaluing small changes; undervaluing large ones (e.g., a $1,000 repair expense will appear large, but an additional $1,000 added to an already very large $30,000 repair expense will not appear as large). Bundling expenses such as third-party closing costs, servicing fees, and financing expenses makes them appear less large.	• Unbundle expenses • Point out the utility of that money in other contexts
Temporal discounting—Consumers overvalue money received immediately and undervalue money that they could receive later and delayed costs.	• Provide present value figures of costs to allow seniors to accord proper weight to delayed costs
Range effects—Extremely bad attributes (e.g., an extremely high interest rate) make other bad attributes appear less bad.	• Present better values (e.g., presenting an extremely good interest rate will help put a poor interest rate that has been made to appear less bad in perspective)
Endowment effects—overvaluing things (i.e., one's home) that are already owned.	• Seniors have reduced vulnerability due to reduced loss aversion • Reduce further by presenting positives of alternatives
Binding difficulties—Defined in Table 1, creates difficulties not only for learning about reverse mortgages, but could also cause misevaluation.	• Review the basic economics of the offered reverse mortgages (interest rate, origination and other closing costs, loan amount, mortgage insurance premiums, etc.) with seniors to ensure they are aware of actual attributes.

Table 4. Recognizing Important Attributes. Seniors need to recognize which attributes of reverse mortgages are important.

Phenomenon	Tips to protect seniors
Compensatory weighting is complex—weighting so that strengths on some attributes compensate for weaknesses on others is difficult.	• Provide an overall finding on whether the reverse mortgage appears to meet the senior's goals (suitability finding)
Use of non-compensatory choice strategies—to simplify people often use simpler strategies.	• Mortgage counselors will take into account the important attributes in making the suitability finding
Evaluability—consumers judge importance of attributes by how easy they are to evaluate.	• For attributes that are difficult to evaluate such as interest rates or novel costs, present comparison values such as the average value or range of values the counselor has seen for similar reverse mortgages. Doing so makes evaluation easier • Use of the suitability finding which is easy for consumers to evaluate
Dominance—consumers judge attributes as more important when the value of that attribute for one option is clearly better than another.	• The use of the suitability finding should reduce dominance effects • Mortgage counselors should be aware of market conditions for all the economic terms so that a single bad exemplar will not create a dominance effect
Conversational norms—the amount of time people spend talking about an attribute is used as a cue to its importance.	• Spend more time on the most important aspects of reverse mortgages • Spend the most time on suitability and explain it to seniors

Table 5. Judging Probability. Seniors need to judge the likelihood of events.

Phenomenon	Tips to protect seniors
Optimistic bias—the tendency to be overly optimistic; overestimating the likelihood of good events; underestimating the likelihood of bad	• Be aware of the optimistic bias • Counselors might have available objective base rate information on the likelihood that bad and good events might happening to seniors as they age
Risk-as-feelings and affect heuristics—emotional reactions and momentary feelings affect likelihood judgments and risky behavior	• Present risk using frequencies, rather than probabilities • Use symbols such as the yellow flags used on the FIT
Memory-based models—hold that people judge the likelihood of events or the support for hypotheses about the likelihood of events by retrieving cognitively available or representative exemplars	• Counselors might have available objective base rate information on the likelihood that bad and good events might happen to seniors as they age
Unpacking principle—people judge outcomes (e.g., the home needing repairs) more likely if the scenarios under which outcomes could occur are unpacked.	• Counselors may need to unpack some scenarios, weighing the advantages of doing so against the risk of information overload
Uncertainty discounting—minimizing or ignoring the risks associated with uncertain events	• Counselors might have available objective base rate information on the likelihood that bad and good events might happen to seniors as they age
Risk aversion—fearing losses such as losing one's home more than appreciating gains such as the money that could be received from taking out a reverse mortgage	• Since the mortgage counselor will discuss the risks associated with reverse mortgages, this phenomenon could be a protective factor. Counselors should also emphasize benefits if the suitability determination is positive.

Table 6. Deciding. Seniors need to integrate information and make a decision.

Phenomenon	Tips to protect seniors
Integrating information is computationally complex—putting all of the information together to come to a decision regarding whether to take out a reverse mortgage exceeds the capacities of all but the most savvy of consumers	• Presenting a suitability finding, based on the FIT and Benefit Check up, would create a single attribute that the senior can focus on
Decisional avoidance—older adults have a greater tendency than their younger counterparts to avoid making decisions and to defer to authority	• This phenomenon could protect seniors, if it prevented them from taking out reverse mortgages that are not in their interests, but could prevent them from taking out ones that are • The tendency to defer to authority is problematic, if the authority's advice is tainted by self-interest • Underscores the need for disinterested, independent mortgage counselors
Fast and frugal heuristics—the strategy to reduce the computational complexity of making decisions by relying on shortcuts called fast and frugal heuristics	• Underscores the need for mortgage counselors to review with seniors all key factors that should be considered • Presenting a suitability finding would create a single attribute that the senior could focus on instead of utilizing unreliable heuristics such as the recognition heuristic
Affect heuristic—the tendency to make decisions based upon affect (i.e. emotional reactions and momentary state), rather than a careful analysis	• Due to their greater experience, seniors' emotional reactions can lead to good decisions. Mortgage counselors should capitalize on these well-tuned emotional reactions such as through the use of the "yellow flags" in the FIT and adding symbols for a positive v. negative suitability finding
Reason-based decision-making— the strategy to reduce the computational complexity of making decisions by looking for reasons to justify a choice, rather than perform a careful analysis	• Underscores the need for mortgage counselors to review all the key factors with seniors • Suitability finding would create a single attribute that the senior could rely on to justify their choice, rather than rely on less reliable factors to justify choice

[1] Debra Pogrund Stark is a professor of law at The John Marshall Law School. A primary area of her research focuses on real estate finance and consumer protection. She acknowledges with appreciation research assistance from Jamie Sommer, a reference librarian at The John Marshall Law School. She also acknowledges and thanks Dean John Corkery and Associate Dean Ralph Ruebner for their support of her research. Finally, she thanks Barbara Stucki, Vice President, Home Equity Initiatives for the National Council on Aging and Celeste Hammond, professor of law at The John Marshall Law School for their helpful comments on a prior draft of this article. The opinions expressed herein and any errors in this paper are solely those of the authors of this article.
[2] Jessica M. Choplin, is an associate professor of experimental psychology at DePaul University whose research focuses on judgment and decision-making. She was supported in part by a grant awarded to her by the National Science Foundation: Decision, Risk, and Management Science Program (SES-0621664) while conducting the study reported in Section IID, *Positivity effects*, and was supported in part by a second grant awarded to her by the National Science Foundation: Law and Social Science Program (SES-1024435) while writing this article.
[3] Joseph A. Mikels is an assistant professor of experimental psychology at DePaul University whose research focuses on cognitive aging. He was supported in part by a grant awarded to him by the National Science Foundation: Decision, Risk, and Management Science Program (SES-1139554) while working on this article.
[4] Amber Schonbrun McDonnell, J.D. The John Marshall Law School.
[5] Tonja Bowen Bishop & Hui Shan, *Reverse Mortgages: A Closer Look at HECM Loans*, 2 (Sept. 2008), *available at* http://www.nber.org/programs/ag/rrc/08-Q2%20Bishop,%20Shan%20FINAL.pdf.
[6] Housing and Community Development Act of 1987, Pub. L. No. 100-242, Section 417, 101 Stat. 1908 (1988) (codified at 12 U.S.C. § 1715z-20 (2006)).
[7] National Housing Act, 12 U.S.C. § 1715z-20 (2010), *amended by* The Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (July 30, 2008).
[8] National Housing Act, 12 U.S.C. § 1715z-20 (2010).
[9] See notes 61 and 244 *infra.*
[10] Bishop & Shan, *supra* note 5, at 1, 2.
[11] In addition to HECM's there are private reverse mortgages that are not federally insured (so no guarantee to the senior that the money will be there in the future from the federal government), and while these private reverse mortgages may have lower fees, they generally have higher interest rates and therefore may cost more than a HECM, with the exception of reverse mortgages being developed by some credit unions. AARP, *Reverse Mortgage Loans: Borrowing Against Your Home,* at 8, *available at* http://assets.aarp.org/www.aarp.org_/articles/money/financial_pdfs/hmm_hires_nocrops.pdf, [hereafter "AARP Booklet"].
[12] Benjamin A. Neil & Brian A. Neil, *Is A Reverse Mortgage A Viable Option For Baby Boomers?,* 7(6) J. BUS. & ECON. RES. 53 (June 2009). Certain state or local government based reverse mortgages are lower in cost than a HECM but must be used for one specific purpose only such as repair of the home or to pay for property taxes and which are generally only available to homeowners of low to moderate incomes.
[13] *Fixed Rate Note—Closed End* (Home Equity Conversion), para. 6(B)(ii) [hereinafter *Fixed Rate Note*](form utilized in Fla.); *Fixed Rate Mortgage Home Equity Conversion Mortgage*, at para. 9(b)(ii) [hereinafter *Fixed Rate Mortgage Form*](form utilized in Fla.). "9. Grounds for Acceleration of Debt…(b) Due and Payable with Secretary Approval. Lender may require immediate payment in full of all sums secured by this Security instrument, upon approval by an authorized representative of the Secretary, if:…(ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to physically occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other Borrower… or (iii) An obligation of the Borrower under this Security Instrument is not performed." *Id.* Payment of property charges (paragraph 2 of the Mortgage) and maintaining the property (paragraph 4 of the Mortgage) are examples of obligations of the Borrower under the Mortgage. *See also* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *Frequently Asked Questions about HUD's Reverse Mortgages,* http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm, (last updated Oct. 14, 2010) [hereinafter *Frequently Asked Questions*].
[14] J.A. Alsup, *Texas's New and Improved Reverse Mortgage,* 68 TEX. B. J. 1076 (2005).
[15] AARP Booklet, *supra* note 11, at 8.
[16] Alsup, *supra* note 14.

[17] Annie Nelson, *Reverse Mortgages: Changes Brought About By the Housing and Economic Recovery Act,* 13 N.C. Banking Inst. 337, 343 (2009).
[18] AARP Booklet, *supra* note 11, at 12.
[19] *Id.*
[20] Nathalie Martin, *Consumer Scams and The Elderly: Preserving Independence Through Shifting Default Rules,* 17 ELDER L.J. 1, 23 (2009).
[21] Nelson, *supra* note 17, at 343.
[22] AARP Booklet, *supra* note 11, at 9.
[23] John Yedinak, *Tool Helps Streamline HECM Counseling Protocol Document Requirements*, REVERSE MORTGAGE DAILY (Sept. 13, 2010), http://reversemortgagedaily.com/2010/09/13/tool-helps-streamline-hecm-counseling-protocol-document-requirements/. But it should also be noted that as housing prices have decreased over the past five years this also leads to a reduction in the amount a borrower can receive under any mortgage loan, including a HECM.
[24] J.R. Caggiano, *Mortgage and Predatory Lending Law Developments,* 64 BUS. L. 517, 518 (2009).
[25] Nelson, *supra* note 17, at 346.
[26] *Id.* at 347.
[27] *Id.* at 349.
[28] *Id.* at 353.
[29] *Id.* at 354.
[30] *Frequently Asked Questions*, *supra* note 13.
[31] *Id.*
[32] Nelson, *supra* note 17, at 342.
[33] *Id.* The Department of Housing and Urban Development (HUD) announced nearly $73 million in counseling grants that will go to more than 500 national, regional and local organizations in 2011 to help families find decent housing and to prevent future foreclosures. Of the $73 million, HUD is providing $9.5 million in HECM counseling grants, an increase of 21% from 2010. If funding is not available when a senior applies for a reverse mortgage, in accordance with the regulations at 24 CFR 214.313, counseling agencies may charge a fee for counseling services as long as the cost is reasonable and customary, does not create a financial hardship for the client, and meets the other requirements of the regulation. Based on feedback from reverse mortgage counseling providers and cost data collected by HUD, HUD has determined that a reverse mortgage counseling fee of $125 per counseling session constitutes a reasonable and customary fee, and does not exceed a level so as to be generally commensurate with the education and counseling services that are typically provided.
[34] Bishop & Shan, *supra* note 5, at 12.
[35] BRUCE E. FOOTE, CONG. RESEARCH SERV., RL33843, REVERSE MORTGAGES, BACKGROUND AND ISSUES 8 (Jan. 26, 2007).
[36] Bishop & Shan, *supra* note 5, at 12.
[37] Nelson, *supra* note 17, at 343.
[38] Michael C. Fratantoni, *Reverse Mortgage Choices: A Theoretical and Empirical Analysis of the Borrowing Decisions of Elderly Homeowners,* 10(2) J. HOUSING RES. 189 (Fannie Mae Foundation, 1999). Another advantage of line of credit is that the credit-line keeps growing larger every month for as long as the borrower has any credit left.
[39] FOOTE, *supra* note 35, at 8.
[40] AARP Booklet, *supra* note 11, at 9.
[41] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *FHA Reverse Mortgages (HECM) for Consumers,* http://www.hud.gov/buying/reverse.cfm, (last visited Dec. 27, 2010).
[42] The counseling protocol does not specifically address this, but it would seem only logical that if the loan amount under a term plan is exhausted or nearly so, that it would not then be possible to convert it to a tenure plan.
[43] The origination fee is what the senior pays the lender for preparing the paperwork and processing the loan, and varies from lender to lender. This amount is capped by statute at the greater of $2,500 or 2.0% of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000, plus 1% of any portion of the maximum claim amount that is greater than $200,000, not to exceed the sum of $6,000. National Housing Act, 12 U.S.C. § 1715z-20 (2010).
[44] HUD guidelines require that all HECM reverse mortgage borrowers pay for and receive mortgage insurance, which guarantees that the homeowner will continue to receive benefits no matter what happens to their lender and

ensures the senior will never owe more than the value of the home. HECM insurance is financed by a mortgage insurance premium charged on all reverse mortgage loans. Borrowers do not directly or immediately pay the insurance premiums. Instead, lenders make the payments to FHA on behalf of the borrowers and the cost of the insurance is added to the borrower's loan balance. US Department of Housing and Development, *FHA Reverse Mortgages (HECMs) for Seniors,* http://www.hud.gov/offices/hsg/sfh/hecm/hecmabou.cfm, (last visited Dec. 27, 2010). Responding to complaints over the high mortgage insurance premiums, the "HECM Saver" was established in which there is only a 0.01% upfront mortgage insurance premium and 1.25% annual mortgage insurance premium, much lower than the 2% upfront MIP and 1.25% annual mortgage insurance premium charged to HECM Standard borrowers. However, the lower upfront fees result in less money being made available to the borrower than is available under HECM Standard. "The tradeoff with the HECM Saver is that the amount you can borrow against your equity is between 10 percent and 18 percent less, depending on your age, than the FHA's standard reverse mortgage. Borrowers are also charged mortgage insurance premiums on an ongoing basis equivalent to 1.25 percent annually of the outstanding loan balance." *See* Donna Fuscaldo, *A Reverse Mortgage for Less: The FHA'a new HECM Saver Program Charges Lower Upfront Fees*, AARP (Oct. 4, 2010), http://www.aarp.org/money/credit-loans-debt/info-10-2010/new-reverse-mortgage-for-less.html. The HECM Saver may make sense for senoiors with more modest cash needs or who need money for a shorter time. *See*, Tara Siegel Bernanrd, *Changes on Reverse Mortgages Will Alter Fee Structure* (Oct. 1, 2010), http://www.nytimes.com/2010/10/02/business/02reverse.html.

[45] The third-party closing costs include an appraisal, title search and title insurance, surveys, inspections, recording fees, mortgage taxes, credit checks, and others. In addition to placing a value on the home, an appraiser must also make sure there are no major structural defects. *See* John Yedinak, *FHA Announces HECM Saver, New Low Cost Reverse Mortgage*, REVERSE MORTGAGE DAILY (Sept. 21, 2010), http://reversemortgagedaily.com/2010/09/21/fha-announces-hecm-saver-new-low-cost-reverse-mortgage/. Although the closing costs vary in different jurisdictions/regions, HUD limits third-party closing costs to what is "usual and customary" in a given area for reverse mortgages. HECM COUNSELING PROTOCOL, *infra* note 55, at 126.

[46] There are also monthly service fees for furnishing account statements, disbursing loan proceeds and ensuring the senior keeps up with paying taxes and insurance, but it is at fairly low regulated rates of no more than $35 per month if the interest rate adjusts monthly and $30 if a fixed rate or annually adjustable reverse mortgage. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD HANDBOOK: 4235.1 REV-1 HOME EQUITY CONVERSION MORTGAGES paragraphs. 1-12 [hereinafter Home Equity Conversion Mortgages].

[47] Unless a tenure loan where if they live and remain in the home past the age of 100 they would receive more than that sum.

[48] AARP Booklet, *supra* note 11, at 14.

[49] *See* Primary Mortgage Market Survey, FREDDIE MAC, http://www.freddiemac.com/pmms/release.html.

[50] According to information provided in the Federal Reserve Board's Consumer Guide to Mortgage Settlement Costs, closing costs related to a mortgage on a house purchase for $222,000 with a down payment of twenty percent are expected to total between $4,700 and $10,200.19. Calculation of borrower costs on HECM loans are much higher, $18,340 ($24,670) in the high (low) termination mode. Ratios of borrower costs to the net principal limit at origination, which is the maximum lump sum that could be immediately withdrawn, are similarly much higher than ratios of closing costs to loan values for forward mortgages: 13.5% (18.4%) in the high (low) termination mode for reverse mortgages compared to no more than 6% for forward mortgages.

[51] AARP Booklet, *supra* note 11, at 12.

[52]*See Fixed Rate Note*, *supra* note 13, at para. 6(B); *Frequently Asked Questions*, *supra* note 13.

[53] *Fixed Rate Mortgage Form*, *supra* note 13, at para. 9(d) (form used in Tampa, Fla.).

[54] Caggiano, *supra* note 24, at 520.

[55] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD HANDBOOK: 7610.1 HECM COUNSELING PROTOCOL 104, *available at* http://hud.gov/offices/adm/hudclips/handbooks/hsgh/7610.1/76101HSGH.pdf [hereinafter HECM COUNSELING PROTOCOL].

[56] *Id.*

[57] Neil Morse, *Fannie Mae to Start Foreclosure on Reverse Mortgage Defaults,* REVERSE MORTGAGE DAILY (June 6, 2010), http://reversemortgagedaily.com/2010/06/06/fannie-mae-to-start-foreclosure-process-on-reverse-mortgage-defaults/.

[58] *Id.*

[59] *Id.*

[60] See note 52 *supra*.

[61] Reported in U.S News & World Report (Dec. 7, 2011), available at: http://money.usnews.com/money/blogs/the-best-life/2011/12/07/why-reverse-mortgage-delinquencies-are-extensive/ that HUD disclosed that 46,000 HECM loans, representing 8% of all such outstanding loans, were delinquent in real estate tax and property insurance payments as of July 2011. Lenders have advanced approximately $250 million on these delinquent loans according to figures provided to US News by HUD only $40 million of which have since been repaid.
[62] FOOTE, *supra* note 35, at 8.
[63] Nelson, *supra* note 17, at 345-46 *(citing,* Charles Duhigg, *Tapping Into Homes Can Be Pitfall For the Elderly,* N.Y. TIMES, Mar. 2, 2008, http://www.nytimes.com/2008/03/02/business/02reverse.html).
[64] *Id.* at 346.
[65] HECM COUNSELING PROTOCOL, *supra* note 55, at 86.
[66] *Id.* at 150.
[67] *Id.*
[68] John Yedinak, *New Counseling tool Helps Determine How Reverse Mortgages Can Assist Seniors*, REVERSE MORTGAGE DAILY (July 22, 2010), http://reversemortgagedaily.com/2010/07/22/new-counseling-tool-helps-determine-how-reverse-mortgages-can-assist-seniors/.
[69] *Id.*
[70] John Yedinak, *Addressing the Fuss over the Financial Interview Tool*, REVERSE MORTGAGE DAILY (Nov. 20, 2010), http://reversemortgagedaily.com/2010/11/30/addressing-the-fuss-over-the-financial-interview-tool/.
[71] Older adults often have difficulty with novel symbols. Yellow flags are well-understood symbols, so they are likely to be less problematic for older adults than alternative symbols. *See* M.F. Lesch, W.J. Horrey, M.S. Wogalter & W.R. Powell, *Age-related Differences in Warning Symbol Comprehension and Training Effectiveness: Effects of Familiarity, Complexity, and Comprehensibility*, 54(10) ERGONOMICS 879, 879 (Oct. 2011).
[72] Research suggests that memory for items such as these is limited to at most 4 items among younger adults and is limited even more among older adults. *See* Nelson Cowan, *The magical number 4 in short-term memory: A reconsideration of mental storage capacity*, 24 BEHAVIORAL AND BRAIN SCIENCES 87, 87 (2000) (reviewing a large literature in support of the view that memory is limited to four items); K.L. Bopp & P. Verhaeghen, *Aging and verbal memory span: A meta-analysis*, 60(5) J. GERONTOL. B. PSYCHOL. SCI. SOC. SCI. 223, 223 (2005) (presenting a meta-analysis demonstrating that memory is even more limited among older adults).
[73] HECM COUNSELING PROTOCOL, *supra* note 55, at 150.
[74] *Id.*
[75] HECM COUNSELING PROTOCOL, *supra* note 55, at 131.
[76] NATIONAL COUNCIL ON AGING, USE YOUR HOME TO STAY AT HOME: A GUIDE FOR OLDER HOMEOWNERS WHO NEED HELP NOW 1 (2010) [hereafter "NCOA Booklet"].
[77] *Id.* at 14. Although the guide also notes how closing costs for HECM's vary a lot by the type of HECM loan and by lender and the importance of shopping around on the interest rate and fees among lenders, the guide also states that "Loan closing costs for a reverse mortgage are the same as what you would pay for a traditional 'forward' mortgage. These can include an origination fee, appraisal, and other closing costs (such as title search and insurance, surveys, inspections, recording fees). HECM borrowers also pay a mortgage insurance premium." *Id.* at 13, 14, and 23. We find these two sentences to be problematic since as noted earlier the closing costs for a HECM are in fact usually much higher than for a conventional/forward mortgage loan. The AARP Booklet much more clearly illustrates how expensive a HECM loan can be.
[78] HECM COUNSELING PROTOCOL, *supra* note 55, at 131.
[79] *Id.* at 85.
[80] *Id.* at 113.
[81] *Id.* at 133.
[82] *Id.* at 85.
[83] *Id.* at 80.
[84] *Id.*
[85] *Id.*
[86] HECM COUNSELING PROTOCOL, *supra* note 55, at 145.
[87] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, MORTGAGEE LETTER 2010-37 (Nov. 8, 2010), http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/10-37ml.pdf [hereinafter MORTGAGEE LETTER 2010-37].
[88] The order in which options are listed has a major effect on which options are chosen. *See* Jamie Murphy, Charles

Hofacker & Richard Mizerski, *Primacy and Recency Effects on Clicking Behavior*, 11(2) J. COMPUTER-MEDIATED COMM. 522, 522 (Jan. 2006).

[89] MORTGAGEE LETTER 2010-37, *supra* note 87, at 2.

[90] *Id.*

[91] John Yedinak, *HUD Offers 79 Million in Grants for Housing Counseling*, REVERSE MORTGAGE DAILY (July 27, 2010), http://reversemortgagedaily.com/2010/07/27/hud-offers-79-million-in-grants-for-housing-counseling/. U.S. Department of Housing and Urban Development, Press Release 09-199: Obama Administration Announces $60 Million In Housing Counseling Grants To Nearly 500 National, State And Local Agencies (Oct. 14, 2009), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2009/HUDNo.09-199. [Press release from Oct. 2009 announcing that they would put $8 million toward reverse mortgage counseling. It was announced prospectively that they would spend this amount in 2010 rather than a retrospective statement of what was actually spent.]

92 John Yedinak, New HECM Protocol Means Longer Sessions Higher Costs for Borrowers, Reverse Mortgage Daily (Oct. 13, 2010), http://reversemortgagedaily.com/2010/10/13/new-hecm-counseling-protocol-means-longer-sessions-higher-costs-for-borrowers/. Mary Ellen Podmolik, Housing Counseling Services To Suffer Under Funding Cuts, Washington Post, April 11, 2011, at E05. Al Heavens, On The House: Housing Counseling Was Sacrificed To Keep Federal Government Open, The Philadelphia Inquirer, May 8, 2011, at J01.

[93] HECM RESOURCES, http://www.hecmresources.org/hecmresources/requests.cfm, (last visited Dec. 28, 2010); *see also* AARP Booklet, *supra* note 10, at 25. There was no data on the maximum counseling fee in 2010.

94 John Yedinak, HUD awards 9.5 Million in HECM Counseling Grants, Reverse Mortgage Daily (Dec. 27, 2010), http://reversemortgagedaily.com/2010/12/27/hud-awards-9-5-million-in-hecm-counseling-grants-increase-of-21/. U.S. Department of Housing and Urban Development, Press Release 10-269: Obama Administration Announces nearly $73 Million in Counseling Grants to Help Families Find and Keep Housing (Dec. 23, 2010), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-269.

[95] Fratantoni, *supra* note 38.

[96] PJ WADE, REVERSE MORTGAGES: BEST FRIEND, WORST ENEMY…YOUR CHOICE! 56 (Catapult Publishing, 2008).

[97] "The tradeoff with the HECM Saver is that the amount you can borrower against your equity is between 10 percent and 18 percent less, depending on our age, than the FHA;s standard reverse mortgage." Fuscaldo, *supra* note 44.

[98] *See Fixed Rate Mortgage Form*, *supra* note 13.

[99] *Id; see Fixed Rate Note*, *supra* note 13, at para. 6(B) (HECM used in Florida).

[100] AARP Booklet, *supra* note 11, at 12.

[101] See note 61 *supra* which stated that as of July 2011, 8% of HECM loan borrowers are delinquent in their payment of real estate taxes and/or insurance premiums. See, also, K.B. Gallant, *Alternatives to Medicaid: Planning and Paying for Long-Term Care*, 63 INSTITUTE ON FEDERAL TAXATION 23, 23.02 (2005); *see supra* note 34.

[102] Another risk, but which has been addressed in the standard form HECM loan documents, is if the senior becomes ill, injured or incapacitated, it is possible the senior will neglect to make these payments at that time. However, the senior can initially or later on opt to have the servicer make these payments from the loan proceeds and if there has been a failure of the senior to make these payments when they have opted to be responsible for this then the loan documents provide that the lender, through the servicer, should make these payments. *See Fixed Rate Note*, *supra* note 12, at sec. 2.10.1 and 2.10.5; *but see id.* at art. 5 (making an exception if the mortgage is assigned to the Secretary of HUD in which case neither the lender nor the Secretary is obligated to pay for flood, fire and other hazard insurance from loan advances).

[103] Morse, *supra* note 56 at __.

[104] Neil & Neil, *supra* note 12, at 55.

[105] SOCIAL SECURITY ONLINE, *Supplemental Social Security Income,* http://www.ssa.gov/pubs/11000.html#part1, (last visited Dec. 27, 2010).

[106] NATIONAL REVERSE MORTGAGE LENDERS ASSOCIATION, *About Reverse Mortgages,* http://www.reversemortgage.org/Default.aspx?tabid=230, (last visited Nov. 10, 2010).

[107] Nelson, *supra* note 17, at 343.

[108] OMNI REVERSE MORTGAGE, *Can My Benefits Be Cut if I Have a Reverse Mortgage?*, http://www.omnireversemortgage.com/reverse-mortgage/can-my-benefits-be-cut-if-i-have-a-reverse-mortgage/, (last visited Nov. 20, 2010).

[109] One of the pre-counseling documents the seniors receive is the AARP Booklet which contains on page 38 a table calculating expected equity in the home over ten years taking into account loan payments and assumes a 4% appreciation each year which may or may not be accurate making the estimated equity available to draw upon in the future higher or lower than estimated. The mortgage counselor could note this point to the senior when discussing the amount of likely possible loan draw-downs over the life of the loan.
[110] Tim Paul, *Five Reverse Mortgage Scams to Watch Out For*, MESHMAP.NET (Mar. 20, 2010), http://www.meshmap.net/five-reverse-home-mortgage-scams-to-watch-out-for.
[111] Kennedy v. World Alliance Financial Corp., 792 F. Supp. 2d 1103 (E.D. Cal. 2011).
[112] *Id.*
[113] *Id.* at 4.
[114] *Id.*
[115] Charles Duhigg, *Tapping Into Homes Can Be Pitfall For the Elderly,* N.Y. TIMES, Mar. 2, 2008, http://www.nytimes.com/2008/03/02/business/02reverse.html.
[116] *Id.*
[117] *Id.*
[118] Paul, *supra* note 110.
[119] Earlier, this article briefly noted some advantages and disadvantages of entering into a private reverse mortgage not part of the HECM program.
[120] AARP Booklet, *supra* note 11, at 21.
[121] *Taking Care of Mom and Dad: The Sale-Leaseback,* HEALTH INSURANCE ONLINE, http://www.online-health-insurance.com/health-insurance-resources/TCMD/content/sale-leaseback.htm, (last visited Nov. 29, 2010) [hereinafter *Taking Care*].
[122] *Id.*
[123] Brian E. Davis & Stephen G. Tomlinson, P.C., *Sale-Leaseback Offers Compelling Alternative,* N.Y.L.J. (Nov. 25, 2002), *available at* http://www.kirkland.com/sitecontent.cfm?contentID=223&itemId=2500.
[124] *Taking Care*, *supra* note 121.
[125] AARP Booklet, *supra* note 11, at 22.
[126] *Id.*
[127] *See A Guide To Supplemental Security Income (SSI) For Groups & Organizations, SSA Publications No. 05-11015, July 2011 ICN 480300,* available at http://www.socialsecurity.gov/pgm/ssi.html.
[128] *Id.*
[129] *Id.*
[130] AARP Booklet, *supra* note 11, at 22.
[131] Interview with Michael Otte, a former mortgage broker (Nov. 17, 2010).
[132] *Id.*
[133] *Frequently Asked Questions*, *supra* note 13.
[134] *Id.*
[135] AARP Booklet, *supra* note 11, at 18-19.
[136] *Id.*
[137] HENNEPIN COUNTY, MINN. WEBSITE, *Senior Citizen Property Tax Deferral*, http://hennepin.us/portal/site/HennepinUS/menuitem.b1ab75471750e40fa01dfb47ccf06498/?vgnextoid=65053cf4b1b94210VgnVCM10000049114689RCRD (last visited Feb. 7, 2011).
[138] *Id.*
[139] *Id.*
[140] AARP Booklet, *supra* note 11, at 19-20.
[141] CONSUMER UNIONS OF U.S., INC., *Fees Pile Up,* http://www.consumerreports.org/cro/money/retirement-planning/reverse-mortgages-4-08/fees-pile-up-/reverse-mortgages-fees-pile-up.htm, (last updated Apr. 2008).
[142] PROACTIVE FINANCIAL PLANNING: A CONSUMER ADVOCACY ORGANIZATION, *Financing Retirement: The Reverse Mortgage Option,* http://webcache.googleusercontent.com/search?q=cache:Pg8ZyOfcZBsJ:www.open-ira.com/Financial_Planning/PFP_Debt_Management/Mortgages/Reverse_Mort_2.htm+ideal+candidate+for+reverse+mortgage&cd=10&hl=en&ct=clnk&gl=us, (last visited Nov. 12, 2010).
[143] Martin, *supra* note 20, at 24.
[144] WADE, *supra* note 96, at 53.
[145] *Id* . at 53-54.

[146] Martin, *supra* note 20, at 25.
[147] AARP Booklet, *supra* note 11, at 1.
[148] *Id.*
[149] AARP, *5 Questions to Ask Before Considering a Reverse Mortgage*, (Sept. 2010), http://www.aarp.org/money/credit-loans-debt/info-2007/5_questions_to_ask_before_considering_a_reverse_mo.html. "Before considering [a reverse mortgage] you need to do your homework carefully and thoroughly." *Id.*
[150] B. Molander & L. Backman, *Age Differences in the Effects of Background Noise on Motor and Memory Performance in a Precision Sport*, 16(1-2) EXP. AGING RES. 55, 55 (1990).
[151] P. Verhaeghen, A. Marcoen & L. Goossens, *Facts and Fiction about Memory Aging: A Quantitative Integration of Research Findings*, 48 J. GERENTOL. B. PSYCHOL. SCI. SOC. SCI. 157, 157 (1993).
[152] D.C. Park, G. Lautenschlager, T. Hedden, N.S. Davidson, A.D. Smith & P.K. Smith, *Models of Visuospatial and Verbal Memory Across the Adult Life Span*, 17(2) PSYCHOL. & AGING 299, 299 (June 2002).
[153] M.L. Finucane, C.K. Mertz, P. Slovic & E.S. Schmidt, *Task Complexity and Older Adults' Decision-making Competence*, 20 PSYCHOL. & AGING 71, 71 (2005).
[154] *Id.* at 77-79.
[155] F.I.M. Craik & J.M. McDowd, *Age Differences in Recall and Recognition*, 13(3) J. EXP. PSYCHOL.: LEARNING, MEMORY, AND COGNITION 474, 474 (1987).
[156] G.O. Einstein & M.A. McDaniel, *Normal Aging and Prospective Memory*, 16 J. EXP. PSYCHOL.: LEARNING, MEMOERY, AND COGNITION 717, 717 (1990).
[157] As noted in note 102 *supra*, fortunately, the lender is required to make those payments if the borrower fails to unless the loan is assigned to the Secretary of HUD, in which case HUD is not obligated to do so.
[158] J.A. Mikels, G.R. Larkin, P.A. Reuter-Lorenz & L.L. Carstensen, *Divergent Trajectories in the Aging Mind: Changes in Working Memory for Affective Versus Visual Information With Age*, 20(4) PSYCHOL. & AGING 542, 542 (2005).
[159] M. Mather & L.L. Carstensen, *Aging and Attentional Biases for Emotional Faces*, 14(5) PSYCHOL. SCI. 409, 409 (2003).
[160] J. Strough, C.M. Mehta, J.P. McFall & K.L. Schuller, *Are Older Adults Less Subject to the Sunk-cost Fallacy Than Younger Adults?*, 19 PSYCHOL. SCI. 650, 650 (2008).
[161] C.E. Loeckenhoff & L.L. Carstensen, *Aging, Emotion, and Health-Related Decision Strategies: Motivational Manipulations Can Reduce Age Differences*, 22 PSYCHOL. & AGING 134, 134 (2007).
[162] R. Mata & L. Nunes, *When Less Is Enough: Cognitive Aging, Information Search, and Decision Quality in Consumer Choice*, 25(2) PSYCHOL. & AGING 289, 289 (2010).
[163] T.A. Salthouse, *What and When of Cognitive Aging*, 13 CURRENT DIRECTIONS PSYCHOL. SCI. 140, 140 (2004).
[164] A. Wingfield, P.A. Tun & M.J. Rosen, *Age Differences in Veridical and Reconstructive Recall of Syntactically and Randomly Segmented Speech*, 50 J. GERONTOL.: PSYCHOL. SCI. 257, 257 (1995).
[165] Larry L. Jacoby, *Deceiving the Elderly: Effects of Accessibility Bias in Cued-Recall Performance*, 16(3-5) COGNITIVE NEUROPSYCHOLOGY 417, 417-418 (May-July 1999).
[166] *See* M.L. Gick & K.J. Holyoak, *Schema Induction and Analogical Transfer*, 15(1) COGNITIVE PSYCHOL. 1, 1 (1983); Leigh Thompson, Dedre Gentner & Jeffrey Loewenstein, *Avoiding Missed Opportunities in Managerial Life: Analogical Training More Powerful Than Individual Case Training*, 82(1) ORG. BEHAV. HUM. DECISION PROCESSES 60, 60 (May 2000).
[167] *See* J.M. Weber, D. Malhotra & J.K. Murnighan, *Normal Acts of Irrational Trust: Motivated Attributions and the Trust Development Process*, 26 RES. ORG. BEHAV. 75, 75 (2005) (giving a theoretical account of the development of trust in situations that involve dependency).
[168] A.M. Shamaskin, J.A. Mikels & A.E. Reed, *Getting the Message Across: Age Differences in the Positive and Negative Framing of Healthcare Messages*, 25(3) PSYCHOL. & AGING 746, 746 (2010).
[169] S.A. Mutter & R.M. Pliske, *Aging and Illusory Correlation in Judgments of Co-Occurrence*, 9 PSYCHOL. & AGING 53, 53 (1994).; P.C. Wason, *On the Failure to Eliminate Hypotheses in a Conceptual Task,* 12 Q.J. OF EXPERIMENTAL PSYCHOL. 129–140 (1960); J. Klayman & Y.W. Ha, *Confirmation, Disconfirmation, and Information in Hypothesis Testing*, 94 PSYCHOL. REV. 211–228 (1987).
[170] W.J. McGuire, *Resistance to Persuasion Conferred by Active and Passive Prior Refutation of the Same and Alternative Counterarguments*, 63 J. OF ABNORMAL & SOC. PSYCHOL. 326–332 (1961); W.J. McGuire & D.

Papageorgias, *The Relative Efficacy of Various Types of Prior Belief-Defense in Producing Immunity Against Persuasion*. 62 J. OF ABNORMAL & SOC. PSYCHOL. 327–337 (1961).

171 E.J. Langer, A. Blank & B. Chanowitz, *The Mindlessness of Ostensibly Thoughtful Action: The Role of "Placebic" Information in Interpersonal Interaction*, 36 J. PERSONALITY & SOC. PSYCHOL. 635 (1978).

172 A.D. Castel, *Memory for Grocery Prices in Younger and Older Adults: The Role of Schematic Support*, 20 PSYCHOL. & AGING 718, 718 (2005).

173 B.K. Keller, T.M. Magnunson, P.A. Cernin, J.A. Stoner & J.F Potter, *The Significance of Social Network in a Geriatric Assessment Population*, 15(6) AGING CLIN. EXP. RES. 512, 512 (Dec. 2003); T.E. Seeman, *Social Ties and Health: The Benefits of Social Integration*, 6(5) ANN EPIDEMIOL 442, 442 (Sept. 1996); J.T. Cacioppo & L.C. Hawkley, *Social Isolation and Health, with an Emphasis on Underlying Mechanisms*, 46(3 Suppl.) PERSPECT. BIOL. MED. 39, 39 (Summer 2003) (The authors thank Emilia Lombardi for helpful conversations on this topic).

174 Wingfield, et al., *supra* note 166, at 257; Reder, et. al., *supra* note 167, at 72.

175 A.D. Castel, *Aging and Memory for Numerical Information: The Role of Specificity and Expertise in Associative Memory*, 62 J. GERONTOL.:PSYCHOL. SCI. 194, 194 (2007).

176 Ralph Hertwig, Ulrich Hoffrage & Laura Martignon, *Quick Estimation: Letting the Environment Do the Work* in GERD GIGERENZER, PETER M. TODD & THE ABC RESEARCH GROUP, SIMPLE HEURISTICS THAT MAKE US SMART 209-334 (Oxford University Press, New York, NY, 1999); *see also* A. Tversky & D. Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124, 1124 (1974).

177 Tversky & Kahneman, A. Tversky & D. Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124, 1124 (1974). at 1124-1131 (Asked participants to judge whether African nations represented a higher or lower percentage of UN-member nations than either 10% or 65% and had participants estimate the actual percentage. When compared to 10%, the median estimate was 25%; but when compared to 65%, the median estimate was 45%.); T.D. Wilson, C.E. Houston, N. Brekke & K.M. Etling, *A New Look at Anchoring Effects: Basic Anchoring and Its Antecedents*, 125 J. EXP. PSYCHOL.: GENERAL 387, 387-402 (1996) (Found that simply exposing participants to numeric values biased estimates. Identification numbers that participants thought were only used to assign them to conditions affected their estimates of the number of physicians in the telephone book. Copying numbers for the purpose of handwriting analysis affected estimates of cancer risk.).

178 A. Tversky & D. Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COGNITIVE PSYCHOL. 207, 207 (1973).

179 Hertwig, et al., supra *note* 184, at 209-334; G. Gigerenzer & U. Hoffrage, *How to Improve Bayesian Reasoning Without Instruction: Frequency Formats*, 102 PSYCHOL. REV. 684, 684 (1995).

180 E. Peters, T.M. Hess, D. Vastfjall & C. Auman, *Adult Age Differences in Dual Information Processes: Implications for the Role of Affective and Deliberative Processes in Older Adults' Decision Making*, 2 PERSPECTIVES ON PSYCHOL. SCI. 1, 1 (2007).

181 L.L. Carstensen & J.A. Mikels, *At the Intersection of Emotion and Cognition: Aging and the Positivity Effect*, 14(3) CURRENT DIRECTIONS IN PSYCHOL. SCI. 117, 117-121 (2005).

182 Timothy D. Wilson & Daniel T. Gilbert, *Affective Forecasting: Knowing What to Want*, 14(3) CURRENT DIRECTIONS IN PSYCHOL. SCI. 131, 131 (2005); Philip Brickman, Dan Coates & Ronnie Janoff-Bulman, *Lottery Winners and Accident Victims: Is Happiness Relative?*, 36(8) J. PERSONALITY & SOC. PSYCHOL. 917, 917 (Aug. 1978).

183 HARRY HELSON, ADAPTATION-LEVEL THEORY: AN EXPERIMENTAL AND SYSTEMATIC APPROACH TO BEHAVIOR (Harper & Row, 1964).

184 D. Kahneman & A. Tversky, *Choices, Values and Frames*, 39(4) AM. PSYCHOL. 341, 347 (1984).

185 Older adults are vulnerable to this effect, although they are less vulnerable than their younger counterparts despite the fact that their life expectancy is shorter; L. Green, A.F. Fry & J. Myerson, *Discounting of Delayed Rewards: A Life-Span Comparison*, 5 PSYCHOL. SCI. 33, 33–36 (1994); C.E. Löckenhoff, T. O'Donoghue & D. Dunning, *Age Differences in Temporal Discounting: The Role of Dispositional Affect and Anticipated Emotions*, PSYCHOL. & AGING (print publication forthcoming, 2011). See also, S.J. Estle, L. Green, J. Myerson & D.D. Holt, *Differential Effects of Amount on Temporal and Probability Discounting of Gains and Losses*, 34 MEMORY & COGNITION 914, 914 (2006); M.K. Stevenson, *Decision Making With Long-Term Consequences: Temporal Discounting for Single and Multiple Outcomes in the Future*, 122 J. OF EXP. PSYCHOL.: GENERAL 3, 3 (1993); G.B. Chapman, *Temporal Discounting and Utility for Health and Money*, 22 J. OF EXP. PSYCHOL.: LEARNING, MEMORY, AND COGNITION 771, 771 (1996).

[186] Volkmann, J. (1951). Scales of judgment and their implications for social psychology. In Rohrer, J.H., & Sherif, M. (eds.) *Social Psychology at the Crossroads*, New York: Harper.
[187] See D. Kahneman, J.L. Knetsch & R. Thaler, *Experimental Tests of the Endowment Effect and the Coase Theorem*, 98 J. POL. ECON. 1325, 1325 (1990); although older adults might be less influenced by potential losses than are younger adults, see J.A. Mikels & A.E. Reed, *Monetary Losses Do Not Loom Large in Later Life: Age Differences in the Framing Effect*, 64 J. GERONTOL. B. PSYCHOL. SCI. SOC. SCI. 457, 457 (2009).
[188] Jacoby, *supra* note 165, at 417-418.
[189] Many models of evaluation predict that in many contexts it ought to be possible to reinstate contexts of judgment in this manner. For a discussion of reinstating former contexts without actually experiencing those contexts (e.g., pre-adaptation effects) *see* Shane Frederick, George Loewenstein, & Kahneman, *Hedonic adaptation in* WELL-BEING: THE FOUNDATIONS OF HEDONIC PSYCHOLOGY 305 (Kahneman, Diener & Schwarz eds., 1999). For a discussion of inserting items from memory into ones context of judgment *see* ALLEN PARDUCCI, HAPPINESS, PLEASURE AND JUDGMENT: THE CONTEXTUAL THEORY AND ITS APPLICATIONS (Mahwah, NJ: Lawrence Erlbaum, 1995).
[190] D. Kahneman & A. Tversky, *Choices, Values and Frames*, 39(4) AM. PSYCHOL. 341, 347 (1984).
[191] A.G. Sanfey & R. Hastie, *Judgment and decision making across the adult life span*, *in* COGNITIVE AGING: A PRIMER 253-274 (D. Park & N. Schwarz eds., Phila., Pa.: Psychology Press, 1999).
[192] R. Mata, L. Schooler & J. Rieskamp, *The Aging Decision Maker: Cognitive Aging and the Adaptive Selection of Decision Strategies*, 22 PSYCHOL. & AGING 796, 796 (2007).
[193] J.W. Payne, J.R. Bettman & E.J. Johnson, *Adaptive Strategy Selection in Decision Making*, 14 J. EXP. PSYCHOL.: LEARNING, MEMORY, AND COGNITION 534, 534 (1988); J.W. PAYNE, J.R. BETTMAN & E.J. JOHNSON, THE ADAPTIVE DECISION MAKER (Cambridge: Cambridge University Press, 1993).
[194] G. Gigerenzer & D.G. Goldstein, *Reasoning the Fast and Frugal Way: Models of Bounded Rationality*, 103 PSYCHOL. REV. 650, 650 (1996).
[195] R. Mata, L. Schooler & J. Rieskamp, *The Aging Decision Maker: Cognitive Aging and the Adaptive Selection of Decision Strategies*, 22 PSYCHOL. & AGING 796, 796 (2007).
[196] C.K. Hsee, *The Evaluability Hypothesis: An Explanation for Preference Reversals between Joint and Separate Evaluations of Alternatives*, 67(3) ORG. BEHAV. & HUM. DECISION PROCESSES 247, 248 (1996).
[197] D. Ariely & T.S. Wallsten, *Seeking Subjective Dominance in Multidimensional Space: An Explanation of the Asymmetric Dominance Effect*, 63 ORG. BEHAV. & HUM. DECISION PROCESSES 223, 228 (1995).
[198] H.P. Grice, *Logic and Conversation* in SYNTAX AND SEMANTICS 3: SPEECH ACTS 26-40 (P. Cole & J. Morgan eds., New York: Academic Press, 1975).
[199] *See supra* note 13.
[200] N. Weinstein, *Unrealistic Optimism About Future Life Events*, 39 J. PERSONALITY & SOC. PSYCHOL. 806, 806 (1980). There is some evidence that optimism increases with age, see C.J. Lennings, *Optimism, Satisfaction and Time Perspective in the Elderly*, 51 INT'L J. AGING & HUM. DEV. 167, 167 (2000).
[201] G.F. Loewenstein, E.U. Weber, C.K. Hsee & N. Welch, *Risk as Feelings*, 127(2) PSYCHOL. BULL. 267, 267 (2001). M.L. Finucane, A. Alhakami, P. Slovic & S.M. Johnson, *The Affect Heuristic in Judgments of Risks and Benefits*, 13(1) J. BEHAV. DEC. MAKING 1, 1 (2000). Seniors might be particularly likely to use these strategies, because they require minimal cognitive resources to use and doing so can be beneficial for seniors, see J. Mikels, C. Löckenhoff, S. Maglio, M. Goldstein, A. Garber & L.L. Carstensen, *Following your heart or your head: Focusing on emotions versus information differentially influences the decisions of younger and older adults*, 16 J. EXP. PSYCHOL.: APPLIED 87, 87 (2010).
[202] Tversky & Kahneman, *supra* note 187, at 207 (wherein the authors propose, test, and find evidence for the hypothesis that people make likelihood judgments by the ease with which instances or associations can be brought to mind).
[203] A. Tversky & D. Kahneman, *Extensional Versus Intuitive Reasoning: The Conjunction Fallacy in Probability Judgment*, 90 PSYCHOL. REV. 293, 293 (1983) (wherein the authors propose, test, and find evidence for the hypothesis that people make likelihood judgments by the similarity between a to-be-judged instance, event, or hypothesis and instances or events in memory).
[204] M.R.P. Dougherty, C.F. Gettys & E. Ogden, *Minerva DM: A Memory Process Model for Judgments of Likelihood*, 106 PSYCHOL. REV. 180, 180 (1999) (MINERVA-DM is a quantitative memory-based model of

likelihood judgments under which each encoded event lays down a new memory trace. When people judge likelihood, these encoded events are activated to the degree that they are similar to the to-be-judged event.).

[205] *Id.* at 551-552 (In Tversky and Koehler's, 1994, Experiment 1, participants imagined an individual taken randomly from the population of the United States who had recently died and then estimated the probability that this person had died from a variety of causes. One group of participants was told that the person had died from an unnatural cause and then they estimated the probability that the death was due to an accident. The actual probability at the time of a person in the United States dying from an accident given that the death was due to an unnatural cause was 57.9%, but the participants in this group estimated it to be 45% on average. A second group was also told that the person had died from an unnatural cause, but the various types of accidents were unpacked. Participants in this group estimated the probability that the person had died from an auto accident (average estimate = 33%, actual probability = 30.3), firearm accident (average estimate = 7%, actual probability = 1.3%), accidental fall (average estimate = 6%, actual probability = 7.9%), death in a fire (average estimate = 4%, actual probability = 2.6%), drowning (average estimate = 5%, actual probability = 2.6%), accidental poisoning (average estimate = 4%, actual probability = 3.9%), and other accidents (average estimate = 24%, actual probability = 9.2). The sum of the probabilities from the unpacked types of accidents was 83%, much higher than the first groups estimate of 45%).

[206] S.J. Estle, L. Green, J. Myerson & D.D. Holt, *Differential Effects of Amount on Temporal and Probability Discounting of Gains and Losses*, 34 MEMORY & COGNITION 914, 914 (2006).

[207] D. Kahneman & A. Tversky, *Prospect Theory: An Analysis of Decision under Risk*, 47(2) ECONOMETRICA 263, 263 (Mar. 1979), *available at* http://www.hss.caltech.edu/~camerer/Ec101/ProspectTheory.pdf.

[208] Michael Siegrist, *Communicating Low Risk Magnitudes: Incidence Rates Expressed as Frequency Versus Rates Expressed as Probability*, 17(4) RISK ANALYSIS 507, 507 (Aug. 1997); Carmen Keller, Michael Siegrist & Heinz Gutscher, *The Role of the Affect and Availability Heuristics in Risk Communication*, 26(3) RISK ANALYSIS 631, 631 (June 2006).

[209] Yedinak, *Addressing the Fuss*, *supra* note 70.

[210] Paul Slovic, Ellen Peters, Melissa L. Finucane & Donald G. MacGregor, *Affect, Risk, and Decision Making*, 24(4 Suppl.) HEALTH PSYCHOL. S35, S38 (2005).

[211] E. Peters, T.M. Hess, D. Vastfjall & C. Auman, *Adult Age Differences in Dual Information Processes: Implications for the Role of Affective and Deliberative Processes in Older Adults' Decision Making*, 2 PERSPECTIVES ON PSYCHOL. SCI. 1, 1 (2007).

[212] M. Mather, *A review of decision-making processes: Weighing the risks and benefits of aging* in WHEN I'M 64 145-173 (L. Carstensen, & C. Hartels eds., Washington, DC: The National Academies Press, 2006).

[213] Lauren E. Willis, *Decision-Making and the Limits of Disclosure: The Problem of Predatory Lending*, 65 MD. L. REV. 707, 780–81 (2006).

[214] Eldar Shafir, Itamar Simonson, & Amos Tversky, *Reason-Based Choice*, 49 COGNITION 11, 11–36 (1993), at 11-36. Mata & Nunes, *supra* note 162, at 289-298.

[215] GERD GIGERENZER, PETER M. TODD & THE ABC RESEARCH GROUP, SIMPLE HEURISTICS THAT MAKE US SMART 1-432 (Oxford University Press, New York, NY, 1999), at 1-432.

[216] D. Goldstein & G. Gigerenzer, *Models of Ecological Rationality: The Recognition Heuristic*, 109(1) PSYCHOL. REV. 75, 75 (2002).

[217] J. Mikels, C. Löckenhoff, S. Maglio, M. Goldstein, A. Garber & L.L. Carstensen, *Following your heart or your head: Focusing on emotions versus information differentially influences the decisions of younger and older adults*, 16 J. EXP. PSYCHOL.: APPLIED 87, 87 (2010)**,** at 87-95.

[218] T. Pachur, R. Mata & L.J. Schooler, *Cognitive Aging and the Adaptive Use of Recognition in Decision Making*, 24 PSYCHOL. & AGING 901, 901 (2009).

[219] Indeed, on page one of the HUD form "Preparing for Your Counseling Session" provided to seniors before the counseling, it states "The counselor is responsible for helping you understand reverse mortgages and *the appropriateness of a reverse mortgage to meet your particular need* as well as alternatives to a reverse mortgage." [emphasis added]) U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PREPARING FOR YOUR COUNSELING SESSION, at 1, *available at* http://www.reversemortgagestore.com/Preparing%20for%20Your%20Counseling%20Session.pdf.

[220] See, note _61*supra* discussing the fact that currently 8% of HECM's are in default for failing to pay real estate taxes and/or insurance premiums on the home.

[221] HECM COUNSELING PROTOCOL, *supra* note 55, at 78-79.

[222] *Id.* at 82.

[223] The order in which options are listed has a major effect on which options are chosen. *See* Murphy, et al., *supra* note 88, at 522.
[224] Under Mortgagee Letter 2010-37 lenders are only required to provide each client with a list of HECM Counseling agencies and it must include no fewer than nine HUD-approved counseling agencies. Lenders are now required to input the nine agencies that the lender provided on the list given to the client into FHA Connection. *See generally* MORTGAGEE LETTER 2010-37, *supra* note 87.
[225] HECM COUNSELING PROTOCOL, *supra* note 55, at 82.
[226] *Id.* at 86.
[227] *Id.* at 90.
[228] One difficulty might be the interest rate figure. If a fixed rate loan is intended and a lock applied for this should not be a problem. If a floating rate loan, the figures could be based on the index and margin at the time of the counseling session, with a notice that the figure may change by the time of closing.
[229] Neil Morse, *Longer Counseling Session for Reverse Mortgages*, REVERSE MORTGAGE DAILY (Nov. 28, 2010), http://reversemortgagedaily.com/2010/11/28/longer-counseling-sessions-for-reverse-mortgages/.
[230] One mitigating factor is that reverse mortgage customers are actually getting younger, according to Jerry Tomlin, Atlantic Bay Mortgage Group, who explains that "the 72-year-old widow was our typical reverse mortgage customer [but] now it's the 60-ish couple and single men – [generally more] active adults." *Id.*
[231] Allen G. Schick, Lawrence A. Gordon & Susan Haka, *Information Overload: A Temporal Approach*, 15(3) ACCT., ORG. & SOC'Y 199, 199 (1990).
[232] *See* Harry P. Bahrick, *Long-term Maintenance of Knowledge*, in THE OXFORD HANDBOOK OF MEMORY 347-362, 350 (Endel Tulving & Fergus I. M. Craik eds., Oxford University Press, 1st ed., May 4, 2000) (discussing how having multiple training sessions enhances learning).
[233] HECM COUNSELING PROTOCOL, *supra* note 55, at 83.
[234] *See* Roger W. Shuy, *In-Person Versus Telephone Interviewing*, in INSIDE INTERVIEWING: NEW LENSES, NEW CONCERNS 175-194, 180 (James A. Holstein & Jaber F. Gubrium eds., Thousand Oaks, CA: Sage Publications, Inc., 2003) (discussing the advantages and disadvantages of in-person versus telephone sessions); *see also* PAUL LAVRAKAS, TELEPHONE SURVEY METHODS: SAMPLING, SELECTION, AND SUPERVISION 6 (2nd ed., Thousand Oaks, Cal.: Sage Publications, Inc., 1993) (discussing problems with telephone sessions with seniors).
[235] U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HANDBOOK 7610.1, at 30 (May 2010). HUD allows participating agencies to provide telephone reverse mortgage counseling only if the agency has indicated that it will provide this as a service option within its HUD approved housing counseling work plan. Participating agencies must also define within its work plan the geographic area in which it will do telephonic counseling. Participating agencies may provide nationwide telephonic counseling as long as it is defined in the housing counseling work plan. *Id.* at 30-31.
[236] *Fixed Rate Note*, *supra* note 13; *see generally, supra* note 13.
[237] *Id.* "Borrower shall not …allow the Property to deteriorate, reasonable wear and tear excepted." *Fixed Rate Mortgage Form*, *supra* note 13, at para 4. "Due and Payable with Secretary Approval. Lender may require immediate payment in full of all sums secured by this Security Instrument, upon approval by an authorized representative of the Secretary, if:..(iv) An obligation of the Borrower under this Security Instrument is not performed." *Id.* at 9(b). "Notice to Secretary and Borrower. Lender shall notify the Secretary and Borrower whenever the loan becomes due and payable under this Paragraph 9 (a)(ii) and (b). Lender shall not have the right to commence Foreclosure until Borrower has had thirty (30) days after notice to either: (i) Correct the matter which resulted in the Security Instrument coming due and payable; or (ii) Pay the balance in full; or (iii) Sell the Property for the lesser of the balance or 95% of the appraised value and apply the net proceeds of the sale toward the balance; or (iv) Provide the Lender with a deed in lieu of foreclosure." *Id.* at para. 9(d).
[238] *Id.* Paragraph 9 (a) (i) of the form Mortgage provides as an event of default "A Borrower dies and the Property is not the principal residence of at least one surviving Borrower;" which then, it appears, can be "cured" within thirty days as set forth in 9 (d). The language of 9 (d) creates a bit of an ambiguity on this point in that it refers to section 9 (a) (ii) at one point relating to notices and then does not clarify that the cure right also relates to Paragraph 9 (a) (i) defaults as well. *Id.* at para. 9.
[239] Equity being defined as the situation where the fair market value of the home is greater than the amount due under the reverse mortgage loan or any other liens on the home.
[240] Christine Dugas, *Reverse Mortgages Don't Always Work: Deals Can Turn Sour For Some Seniors*, USA TODAY, Sept. 13, 2011, at B3, *available at* http://www.usatoday.com/money/perfi/housing/story/2011-09-12/reverse-

mortgages/50373520/1; *see also* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, MORTGAGEE LETTER 2008-38 (Dec. 5, 2008), *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm/hecmml [hereinafter MORTGAGEE LETTER 2008-38] ("Home Equity Conversion Mortgages (HECMs)—Clarification regarding borrower's recourse for repayment of HECM loan debt and termination of a HECM mortgage"). The HUD Handbook 4235.1 REV-1, Home Equity Conversion Mortgages, provides in Paragraph 1-3C that although the HECM is a non-recourse loan "where the estate will never owe more than the loan balance or value of the property whichever is less… if the mortgage is due and payable and the borrower (or estate) desires to retain ownership of the property, the mortgage debt must be repaid in full." HOME EQUITY CONVERSION MORTGAGES, *supra* note 45, at para. 1-3C.

[241] On April 5, 2011, in mortgagee letter 2011-16, HUD rescinded the rule in HUD mortgagee letter 2008-38 and stated that new guidance will be made available in the Code of Federal Regulations and Handbook in the future. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, MORTGAGEE LETTER 2011-16 (Apr. 5, 2011), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=11-16ml.pdf.

[242] Dugas, *supra* note 240, at B3 (describing the three lawsuits).

[243] Elizabeth Ecker, *Following AARP Lawsuit, House Democrats Ask HUD to Modify HECM Program*, REVERSE MORTGAGE DAILY (Apr. 13, 2011), http://reversemortgagedaily.com/2011/04/13/following-aarp-lawsuit-house-democrats-ask-hud-to-modify-hecm-program/ (discussing the March 24, 2011 letter from Barney Frank and Luis Gutierrez to HUD).

[244] After auditing four of sixteen loan servicers nationwide in the Office of Inspector General (OIG) issued a report in August 2010 that found that there were approximately 13,000 HECM loans in default for failing to pay property taxes or insurance premiums totaling more than $2.5 billion in loans.[244] The OIG concluded that having those loans go to claim will have a negative impact on the applicable insurance fund and may even impact the program's ability to be self sustaining. As noted earlier, HUD disclosed to US News on December 7, 2011 that in fact 46,000 such loans were delinquent in making taxes/insurance payments as of July 2011, a much higher figure than industry experts had projected. Requiring a suitability determination that takes into account the ability of the senior to pay such expenses and all other necessary expenses should help to prevent such a high percentage of delinquencies in the future, reduce government needed expenditures to cover said payments, and strengthen the viability of the government insured program. Gerald R. Kirkland, Audit Report 2010-FW-0003: HUD Was Not Tracking Almost 13,000 Defaulted HECM Loans With Maximum Claim Amounts of Potentially More Than $2.5 Billion 10-11 (Office of Inspector General, Aug. 25, 2010), available at http://www.hudoig.gov/pdf/Internal/2010/ig1060003.pdf. Indeed, we speculate that Congress may in the near future consider requiring a suitability determination before a HECM loan can be made which would cover the issue of the senior's ability to pay real estate taxes/insurance with the HECM loan proceeds in reaction to this high delinquency rate. By providing a mandatory suitability focused on ability to pay taxes/insurance Congress would be attempting to protect the government from expending large sums to cover these costs when the senior can no longer pay them with the loan proceeds. While we agree that this element of suitability is very important, in this article we identify that and additional factors that relate to suitability that focus on suitability from the senior's perspective, which we hope is also considered in any future legislative reform of reverse mortgages.