

HELP AGING HOOSIERS REMAIN IN THEIR HOMES: HOW INDIANA CAN PROVIDE BETTER PROTECTIONS TO BORROWERS OF REVERSE MORTGAGES

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I. INTRODUCTION

With improved health care and a longer life expectancy, Americans are now on average living to be seventy-eight years old.¹ By 2034, older Americans, aged sixty-five and older, will outnumber children under the age of eighteen.² By 2025, the entire Indiana-based baby boomer generation will be sixty and over;³ the number of seniors in our community is continuing to grow.⁴ Many of these seniors prefer to age in place in their homes and communities, yet without additional funding or other ways for seniors to increase their income, this will be difficult.⁵ It is critical to have more safe options for seniors to safely age in place and not be displaced from their homes in their final years of life, and to do this, more tools and financial resources must be developed to help seniors age in place in their communities. One tool that could help seniors be more financially stable in their retirement years is a reverse mortgage.

The reverse mortgage has not lived up to Congress's intent of aiding seniors to age in place.⁶ Reverse mortgages have been a tool that seniors are wary of, because of deceptive sales tactics, lack of transparency about fees, high rates of default and foreclosures, and the general complexities.⁷ The Department of

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1. Aaron O'Neill, *Life Expectancy (from birth) in the United States, from 1860 to 2020*, STATISTA (Jul. 31, 2025), <https://www.statista.com/statistics/1040079/life-expectancy-united-states-all-time/> [<https://perma.cc/U9Q5-C4ZR>].

2. Jonathan Vespa, *The Graying of America: More Older Adults Than Kids by 2035*, U.S. CENSUS BUREAU (Oct. 8, 2019), <https://www.census.gov/library/stories/2018/03/graying-america.html> [<https://perma.cc/LS5E-7D4K>].

3. IND. FAM. & SOC. SERVS. ADMIN., INDIANA STATE PLAN ON AGING FEDERAL FISCAL YEARS 2023-2026, 3, 5 (2022), <https://www.in.gov/fssa/da/files/2023-2026-State-Plan-March-2022-Draft.pdf> [<https://perma.cc/Z46P-5HA5>].

4. *See id.* at 5.

5. *See* Michelle R. Davis, *Despite Pandemic, Percentages of Older Adults Who Want to Age in Place Stays Steady*, AARP (Nov. 21, 2022), <https://www.aarp.org/home-family/your-home/info-2021/home-and-community-preferences-survey.html> [<https://perma.cc/EV2B-6QMR>].

6. *Oversight of the Federal Housing Administration's Reverse Mortgage Program for Seniors: Hearing Before the Subcomm. on Ins., Hous. & Cmty. Opportunity of the H. Comm. on Fin. Servs.*, 112th Cong. 7 (2012) (statement of Peter H. Bell, President & CEO, Nat'l Reverse Mortg. Lenders Ass'n), <https://financialservices.house.gov/uploadedfiles/hhrg-112-ba04-wstate-pbell-20120509.pdf> [<https://perma.cc/CNE3-9DRN>] [hereinafter Bell].

7. *See* Debra Pogrud Stark et al., *Complex Decision Making and Cognitive Aging Call for Enhanced Protection of Seniors Contemplating Reverse Mortgages*, 46 ARIZ. ST. L.J. 299, 318–22 (2014); Jennifer Juergens, *Reverse Mortgage Complexity is Negatively Impacting Older*

Housing and Urban Development (HUD) has worked on addressing some of these consumer issues with reverse mortgages, but there is still room for improvement. Indiana should protect our seniors by creating more regulations for reverse mortgages because they are complex and difficult for seniors to understand. While this note primarily advocates for changes in Indiana, changes may also be beneficial at the Federal level. With increased safeguards and protections, a reverse mortgage could be a more useful tool for aging seniors.

The first part of this note will explain what a reverse mortgage is and identify how it could be useful for Indiana seniors. This portion of the note will discuss the economic strife for seniors, the current demographics of Indiana seniors, how the economic landscape creates barriers for older Hoosiers to safely age in place, and a comprehensive overview of the total financial cost of aging in place. The second section of this note will discuss the history and current regulations governing reverse mortgages, the gaps that make reverse mortgages not live up to their intended purpose, and the impacts of these shortcomings. The third section of this note will compare Indiana's current regulations against both Federal regulations and other states, and identify areas where Indiana falls short. The fourth section will summarize recommendations for Indiana to improve its borrower protections that would limit displacement of borrowers from their homes and create safeguards that allow seniors to age in place in their homes.

II. WHAT IS A REVERSE MORTGAGE AND HOW IT COULD HELP SENIORS

A. Reverse Mortgage Defined

Reverse mortgages are nonrecourse loans.⁸ There are three types of reverse mortgages available: the Home Equity Conversion Mortgage (HECM), the proprietary reverse mortgage, and the single-purpose reverse mortgage. The HECM differs from the other two types of reverse mortgages because it has different age requirements for borrowers, more flexible payment options, a maximum assessed home value, funds that can be used for any purpose, and it is federally insured by the Federal Housing Administration (FHA).⁹ This note

Americans, 6 HOU. L. REV. 209, 216–19 (2016); Sarah B. Mancini & Odette Williamson, *Reversing Course: Stemming the Tide of Reverse Mortgage Foreclosures Through Effective Servicing and Loss Mitigation*, 26 ELDER L.J. 85, 125 (2018).

8. *Nonrecourse loan*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/nonrecourse%20loan> [<https://perma.cc/D92F-G6XB>] (last visited Nov. 17, 2024) (explaining that a nonrecourse loan is one where “the lender agrees to accept the collateral security in lieu of repayment from the borrower . . . [even] if the value of the security falls below the amount of the loan”).

9. Michael G. Branson, 3 *Types of Reverse Mortgages Explained: Which One is Right for You?*, ALL REVERSE MORTGAGE, INC. (May 2, 2024), <https://reverse.mortgage/3-types-of-reverse-mortgages> [<https://perma.cc/5J7L-R9NX>] (discussing types of reverse mortgages. Proprietary

will focus on the HECM reverse mortgage because it is the most commonly used reverse mortgage and the only one insured through the FHA.¹⁰

The HECM was designed to allow lower-income, senior homeowners to access their home equity without having to sell their property or risk displacement.¹¹ The reverse mortgage is a tool that allows any homeowner who is sixty-two or older to borrow against the equity of their home while they still live in it.¹² The equity is paid to the borrower through either periodic lump sums, regular monthly payments, or a line of credit.¹³ One of the advantages to a reverse mortgage is that it does not require monthly payments to pay back the loan.¹⁴ A reverse mortgage becomes due and payable only after a triggering event, such as the borrower's death or moving out of the home.¹⁵

Because a reverse mortgage does not become due and payable until a specified event occurs, it differs from a home equity line of credit, which requires regular monthly payments.¹⁶ A reverse mortgage can be preferable to a home equity line of credit for individuals living on a fixed income, as they may be unable to afford monthly payments. For some seniors who still have a traditional mortgage, a reverse mortgage eliminates their monthly mortgage payment, which reduces their expenses and frees up funds during their retirement. This financial flexibility can be especially important as seniors' needs may increase with age. The extra funds available could help with home modifications, unexpected repairs, and the cost of in-home caregivers.

While a senior may be unable to leave their home to their heirs after taking out a reverse mortgage, they can enjoy greater financial independence and rely less on their loved ones in their later years. The ability to afford in-home care can ease the burden on family members from some caregiving responsibilities or allow the homeowner to compensate family members who provide assistance. Often, adult children reduce their work hours or leave their jobs to care for their aging parents, which lowers their earnings and, in turn, reduces their future

reverse mortgages are more often used for homeowners who have homes above the lending limits of the HECM and can assist borrowers as young as 55. Single-purpose reverse mortgages allow for a single lump sum to be paid to the homeowner for a specific purpose.).

10. *Home Equity Conversion Mortgages for Seniors*, U.S. DEP'T OF HOUS. AND URB. DEV., <https://www.hud.gov/hud-partners/single-family-hecmhome#close> [https://perma.cc/CCA5-59G5] (last visited Nov. 11, 2025).

11. Sarah Bolling Mancini, *Unmet Promise Reverse Mortgage Servicing Challenges and How to Preserve Housing Stability for Older Adults*, NAT'L CONSUMER L. CTR., 5 (2023), <https://www.nclc.org/wp-content/uploads/2023/02/RevMortgage-Rpt.pdf> [https://perma.cc/SX5N-ZKMZ].

12. *What is a Reverse Mortgage?*, CONSUMER FIN. PROT. BUREAU (Aug. 28, 2023), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/> [https://perma.cc/8A4H-9JK4].

13. *See* 24 C.F.R. § 206.13.

14. *See generally id.*

15. 24 C.F.R. § 206.27(c).

16. *HUD's Reverse Mortgage Insurance Program: Home Equity Conversion Mortgages*, CONG. RSCH. SERV. 1-2, (upd. Mar. 31, 2017), <https://www.congress.gov/crs-product/R44128> [https://perma.cc/CV2H-PGBB].

Social Security benefits when they become eligible—if those benefits are still available when they retire.¹⁷ Ultimately, the child's ability to save for their own retirement becomes harder.

B. Economic Struggles of Seniors

The economic challenges seniors face from lack of income after ceasing to work emphasizes the need for more social tools, like reverse mortgages, available to help seniors attain financial stability. This lack of income has been an area of concern since before President Roosevelt's implementation of the Social Security Act of 1935.¹⁸ The purpose of the Act, when enacted, was to provide older Americans with Social Security benefits to help reduce the economic insecurity they faced when they could no longer work.¹⁹ The Act intended to provide a source of financial support and serve as one leg of a "three-legged stool," along with personal savings and retirement benefits and/or pensions.²⁰ But over the years, people's retirement savings have decreased and companies have moved away from pensions and towards employer-sponsored retirement accounts.²¹ Seniors are also living longer and, as a result, drawing from Social Security benefits for a longer period than in previous generations.²²

With the decline in personal savings and the shift from pensions to employer-sponsored retirement accounts, many seniors now rely exclusively on their Social Security benefits.²³ Although Social Security includes annual cost-of-living adjustments (COLA), these increases are often insufficient to keep pace with inflation and rising medical costs.²⁴ The COLA increases can easily be offset by an increase in Medicare premium payments, which are deducted directly from a senior's Social Security payment.²⁵ Moreover, seniors typically

17. *See Benefit Calculators*, SOC. SEC. ADMIN., <https://www.ssa.gov/OACT/ProgData/retirebenefit1.html> [<https://perma.cc/4MDZ-WBXS>] (last visited Feb. 10, 2025).

18. *Historical Background and Development of Social Security*, SOC. SEC. ADMIN., <https://www.ssa.gov/history/briefhistory3.html> [<https://perma.cc/7Y2U-BD8Y>] (last visited Sept. 1, 2024).

19. *Id.*

20. *Agency History*, SOC. SEC. ADMIN., <https://www.ssa.gov/history/stool.html> [<https://perma.cc/R3PL-CJ4X>] (last visited Nov. 11, 2025); Mancini, *supra* note 10, at 6.

21. *See generally* Alicia H. Munnell, Anthony Webb, & Francesca Golub-Sass, *Is There Really a Retirement Savings Crisis? An NRRI Analysis*, CTR. FOR RETIREMENT RSCH. AT BOS. COLL. 5-6 (2007), https://crr.bc.edu/wp-content/uploads/2007/07/ib_7-11-508.pdf [<https://perma.cc/YM8H-56YV>].

22. *See* O'Neill, *supra* note 1.

23. *New Report: 40% of Older Americans Rely Solely on Social Security for Retirement Income*, NAT'L INST. ON RETIREMENT SEC. (Jan. 13, 2020), <https://www.nirsonline.org/2020/01/new-report-40-of-older-americans-rely-solely-on-social-security-for-retirement-income/> [<https://perma.cc/QS6R-GAWT>].

24. Andy Markowitz, *How does Social Security calculate the COLA?*, AARP (Oct. 10, 2024), <https://www.aarp.org/retirement/social-security/questions-answers/social-security-calculate-cola.html> [<https://perma.cc/6S4Y-QPH9>].

25. *Id.*

spend about 25% of their Social Security benefits on medical expenses, including Medicare premiums and out-of-pocket costs.²⁶ Because medical expenses are rising faster than the general rate of inflation, the COLA increases often fail to cover seniors' full cost of living.²⁷

In Indiana, seniors aged sixty-five and older report the second-lowest median income of the state—\$51,468 annually—compared to those aged twenty-five to sixty-four.²⁸ In 2022, Indiana's Family and Social Service Administration (FSSA) conducted a Community Assessment Survey for Older Adults (CASOA) which showed that 48% of seniors have insufficient money to meet their daily expenses.²⁹

C. Financial Implications of Senior Housing

The shift in older Americans' income during retirement has had serious ramifications on senior housing by forcing many seniors to be "stuck in place," rather than "aging in place."³⁰ The combination of lower incomes and savings, along with the rising costs of goods, healthcare, and home-based support, has made it difficult for many seniors to age safely at home.³¹ A reverse mortgage may help seniors in Indiana who are income-poor due to reduced savings and retirement benefits, but are asset-rich because they own their homes.³² The equity they have accumulated over the years in their homes, which is typically available only after selling their property and moving out, could instead be a financial resource while they are still alive.³³ As of 2020, almost 81% of the sixty-five and older population in Indiana owned a home.³⁴ As of 2022, the

26. Melissa McInerney, Matthew S. Rutledge, & Sara Ellen King, *How Much Does Health Spending Eat Away at Retirement Income?*, CTR. FOR RETIREMENT RSCH. AT BOS. COLL. 1 (Aug. 2022).

27. Shameek Rakshit, et al., *How does medical inflation compare to inflation in the rest of the economy?*, PETERSON KFF (Aug. 2, 2024), <https://www.healthsystemtracker.org/brief/how-does-medical-inflation-compare-to-inflation-in-the-rest-of-the-economy/> [https://perma.cc/KWN3-UN8K].

28. *Indiana Median Household Income by Age*, NEILSBERG (Aug. 9, 2024), <https://www.neilsberg.com/insights/indiana-median-household-income-by-age> [https://perma.cc/2NXZ-MEM2].

29. IND. FAM. & SOC. SERVS. ADMIN. *supra* note 3, at 10 (the Community Assessment Survey for Older Adults was conducted three times over the course of eight years (2013, 2017, and 2021) to gather data to compare responses).

30. Davis, *supra* note 5.

31. Munnell et al., *supra* note 21, at 6.

32. See Carolyn H. Sawyer, *Reverse Mortgages: An Innovative Tool for Elder Law Attorneys*, 26 STETSON L. REV. 617, 619 (1996).

33. *Id.*

34. *Forecasting State and National Trends in Household Formation and Homeownership: Indiana*, URB. INST., <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/forecasting-state-and-national-trends-household-formation-and-homeownership/indiana> [https://perma.cc/84HN-Q5YN] (last visited Sept. 5, 2025).

median value of homes in Indiana was \$208,700.³⁵ It is projected by 2030, that 78% of the population aged sixty-five and older will own their home.³⁶

D. The High Cost of Care for Seniors

As of 2024, the annual cost of care for in-home services in Indiana ranged from \$73,216 to \$75,504 a year.³⁷ Some lower income seniors may qualify for Medicaid's Home and Community Based Services (HCBS) waiver, now known as Indiana PathWays for Aging Waiver ("PathWays"), to help cover these costs.³⁸ While PathWays is available for seniors who qualify, the current landscape of Pathways in Indiana makes it difficult for seniors to access it in a timely manner.³⁹ In the 2023-2024 budget, FSSA had a \$1 billion shortfall with most of the funding issues coming from the HCBS waiver.⁴⁰ Additionally, PathWays reached its maximum capacity for the available "slots" to eligible recipients.⁴¹ In response, FSSA implemented a waitlist for new recipients of PathWays⁴² without a timeframe for how long a person may be on the waitlist or guarantee someone on the waitlist will be able to access services.⁴³

The alternative for seniors who cannot access PathWays funding or afford to age in place due to the cost of in-home care is to move into a long-term care facility, where annual costs in Indiana range from \$101,835 to \$124,283 as of 2024.⁴⁴ For seniors who cannot pay these costs out of pocket, staying at skilled nursing facilities or Medicaid-certified facilities may be their only remaining

35. *Indiana*, CENSUS REP. (2022), <https://censusreporter.org/profiles/04000US18-indiana/> [https://perma.cc/VF76-AAS5].

36. URB. INST., *supra* note 34.

37. *Calculate the cost of long-term care near you*, CARESCOUT, <https://www.genworth.com/aging-and-you/finances/cost-of-care> [https://perma.cc/Y4AC-LA29] (last visited Oct. 15, 2025).

38. *Aged and Disabled Waiver*, IND. FAM. & SOC. SERVS. ADMIN., <https://www.in.gov/medicaid/members/home-and-community-based-services/aged-and-disabled-waiver/> [https://perma.cc/LB6H-BRVB] (last visited Feb. 20, 2025).

39. Abigail Ruhman, *FSSA creates waitlist for Aged and Disabled waiver. Advocates worry it creates a barrier to care*, IND. PUB. MEDIA (Apr. 8, 2024), <https://indianapublicmedia.org/news/fssa-creates-waitlist-for-aged-and-disabled-waiver-advocates-worry-it-creates-barrier-to-care.php> [https://perma.cc/5XD2-4Q46].

40. Brandon Smith, *Indiana Medicaid Program is \$1 billion more expensive after forecasting error*, LAKESHORE PUB. MEDIA (Dec. 19, 2023), <https://www.lakeshorepublicmedia.org/2023-12-19/indiana-medicaid-program-is-1-billion-more-expensive-after-forecasting-error> [https://perma.cc/V6QT-XLDF].

41. Ruhman, *supra* note 39.

42. *Id.*

43. *Aged and Disabled Waiver Waiting List: Frequently Asked Questions*, IND. FAM. AND SOC. SERV. ADMIN., 1, <https://www.in.gov/fssa/files/Aged-Disabled-Waiver-Waiting-List-FAQ.pdf> [https://perma.cc/M6D5-BE9L] (last visited Jan. 1, 2025).

44. CARESCOUT, *supra* note 37.

option.⁴⁵ However, this is far from ideal, as most seniors prefer to remain in their homes rather than move into a nursing home.⁴⁶ Furthermore, 20% of Indiana's Medicaid budget is going towards paying for nursing home care, and it is expected the enrollment population of nursing home care will grow about 5% from 2024 to 2026.⁴⁷ A reverse mortgage could allow seniors to pay for the costs of care in their home from the equity of their home. This would reduce some of the reliance on Medicaid's budget for skilled nursing facilities and leave more funding for in-home care services.

III. THE DEVELOPMENT OF REVERSE MORTGAGES AND THE CHALLENGES TO THEIR EFFECTIVENESS FOR SENIOR BORROWERS

A. The History of Reverse Mortgages

The first reverse mortgage was issued by a private bank in 1961.⁴⁸ The employee of the bank was looking for a way to help a widow in his hometown stay in her house after her husband died.⁴⁹ Over the next 20 years, the reverse mortgage product was studied by various groups, including a Professor of Mathematics from the University of California Los Angeles and the Wisconsin Board of Aging to explore its viability.⁵⁰ When the concept was presented to the federal government in 1980, it took another 9 years before the first FHA-insured reverse mortgage was issued.⁵¹

In 1987, Congress passed the National Housing Act of 1987, Section 225, which outlined the reverse mortgage program with oversight by HUD.⁵² Congress identified the purpose of this program as a way “[t]o meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by increasing costs of meeting health, housing, and subsistence needs”⁵³

In 1988, President Ronald Reagan signed the reverse mortgage bill into law, allowing FHA, through HUD, to have a fund that insures one of three types of

45. *Nursing Facilities*, CTRS. FOR MEDICARE AND MEDICAID SERVS., <https://www.medicaid.gov/medicaid/long-term-services-supports/institutional-long-term-care/nursing-facilities/index.html> [https://perma.cc/582T-YLDG] (last visited Feb. 8, 2025); see Alicia H. Munnell, *Nursing Homes Can't Meet the Care Needs of an Aging Population*, CTR. FOR RETIREMENT RSCH. AT BOS. COLL. 2 (Mar. 25, 2024), <https://ctr.bc.edu/wp-content/uploads/2024/03/Nursing-Homes-Cant-Meet-the-Care-Needs-of-an-Aging-Population-%E2%80%93-Center-for-Retirement-Research.pdf> [https://perma.cc/92AD-GWGK].

46. Davis, *supra* note 5.

47. 2024 MEDICAID FORECAST, IND. FAM. & SOC. SERVS. ADMIN. 13, 16 (2024) <https://www.in.gov/sba/files/December-2024-Medicaid-Forecast-FINAL.pdf> [https://perma.cc/S54J-E4RK].

48. Michael G. Branson, *History of the Reverse Mortgage – 1969 to Present Day Facts*, ALL REVERSE MORTG., INC. (Sept. 19, 2023), <https://reverse.mortgage/history> [https://perma.cc/K634-77V7].

49. *Id.*

50. Bell, *supra* note 6, at 3.

51. *Id.*

52. *Id.*

53. *Id.*

reverse mortgages—the HECM.⁵⁴ This insurance was a way to encourage lenders to provide reverse mortgages because it minimized their financial risk.⁵⁵ The insurance protects the lender if the home’s value is less than the loan amount when the loan becomes due, with the mortgage insurance paying the difference to the lender.⁵⁶ The insurance fund is paid by the borrowers of reverse mortgages as an initial and annual fee.⁵⁷

HUD created additional regulations from the 1990s through 2015 to reduce abuse and negative impacts of reverse mortgages. The first round of these regulations was passed throughout the 1990s, when Congress required reverse mortgage lenders to provide borrowers with thorough disclosures of costs and associated risks.⁵⁸ Then in 2001, HUD partnered with AARP to train and certify reverse mortgage counselors, so there would be a neutral person for potential borrowers to speak with to promote understanding about how a reverse mortgage works, the risks of reverse mortgages, and other options available to them.⁵⁹ In 2005, HECMs were able to be refinanced.⁶⁰ The last changes that were made to improve HECMs were made between 2010–2015, and were designed to: increase FHA’s mortgage insurance premiums to help FHA to continue to be able to cover the cost of unpaid reverse mortgage loans; implement a formal financial assessment of borrowers; and add non-borrowing spousal protections.⁶¹

B. Federal Regulations for Home Equity Conversion Mortgages (HECM)

All borrowers must meet certain requirements to be eligible for a HECM reverse mortgage all borrowers must meet certain requirements. To begin, borrowers must be at least 62 years old, and they must either own their home outright or have paid down a considerable amount of their existing mortgage.⁶² The home must be assessed under \$1,149,825⁶³ and serve as the borrower’s principal residence.⁶⁴ It must also meet the FHA maintenance and safety standards for habitability throughout the life of the loan,⁶⁵ remain current on property tax payments,⁶⁶ and be free of any outstanding unpaid obligation that

54. See 12 U.S.C. § 1715z-20; Branson, *supra* note 48.

55. See Bell, *supra* note 6, at 3–4.

56. See 24 C.F.R. § 206.103.

57. See 24 C.F.R. § 206.31; See *How the HECM Program Works*, U.S. DEP’T OF HOUS. AND URB. DEV., https://www.hud.gov/program_offices/housing/sfh/hecm/hecmabou [https://perma.cc/VX6Q-2J75] (last visited Feb. 8, 2025).

58. See 12 C.F.R. § 1026.19; see also Branson, *supra* note 48.

59. 24 C.F.R. § 206.41.

60. Branson, *supra* note 48.

61. *Id.*

62. U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 57.

63. *Id.*

64. 24 C.F.R. § 206.39.

65. 24 C.F.R. § 206.47.

66. 24 C.F.R. § 206.205.

could remove FHA's priority lien.⁶⁷

Unlike a home equity line of credit that has monthly payments, the borrower of an HECM does not make any monthly payments. Instead, the loan only becomes due when a triggering event occurs, such as: either the borrower or non-borrowing spouse passing away (whichever comes last); either the borrower or non-borrowing spouse no longer using the mortgaged property as their primary residence; the property is transferred; or default of another term of the loan agreement.⁶⁸

Because it is a nonrecourse loan, there is a risk to the lender that the price of the property may be less at the time of the triggering event than it was at the loan origination. FHA will insure those properties that qualify for a HECM.⁶⁹ This mortgage insurance is what makes the HECM the most utilized type of reverse mortgage.⁷⁰ The insurance will pay the lender the difference in the loan amount from the home's value when it is sold if the sale price is less than the loan amount.⁷¹ The insurance removes the risk of loss from the lender because it guarantees the lender will be repaid in full when the loan becomes due and payable, even if the property's value decreases from the initial valuation when the loan was executed. For the home to continue to qualify for the insurance throughout the life of the loan, the home must meet and maintain certain requirements.⁷² The lender may also be reimbursed for the loaned amount before a triggering event occurs if the loaned amount reaches 98% of the available loan.⁷³

The lender is entitled to assign the loan to the Federal Housing Commissioner ("Commissioner") when the borrower uses 98% of their loan balance.⁷⁴ This process can create issues for the borrower, as there is an incentive for lenders to assign their loans to the Commissioner because the lender can then get repayment on the loan without having to wait for a triggering event to occur.⁷⁵ While the Commissioner will manage the loan in the same manner as the lender, the only major difference is that the Commissioner has statutory authority to conduct fast, non-judicial foreclosures.⁷⁶ The Commissioner can enact this process when the loan becomes due and payable because of a triggering event. For example, if a triggering event is due to a borrower's default for missing a property tax payment, the Commissioner will

67. 24 C.F.R. § 206.32; 24 C.F.R. § 206.8(a).

68. 12 C.F.R. § 1026.33(a).

69. 12 U.S.C. § 1715z-20.

70. Branson, *supra* note 48.

71. CONG. RSCH. SERV., *supra* note 16, at 1, 9.

72. 24 C.F.R. § 206.47.

73. 24 C.F.R. § 206.107; Mancini, *supra* note 11, at 15 ("The Maximum Claim Amount is the maximum amount the FHA insurance can pay out on a claim, and is equal to the appraised value of the home when the loan is made, up to a ceiling set by FHA. . . . the lender is entitled to assign the loan to FHA and have its insurance claim paid in full.").

74. 24 C.F.R. § 206.107.

75. See Mancini, *supra* note 11, at 15.

76. 12 U.S.C. § 3751.

likely move to foreclose on the property, displacing the borrower without giving them an opportunity to mitigate the loss. The Commissioner's statutory authority to carry out the non-judicial authority supersedes state laws to the contrary.⁷⁷ However, lenders do not have this authority and must go through judicial foreclosure actions if the state requires it.

When a borrower is applying for an HECM, a HUD approved counselor must certify that the borrower and non-borrowing spouse have received counseling.⁷⁸ This requirement is meant to ensure that the homeowners understand the ramifications of taking a reverse mortgage and other options that may be available to them.⁷⁹ During this counseling, the borrower is informed of the different options they have to access the equity they are owed.⁸⁰ The options available to a borrower include single lump sum disbursements, a line of credit, regular monthly payments, or a combination of these options.⁸¹ The borrower can choose how to access their equity in a way that makes the most sense for their specific financial needs. If a borrower chooses to utilize a monthly payment amount, then the allowable monthly amount will be calculated based on the youngest homeowner and/or borrower of the loan.⁸² If there is a large age gap between the borrowers, or borrower and non-borrowing spouse, the amount that can be paid out may be significantly reduced because it will be based on the younger of the two. Additionally, the amount of equity that will be available for distribution will be reduced by the closing costs, fees, mortgage insurance premiums, servicing fees by the lender, and ongoing interest charges through the length of the reverse mortgage.⁸³ In some cases, if the home needs to be repaired to meet HUD standards, a borrower may also need to use the available equity to cover these costs. The total equity available to the borrower for disbursement will depend on various up-front costs that secure the loan.⁸⁴

The borrower's obligations throughout the life of the loan include payment of the property taxes, homeowners' insurance, ongoing property charges such as homeowners' association fees, and necessary repairs.⁸⁵ There is an option for these expenses to be paid by the lender through a Life Expectancy Set Aside ("LESA").⁸⁶ This is a voluntary option for some borrowers and mandatory for other borrowers depending on the outcomes of their financial assessment.⁸⁷

77. *Id.*

78. 24 C.F.R. § 206.41.

79. *Id.*

80. *Id.*

81. 24 C.F.R. § 206.13.

82. *Housing Counseling Handbook*, U.S. DEP'T OF HOUS. AND URB. DEV., 120 (Sept. 2023), <https://www.nrmలాonline.org/wp-content/uploads/2023/09/Updated-Housing-Counseling-Handbook-9-13-2023.pdf> [<https://perma.cc/S36X-TU8W>] [hereinafter U.S. DEP'T OF HOUS. AND URB. DEV.].

83. *See* 24 C.F.R. § 206.31.

84. CONG. RSCH. SERV., *supra* note 16, at 4.

85. 24 C.F.R. § 206.27.

86. 24 C.F.R. § 206.205.

87. *Id.*

In addition to the counseling requirement, a financial assessment is completed prior to approval of the loan to verify a borrower's credit standing, credit history, cash flow, and residual income.⁸⁸ A borrower may fail the financial assessment for several reasons, including, but not limited to, a poor credit rating, past failure to pay bills, or previous bankruptcy filings. Failing the financial assessment does not always disqualify the borrower from a reverse mortgage loan. Instead, the borrower would be required to do a LESA as part of the terms of the loan.⁸⁹ A LESA functions like an escrow account for mortgages, where funds from the equity of the home are set aside in an account to pay the property's homeowners' insurance and property taxes. A borrower who does pass the financial assessment may choose to opt into a LESA.⁹⁰ While this will reduce the amount of equity available to them over the life of the loan, it will lessen the possibility of default because of missed homeowners' insurance or property tax payments. However, if the amount in the LESA runs out, then the borrower must begin to make these payments to keep the loan from going into default.⁹¹ The decision whether to opt into a LESA is made at the time the loan originates, and it cannot be changed at any point in the future.⁹²

C. Past Issues, Solutions, and Success Stories of HECMs

Congress' goal with the reverse mortgage has been to help seniors access equity in their homes while they still live there so they can comfortably age in place.⁹³ Over time, issues with reverse mortgages have forced seniors out of their homes through foreclosures by HUD and lending companies.⁹⁴ Over the years, HUD has added more protections to limit these outcomes.⁹⁵ The next three subsections discuss an overview of these problems and the solutions.

1. Deceptive Sales Practices and Predatory Lending

The direst consequence for seniors who accept a reverse mortgage is losing their homes. Prior to the 1990's, lenders were taking advantage of seniors by not fully disclosing the costs and fees associated with reverse mortgages. Lenders were also making unfair or deceptive statements to borrowers,⁹⁶

88. 24 C.F.R. § 206.37; Carol M. Kopp, *Residual Income: What It Is, Types, and How to Make It*, INVESTOPEDIA (July 29, 2025), <https://www.investopedia.com/terms/r/residualincome.asp> [<https://perma.cc/JF7N-FBAD>] (Residual income is defined as available income after all debts and bills are paid).

89. 24 C.F.R. § 206.205.

90. *Id.*

91. *Id.*

92. *Id.*

93. Bell, *supra* note 6, at 3.

94. See generally Mancini, *supra* note 11, at 7-17.

95. See CONG. RSCH. SERV., *supra* note 16, at 19-20.

96. See Dan Latona, *Reversing Course: Strengthening Consumer Protections for Reverse Mortgages*, 23 ELDER L.J. 417, 429 (2016).

including that the death of a borrower would not trigger a foreclosure on a surviving non-borrowing spouse.⁹⁷ These deceptive and predatory practices are more egregious when considering the age of the borrower—seniors over the age of 62. Aggressive lenders can easily take advantage of the vulnerable population of seniors.⁹⁸ Some research has shown that seniors may suffer from cognitive risk factors that decrease their insight and awareness, making it more difficult for them to recognize fraud.⁹⁹

In the 1990's, the Truth in Lending Act was amended to implement the Home Ownership and Equity Protection Act of 1994 (HOEPA), which “imposed new disclosure requirements and substantive limitations” on reverse mortgage transactions.¹⁰⁰ Some of these requirements include, but are not limited to, disclosure of all fees payable by the consumer at or before the loan closing; all information on the reverse mortgage be made in writing and in a manner the consumer understands; and disclosures must be given at least three business days prior to finalizing the loan agreement.¹⁰¹

Unfortunately, the addition of these protections has not stopped lenders from using deceptive practices. In *People v. Butler*, a lender had his insurance license revoked because he did not disclose a material term of the agreement to eight reverse mortgage borrowers.¹⁰² The lender did not inform any of the borrowers of the service fee he charged (ranging from \$3,400–\$7,705) until after the loan was complete and the payment was due.¹⁰³ According to the Department of Insurance’s revocation order, the eight senior citizen borrowers would not have borrowed the reverse mortgage had they known of the service fee.¹⁰⁴ Disclosures of reverse mortgage service fees are mandatory under the Truth in Lending Act (TILA).¹⁰⁵

In *Wiseman v. First Mariner Bank*, a loan officer engaged in unfair or deceptive trade practices when he told the Wisemans false and misleading statements about reverse mortgages.¹⁰⁶ He claimed that Mrs. Wiseman, a non-borrowing spouse, would not be required to leave the home if Mr. Wiseman

97. See *Wiseman v. First Mariner Bank*, No. ELH-12-2423, 2013 U.S. Dist. LEXIS 136229 at *11 (D. Md. Sept. 23, 2013).

98. See Latona, *supra* note 96, at 430.

99. Karen Reimers M.D., *Why Are Older Adults More Vulnerable to Scams?*, PSYCHOLOGY TODAY (Sept. 18, 2023), <https://www.psychologytoday.com/us/blog/the-high-cost-of-forgetting/202309/why-are-older-adults-more-vulnerable-to-scams?> [<https://perma.cc/S6GY-CKWT>].

100. 12 C.F.R. §§ 1026.19, 1026.33; BD. OF GOVERNORS OF THE FED. RESRV. SYS., CONSUMER COMPLIANCE HANDBOOK: REGUL. Z TRUTH IN LENDING ACT, 1 (2017), https://www.federalreserve.gov/publications/supervision_cch.htm [<https://perma.cc/BJ89-SXRT>].

101. BD. OF GOVERNORS OF THE FED. RESRV. SYS., *supra* note 100, at 25–27.

102. *People v. Butler*, 212 Cal. App. 4th 404, 410 (2012).

103. *Id.*

104. *Id.*

105. 15 U.S.C. § 1648.

106. *Wiseman v. First Mariner Bank*, No. ELH-12-2423, 2013 U.S. Dist. LEXIS 136229 at *11 (D. Md. Sept. 23, 2013).

passed away before her.¹⁰⁷ Prior to obtaining the reverse mortgage, the Wisemans shared the property as tenants by the entirety with a right of survivorship, and both had equal rights in the property.¹⁰⁸ The loan officer specifically told both of the Wisemans that the property with the reverse mortgage would not be due for payment until they “both passed away or decided to sell or not to reside in their home any longer.”¹⁰⁹ The loan officer advised the couple that obtaining the reverse mortgage would require Mrs. Wiseman to convey her interest in the property to Mr. Wiseman by executing a life estate deed.¹¹⁰ He represented that this arrangement would ensure Mrs. Wiseman could remain in the home for the rest of her life if her husband passed away first.¹¹¹ Otherwise, the loan would become due and Mrs. Wiseman would not be able to continue living in their home.¹¹² Mr. Wiseman passed away before Mrs. Wiseman, and upon his death, First Mariner Bank said the loan was in default and moved to foreclose on the home where Mrs. Wiseman was still living.¹¹³ This case shed light on deceptive practices that lenders engage in to obtain reverse mortgages, and ultimately made HUD clarify protections for non-borrowing spouses.

2. HUD-Required Counseling

Reverse mortgages are complex and unlike other mortgage products available to consumers. Because of this complexity, as well as the costs, fees, and interest that accrue over the life of the loan, HUD requires every prospective borrower and non-borrowing spouse to receive financial counseling from a HUD-certified specialist before accepting a reverse mortgage.¹¹⁴ The prospective borrower must present the certificate of counseling completion to the lender before the loan can be finalized.¹¹⁵ The purpose of this regulation is to ensure that borrowers and non-borrowing spouses are aware of the costs, fees, and implications of obtaining a reverse mortgage, including less risky alternatives.¹¹⁶ Having adequate third-party counseling has been a staple of reverse mortgages since the program was rolled out in 1987.¹¹⁷

While the counseling requirement is a step towards fairness, proper

107. *Id.*

108. *Id.* at 8–9.

109. *Id.* at 10 (quoting Amended Complaint at ¶29, *Wiseman v. First Mariner Bank*, No. ELH-12-2423, 2013 U.S. Dist. LEXIS 136229 (D. Md. Sept. 23, 2013)).

110. *Id.* at 11.

111. *Id.*

112. *Id.*

113. *Id.* at 14.

114. 24 C.F.R. § 206.41.

115. *Id.*

116. See *Reverse Mortgages: A Discussion Guide*, CFPB, 1 (Aug. 2021), https://files.consumerfinance.gov/f/documents/cfpb_reverse-mortgage-discussion-guide.pdf [<https://perma.cc/V97X-4JY9>].

117. Bell, *supra* note 6.

counseling is largely dependent upon counselor assignment and adequacy of counseling services.¹¹⁸ To become a qualified HECM Counselor, all individuals must complete standardized training on HECM counseling standards and pass an exam administered by the FHA that is designed to test their knowledge of required HECM standards.¹¹⁹ HUD recommends that each counseling session with prospective borrowers and non-borrowing spouses take at least one hour, but some counselors have reported completing a session in less than fifteen minutes.¹²⁰ HUD allows for reimbursement of counseling on a case-by-case basis rather than pay-per-hour basis. The fee just cannot exceed “a level that is commensurate with the services provided [and] is reasonable and customary for the area.”¹²¹ This structure can incentivize some counselors to hold shorter sessions and require people to attend more sessions without accountability.

Currently, HUD does not have a way to determine if prospective borrowers are receiving quality counseling.¹²² HUD’s inability to track the information given at each counseling session creates inconsistencies for borrowers.¹²³ HUD requires each counselor to give a packet of information related to reverse mortgages to each prospective borrower and go over that information with them at the counseling session.¹²⁴ In a study conducted by the National Consumer Law Center (NCLC), advocates for borrowers who were in default of their reverse mortgage found that borrowers who defaulted because of missed property tax payments often defaulted because the borrower did not understand that they were responsible for paying these fees.¹²⁵

For many individuals that live in rural areas or do not have adequate transportation, face-to-face counseling may not be a feasible option. To ensure these individuals receive adequate counseling, HUD allows HECM counselors to conduct counseling sessions via telephone counseling.¹²⁶ While this is a beneficial alternative, it also creates concern as to whether prospective borrowers retain the necessary information in a phone session, especially considering the complexity of reverse mortgages and the counselor’s ability to gauge possible diminished capacity over the phone.¹²⁷ Counselors are supposed to assess legal capacity of prospective borrowers during the first intake

118. U.S. GOV’T ACCOUNTABILITY OFF., GAO-09-606, REVERSE MORTGAGES: PRODUCT COMPLEXITY AND CONSUMER PROTECTION ISSUES UNDERSCORE NEED FOR IMPROVED CONTROLS OVER COUNSELING BORROWERS, 30–33 (2009), <https://www.gao.gov/assets/gao-09-606.pdf> [<https://perma.cc/T9VN-SHTG>].

119. 24 C.F.R. § 206.304.

120. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 118.

121. U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 82, at 83.

122. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 118, at 31–32.

123. *Id.* at 30–33.

124. U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 82, at 43–44.

125. Mancini, *supra* note 11, at 31.

126. U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 82, at 103.

127. See Naomi Karp & Ryan Wilson, *Protecting Older Investors: The Challenge of Diminished Capacity*, AARP PUB. POL’Y INST., 17 (Nov. 2011), <https://financialservices.org/wp-content/uploads/2017/03/rr2011-04.pdf> [<https://perma.cc/KJ89-FNQ3>].

appointment by asking questions to ensure understanding throughout the counseling session.¹²⁸ To receive a certificate of completion, borrowers must be able to correctly answer a minimum of five out of ten questions asked during the session. The questions are chosen by the counselor from a bank of sixteen questions and are based on things a borrower should understand about their reverse mortgage.¹²⁹ Examples of questions a counselor may ask include: “When is the loan required to be repaid?”; “Which of the available options for receiving HECM proceeds are you interested in, and how does that option work?”; “What ongoing responsibilities will you have as a homeowner after obtaining a HECM?”; “What obligations must a surviving non-borrowing spouse maintain after the borrower’s passing?”; and “How are closing costs determined for a HECM for purchase?”¹³⁰ If the prospective borrower is unable to answer at least five of the questions correctly, the counselor may either invite them to do another counseling session, or ask if they would like to include someone else in a future session to assist them.¹³¹ A certificate of completion cannot be given until the borrower correctly answers at least five questions.¹³² There is no limit to the number of follow-up sessions a borrower may attend to try to meet this requirement, and the counselor has the discretion to determine how many sessions are necessary.¹³³

While HUD requires an individual complete counseling prior to being approved to receive a loan, HUD does not have the same requirements for follow-up counseling. HUD only requires the counselor to make reasonable efforts to contact the borrower within sixty days after the first counseling session to ask whether the loan has met the borrower’s needs and if they have any questions.¹³⁴ If the counselor does not make contact within three months of the initial counseling session, then the counselor may terminate the borrower’s file and refrain from attempting any more contacts.¹³⁵ A 2018 report by the Retirement Research Foundation analyzing post-default HECM counseling found “. . . that out of 162 HECM borrowers facing default or foreclosure, 70% were able to cure the default and remain in their homes with the help of experienced counselors.”¹³⁶ Improving the post-loan counseling requirement may help reduce the number of borrower defaults. A lot of information is given in the initial counseling session and borrowers may not know whether they have questions until after the reverse mortgage has been initiated. Having a counselor follow them through the process may help to clarify any misunderstandings or miscommunications.

128. U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 82, at 104, 112.

129. *Id.* at 111–14.

130. *Id.* at 113–14.

131. *Id.* at 114.

132. *Id.*

133. *Id.*

134. *Id.* at 116.

135. *Id.* at 33–34.

136. Mancini & Williamson, *supra* note 7, at 127.

3. Non-Borrowing Spouses

Until 2014, the death of a borrower or a borrower moving into a long-term care facility would trigger the repayment of the loan, even if a non-borrowing spouse was still using the mortgaged property as their primary residence.¹³⁷ The only way the non-borrowing spouse could stop the bank from foreclosing was repaying the loan within 120 days of the triggering event.¹³⁸ The high burden and difficulty of repayment led to non-borrowing spouses getting displaced from their homes.¹³⁹

Much litigation occurred to help non-borrowing spouses defer the loan throughout their lifetime. One of the most heavily litigated issues was the discrepancy between HUD's interpretation of a homeowner and Congress' definition of a homeowner.¹⁴⁰ HUD defined homeowner as "borrower," whereas Congress intended a more expansive definition to protect spouses of homeowners by encompassing both the borrower and non-borrowing spouse in the definition of "borrower."¹⁴¹ In *Bennet v. Donovan*, surviving non-borrowing spouse homeowners brought suit to enforce Congress's interpretation to avoid having their homes foreclosed after the triggering event of their spouses' death.¹⁴² The claimants asserted that HUD's definition of a homeowner as a "borrower" was unlawful and inconsistent with Congress's definition of homeowner, which encompassed both the borrower and the non-borrowing spouse from displacement.¹⁴³ The Appellate Court agreed that HUD's regulation was contrary to the statutory intent and suggested various steps HUD could take to correct the problem, including revising the definition to include the surviving spouse.¹⁴⁴

In 2014, HUD updated their definition of a "non-borrowing spouse" as:

- (i). . . [a] spouse of a HECM borrower at the time of the loan closing and remained the spouse of such HECM borrower for the duration of the HECM borrower's lifetime; (ii) [h]ave been properly disclosed to the mortgagee at origination and specifically named as an Eligible Non-Borrowing Spouse in the HECM mortgage and loan documents; (iii) Have occupied, and continue to occupy, the property securing the HECM as his or her principal residence; and (iv) Meet any other

137. Sam Brittingham, *Aging Out of Place: The Toll of Reverse Mortgages and How to Fix the Program*, 29 ELDER L.J. 149, 166 (2021).

138. *Id.* at 164-65.

139. *Id.* at 165.

140. *Bennett v. Donovan*, 703 F.3d 582, 586 (2013).

141. *Id.*; 12 U.S.C. § 1715z-20(j); 24 C.F.R. § 206.27(c).

142. *Bennet v. Donovan*, 703 F.3d at 586.

143. *Id.*; 12 U.S.C. § 1715z-20(j); 24 C.F.R. § 206.27(c).

144. *Bennet v. Donovan*, 703 F.3d at 586 (HUD explained the regulation came out of a concern that "[a] homeowner, after taking out a reverse mortgage, marries a spouse — particularly a young spouse — and thereby significantly increases a lender's risk.").

requirements as the Commissioner may prescribe by Federal Register notice for comment.¹⁴⁵

HUD further clarified its regulations to allow for HECM loan payments to be deferred after the borrower's death or departure from the home, provided that the non-borrowing spouse lived in the home when the reverse mortgage originated and continues to use it as their primary residence.¹⁴⁶ To defer the loan balance, the non-borrowing spouse must notify the lender within a specified time of the triggering event.¹⁴⁷ This rule also requires the non-borrowing spouse to establish legal ownership of the home within 90 days of their borrower spouse leaving the home or dying.¹⁴⁸ Additionally, the non-borrowing spouse must continue to fulfill the requirements of the loan terms, such as paying the property taxes, maintaining homeowners' insurance, completing necessary repairs to maintain the home at the standard set forth by FHA, and maintaining the property as their principal residence.¹⁴⁹

It is important to note that the amount of equity available to the borrowing spouse is calculated based on the age of the youngest homeowner, and any remaining equity in the home after the borrower's death cannot be accessed by the non-borrowing spouse unless they refinance the reverse mortgage.¹⁵⁰ This includes money that was set aside under a LESA to pay for taxes on the property, as no LESA funds will be disbursed to the mortgagor, estate, or non-borrowing spouse.¹⁵¹ Because a borrower must have a certain amount of equity in the home to refinance a reverse mortgage, the equity remaining after the death of the borrowing spouse may not be enough for the non-borrowing spouse to refinance.¹⁵²

Both the eligible or ineligible non-borrowing spouse and the borrowing spouse are required to go through HUD-approved counseling.¹⁵³ However, the financial assessment is only required for the borrower, not the non-borrowing spouse.¹⁵⁴ Issues may arise when the borrower passes away and the non-borrowing spouse must take over the mandatory payments for the home. With the loss of their spouse's income, they may no longer be able to afford the rising cost of their property taxes and homeowner's insurance, which may cause the non-borrowing spouse to default on the loan and lose their home through

145. 24 C.F.R. § 206.55(c)(1).

146. 24 C.F.R. § 206.55(a); U.S. DEP'T OF HOUS. AND URB. DEV., MORTGAGEE LETTER 2014-07, at 3, 5 (Apr. 25, 2014), <https://www.hud.gov/sites/documents/14-07ml.pdf> [<https://perma.cc/85HN-3AYT>].

147. Brittingham, *supra* note 137, at 166.

148. 24 C.F.R. § 206.55(d).

149. 24 C.F.R. § 206.41(b)(2).

150. U.S. DEP'T OF HOUS. AND URB. DEV., *supra* note 82, at 120–121, 139.

151. *Id.* at 139.

152. *Id.* at 123.

153. 24 C.F.R. § 206.41.

154. 24 C.F.R. § 206.37(b)(1).

foreclosure.

D. Reasons for Foreclosures

Even with the changes and increased regulations from the 1990s through 2015, borrowers still face issues with reverse mortgages. Although the goal of reverse mortgages is to assist older Americans with aging in place, the foreclosure rate with reverse mortgages is still quite high even with the regulations mentioned above.¹⁵⁵ However, in many circumstances, foreclosures can be prevented or mitigated.¹⁵⁶

1. Property Charge Defaults and Limited Loss Mitigation

Many seniors end up defaulting on their loans because they cannot afford to keep paying their property taxes or home insurance premiums due to the rising costs and their low incomes. According to the NCLC, as of April 2021, roughly 27,000 HECM borrowers were in default because of missed property tax payments.¹⁵⁷ At the time a borrower takes out a reverse mortgage, they can afford their property taxes, but they cannot continue to pay them with their rates increasing over time. Some borrowers inability to keep up with increased taxes on their limited income leads to a default, which is another triggering event that makes the full amount of their loans due and payable.¹⁵⁸ A lender may pay a missed property tax or insurance premium with the borrower's equity if they have some, but under certain conditions, may still proceed with foreclosure if the missed payments indicate financial insolvency.

For lenders to maintain mortgage insurance on the loans, they must meet certain FHA guidelines, including the home being up to date on property taxes, being in good repair, and the loan being in good standing.¹⁵⁹ The fear of losing the mortgage insurance has pushed lenders to foreclose in lieu of other loss mitigation options.¹⁶⁰ For example, if the balance of the loan is at 98%, but the borrower is in default for missed property tax payments, the lender cannot assign the loan to HUD for repayment.¹⁶¹ Instead, they can attempt to mitigate the loss or move forward with a foreclosure.¹⁶² If the amount paid on the sale of the house is less than the loan amount, lender may apply for reimbursement of the difference from HUD.¹⁶³ Offering a repayment plan to a borrower in lieu of foreclosure creates a risk to the lender because if the borrower remains in

155. Mancini, *supra* note 11, at 7-8.

156. *See id.* at 9-15.

157. *Id.* at 10.

158. *See id.* at 9-10, 31.

159. Mancini & Williamson, *supra* note 7, at 92.

160. *Id.* at 122.

161. Mancini, *supra* note 11, at 32.

162. *Id.*

163. *Id.*

default, and the total due on the loan surpasses the maximum amount of the original loan, the lender will only be reimbursed the original loan amount.¹⁶⁴

While there is an option for borrowers to utilize a LESA to allow the lender to pay for property taxes and insurance premiums, this option may not be ideal; there are more fees and charges applied to the loan if a lender has the responsibility for paying these recurring charges.¹⁶⁵ This option will reduce the amount of equity available to a borrower, and it is not guaranteed that there will be enough equity to continue paying the fees through the life of the loan.¹⁶⁶ Depending on the life of the loan, this may not leave much equity for the borrower to use throughout the loan. Furthermore, if the equity runs out before the life of the loan, then the responsibility for these charges goes back to the borrower until the loan becomes due and payable.¹⁶⁷ If a borrower elects this option, they cannot modify this decision before the end of the loan term.¹⁶⁸

Given the issues discussed above with reverse mortgages, HUD should mandate loss mitigation between lenders and borrowers. According to research done by the NCLC, “[o]nly about a quarter of reverse mortgage borrowers in default on property charges have obtained any form of loss mitigation.”¹⁶⁹ The NCLC and advocates for borrowers of reverse mortgages conducted a survey analyzing reverse mortgages and found that, with proper financial counseling and budgeting, 78% of borrowers maintained their housing after being assisted by a professional when the borrower was in default and offered a repayment plan by a lender.¹⁷⁰ In this survey, advocates reported factors contributing to borrower default on property charges included paying overpriced insurance; not getting all property tax exemptions; memory or cognitive impairments; financial hardship (loss of income or increased expenses); or lack of understanding at loan origination about the requirements to pay property taxes and insurance.¹⁷¹ Loss mitigation can help to cure defaults and allow borrowers to remain in their homes.

2. *False Claims of Non-Occupancy*

To qualify for a reverse mortgage, a borrower must use their home as their principal place of residence throughout the year; otherwise, the loan will

164. *Id.*

165. 24 C.F.R. § 206.205(a)(2).

166. *See* 24 C.F.R. § 206.205.

167. *Id.*

168. 24 C.F.R. § 206.205(d).

169. Mancini, *supra* note 11, at 10.

170. *Id.* at 30, 36 (reporting that participating advocates who provide services to HECM borrowers totaled 45 individuals; 37 self-identified as legal service attorneys; 4 self-identified as HUD-certified housing counselors; and the remaining 4 self-identified as a private attorney, a nonprofit attorney, a consumer advocates, and a nonprofit provider of technical assistance).

171. *Id.* at 31.

become due and payable.¹⁷² The sole way that borrowers certify they still live in the home is through a notice in the mail sent by the lender.¹⁷³ Borrowers have the option of designating an alternative contact person in case the lender cannot verify from the borrower that the home is still their principal residence.¹⁷⁴

Besides mailing the certification letter to verify the borrower's residence before commencing a foreclosure action, there are no extra steps a lender must take.¹⁷⁵ The lender does not have to confirm the borrower received the letter, make multiple attempts to reach the borrower, try to call the borrower, or give the borrower a certain amount of time to respond to the letter.¹⁷⁶ Mancini and Williamson advocate for additional policy changes, with the letter as a first attempt, and if there is no response, requiring the lender to call the borrower.¹⁷⁷ If this still does not get a response, Mancini and Williamson propose requiring the lender to attempt at least two in-person contacts before initiating a foreclosure.¹⁷⁸ This author offers another proposal for reform is that lenders should also send the letter via certified mail, so the borrower or non-borrowing spouse must sign for it. This process would also signal the letter's importance.

Borrowers may forget to return the certification letter for many reasons. For example, a borrower may be hospitalized during the time the letter is mailed and miss sending it back, or a borrower may not know the importance of the letter, so it ends up in a junk mail pile. When this occurs, the lender should take reasonable steps to determine if the borrower still lives in the home before taking immediate action.¹⁷⁹ Taking immediate action when the letter is not returned results in unnecessary costs for both the lender and borrower; the lender incurs costs to initiate the foreclosure, and the borrower incurs costs trying to stop it because of the mistake.

Neither HUD nor Indiana agencies account for circumstances where a borrower may not be in the home for a brief period but still considers the home to be their principal residence. For example, if a borrower is hospitalized for a month and then spends sixty days in a rehabilitation facility, they may miss the certification letter sent by the lender. Even if they plan to return home after their rehabilitation, their lender may promptly file a foreclosure action in court due to the failure to respond. Other states have included more detailed language to encompass incidents like these and protect the borrower from default when they are ill but may return home.¹⁸⁰

Missouri and Utah are two states that provide more flexibility in circumstances of temporary absences; Missouri allows for a temporary absence

172. 24 C.F.R. § 206.39.

173. Mancini & Williamson, *supra* note 7, at 125; 24 C.F.R. § 206.211.

174. 24 C.F.R. § 206.211.

175. *See* Mancini & Williamson, *supra* note 7, at 125.

176. *Id.*

177. Mancini & Williamson, *supra* note 7, at 125.

178. *Id.*

179. Mancini, *supra* note 11, at 14.

180. *See* N.C. GEN. STAT. § 53-267 (2024); § 443.903(6)(a) R.S.Mo. (2024).

of the home up to sixty days, or more than sixty days but less than six months, without the loan becoming “due and payable so long as the borrower has taken prior action to secure the home in a satisfactory manner.”¹⁸¹ Utah specifies that a borrower does not maintain the property as their primary residence if they fail to occupy it for more than twelve months and no other borrower remains in the house.¹⁸² These provisions go further in describing when a property is no longer considered a borrower’s principal residence. Having this type of detail ensures both borrowers and lenders have the same expectation when there is a claim of non-occupancy triggering an event of default.

IV. WHERE INDIANA STANDS COMPARED TO FEDERAL REGULATIONS AND OTHER STATES

A. Indiana’s Current Regulations for Reverse Mortgages and Issues to Consider

Indiana’s regulations mirror the regulations created by HUD and leave the same gaps for Indiana senior borrowers. Indiana has two statutes specific to reverse mortgages.¹⁸³ One statute broadly defines a reverse mortgage as “a mortgage loan that: (1) provides periodic payments to the borrower based on . . . equity in the real estate securing the loan . . . and (2) becomes due either: (A) at a specified date; or (B) on the occurrence of a specified event. . .”¹⁸⁴ Like the federal statute, Indiana also requires the home used for the reverse mortgage loan to be the borrower’s principal residence.¹⁸⁵ The second Indiana statute outlines that a potential borrower and their non-borrowing or ineligible non-borrowing spouse, must complete HUD-approved counseling.¹⁸⁶

1. Indiana’s Counseling Requirement

Under the HUD guidelines, a borrower may receive counseling from a certified counselor within a reasonable distance from their location and should be available for in-person counseling if desired, and if not, then it can be done over the phone.¹⁸⁷ In Indiana, there is only one certified HUD counselor.¹⁸⁸ If this person is unavailable, then a borrower will have to receive counseling over the phone from someone outside of Indiana who may or may not provide them

181. § 443.903(6)(a) R.S.Mo. (2024).

182. UTAH CODE ANN. § 57-28-102 (2024).

183. IND. CODE ANN. § 28-15-11-9 (2024); IND. CODE ANN. § 24-4.4-2-503 (2024).

184. IND. CODE ANN. § 28-15-11-9 (2024).

185. IND. CODE ANN. § 24-9-2-9 (2024).

186. IND. CODE ANN. § 24-4.4-2-503 (2024).

187. U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 82, at 42, 50.

188. *Housing Counseling Services*, U.S. DEP’T. OF HOUS. AND URB. DEV., https://answers.hud.gov/housingcounseling/s/?language=en_US [<https://perma.cc/5QLE-YQU7>] (last visited Nov. 12, 2025).

with accurate information.¹⁸⁹ Given that seniors are more likely to have diminished capacity in comparison to other age groups, it is important to consider whether phone counseling is a sufficient alternative for relaying the complexities and possible financial implications of reverse mortgages.¹⁹⁰ It may be a more useful alternative to mandate counseling sessions that cannot be conducted in-person be done over video, where a counselor can easily see if the applicant is confused or having difficulty understanding; however, the borrower might not have the ability, knowledge, and technology to navigate a video session.

2. Indiana's Statute for Settlement Conferences in Lieu of Foreclosure Actions

Indiana offers additional protections for first-lien mortgage holders, including borrowers of reverse mortgages, that allow the borrower to request a settlement conference when a lender files a foreclosure action.¹⁹¹ While lenders are not mandated to hold a settlement conference before going forward with a foreclosure action, borrowers have the ability to request a settlement conference with the court upon receiving a notice of foreclosure from a lender.¹⁹² Requesting a conference may be a way to cure a default and stay the foreclosure proceedings to remain in their homes. Often, the reasons for foreclosure are fixable and can be corrected with proper communication between the lender and borrower.¹⁹³

3. Indiana's Property Tax Exemptions for Seniors

Because many defaults occur due to a borrower's failure to pay property taxes, Indiana has assistance programs that may be helpful to certain seniors.¹⁹⁴ While these exemptions are not specific to seniors with reverse mortgages, they are an available resource that may allow some seniors to budget better for their property taxes and know if they can afford them for years ahead. Indiana has a circuit breaker tax that prevents property taxes from increasing more than 2% per year for qualified senior homeowners.¹⁹⁵ To qualify for this tax benefit, seniors must be at least sixty-five years old, have an annual income below \$30,000 for single filers or below \$40,000 for joint filers, and qualify for a

189. U.S. DEP'T. OF HOUS. AND URB. DEV., *supra* note 83, at 42, 50.

190. Karp & Wilson, *supra* note 127, at 17.

191. IND. CODE ANN. § 32-30-10.5-10 (2024).

192. IND. CODE ANN. § 32-30-10.5-8 (2024).

193. *See, e.g.,* Mancini, *supra* note 11, at 13-14.

194. *Housing Assistance for Seniors in Indiana (2025 Guide)*, GRANTS FOR SENIORS (Aug. 19, 2025), <https://grantsforseniors.org/housing-assistance-for-seniors-in-indiana/> [<https://perma.cc/V6S5-7GJP>] (lists property tax programs seniors may qualify for).

195. IND. CODE ANN. § 6-1.1-20.6-7.5 (2024).

homestead exemption credit for their property.¹⁹⁶ In response to the COVID-19 pandemic, and as part of the American Rescue Plan Act of 2021, the Indiana Homeowners Assistance Fund was created with federal funding to assist eligible homeowners with payment of housing-related costs, including property taxes and homeowners insurance.¹⁹⁷ Funding for this program is no longer available to homeowners, but it could be something to reconsider reinstating in the future. To save money, the funds could be limited to seniors with reverse mortgages who have received notification of a foreclosure for failure to pay property taxes or homeowners insurance.¹⁹⁸

B. How Other States Are Making Reverse Mortgages a Safer Tool to Help Their Seniors Age in Place

1. Property Tax Relief Programs and Property Tax Freezes for Seniors

The District of Columbia Housing Finance Agency provides financial assistance to qualified senior District homeowners for delinquent property taxes, homeowners' insurance, and HOA/Condo fees that put the homeowners at risk for foreclosure through their Reverse Mortgage Insurance & Tax Payment Program (ReMIT).¹⁹⁹ The program provides assistance to qualified homeowners who have received legal notice of default on their reverse mortgage loan because of a failure to pay property taxes or homeowners insurance premiums.²⁰⁰ If the borrower and lender have entered into a repayment agreement but the borrower can show financial difficulty, then the ReMIT program will help them pay off the past due amount.²⁰¹ This program allows for funding up to \$40,000 in the form of a zero-interest nonrecourse loan.²⁰² To qualify, a homeowner's income must not exceed \$77,450.²⁰³ This program was originally created during COVID-19 and then was reinstated in 2024 after the initial pilot program from 2019–2021 ended.²⁰⁴

Other states have different types of property tax relief programs or property tax freezes for seniors that can help them maintain the cost of their property

196. IND. CODE ANN. § 6-1.1-20.6-8.5 (2024).

197. *Indiana's Homeowner Assistance Fund (IHAF)*, IND. FORECLOSURE PREVENTION NETWORK, <https://www.877gethope.org/ihaf-servicers> [<https://perma.cc/EJ7K-BJB3>] (last visited Nov. 11, 2024); *Indiana Homeowner Assistance Fund Mortgage Assistance Program*, IND. HOUS. AND CMTY. DEV. AUTH., 2, <https://home.treasury.gov/system/files/136/HAFP-0085-Indiana-SubmittedPlanNarrative.pdf> [<https://perma.cc/94D9-V8HQ>] (last visited Feb. 9, 2025).

198. *ReMIT*, D.C. HOUS. FIN. AGENCY, <https://dchfa.org/homeownership/remit/> [<https://perma.cc/M6JY-BRZA>] (last visited Sept. 28, 2024).

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. D.C. CODE § 42-2703.07a (2024).

taxes on fixed incomes. These programs were not created for the purpose of assisting seniors who have reverse mortgages like the D.C. ReMit program, but they can still aid seniors with reverse mortgages. So, while property tax freeze programs provide tax benefits by preventing the eligible senior homeowner's property from increasing in value and allow a borrower to project if they have the income to continue paying taxes through the life of the loan, state property tax relief programs reduce property taxes for seniors to lessen their property tax burden.²⁰⁵

For example, South Dakota offers two separate relief programs for homeowner seniors who are at least seventy-years old.²⁰⁶ These programs delay the payment of property taxes.²⁰⁷ Program 1 has eligibility based on age and home value and Program 2 is an annual application with eligibility based on age, income, and other factors.²⁰⁸ These programs have been implemented because "state officials understand that many elderly and disabled South Dakotans live on fixed incomes and may have difficulty meeting their property tax obligations."²⁰⁹ Programs like these can help reduce the likelihood that seniors will lose their homes because they cannot afford the annual increase in their property taxes.

Additionally, Washington state's Property Tax Freeze is available for eligible seniors based on age and income. The income must fall within a certain percentage of the median income in the county of their primary residence.²¹⁰ The statute places a freeze on the property's assessed value at the date the applicant first qualifies or January 1, 1995, whichever is later.²¹¹

2. States with Reverse Mortgage Acts

Illinois, Missouri, North Carolina, South Carolina, Utah, and Washington have adopted Reverse Mortgage Acts to codify and expand HUD's regulations.²¹² Washington, Utah, and Colorado are three of the top 10 states

205. Nathan Justice, *3 Best Senior Citizen Property Tax Relief Programs*, SENIOR STRONG (Nov. 10, 2024), <https://www.seniorstrong.org/3-best-senior-citizen-property-tax-relief-programs/> [<https://perma.cc/SNV2-AC56>].

206. *Homestead Exemption Programs*, S.D. Dep't of Revenue (Dec. 2024), <https://dor.sd.gov/media/5lrpvndw/homestead-exemption-brochure.pdf> [<https://perma.cc/EZ4F-PS3W>].

207. *Id.*

208. *Id.*

209. *Id.*

210. WASH. REV. CODE § 84-36-383 (2024); *Property Tax Exemption for Senior Citizens and People with Disabilities*, Wash. State Dep't of Revenue, 1–2 (Sept. 23, 2024), https://dor.wa.gov/sites/default/files/2022-02/PTExemption_Senior.pdf [<https://perma.cc/8LQC-QCJQ>].

211. WASH. ADMIN. CODE § 458-16A-140(7).

212. 765 ILL. COMP. STAT. §§ 945, 1–35 (2024); MO. REV. STAT. §§ 443.901–12 (2024); N.C. GEN. STAT. §§ 53-255–74 (2024); S.C. CODE ANN. §§ 29-4-10–60 (2024); UTAH CODE ANN. §§ 57-28-201–08 (2024); and WASH. REV. CODE ANN. §§ 31.04.500–906 (2024).

with the highest reverse mortgage consumers.²¹³ While the Reverse Mortgage Acts have some variation, most include a more robust description of reverse mortgages, responsibilities of lenders, responsibilities of borrowers, and definitions of default on the part of the lender and borrower.²¹⁴ The Reverse Mortgage Acts benefit both borrowers and lenders by detailing various guidelines that ensure both parties are aware of their rights and obligations with reverse mortgages.

North Carolina has codified regulations that provide more robust sanctions than standard HUD guidelines against a lender that fails to properly service a reverse mortgage loan to meet their contracted obligations.²¹⁵ HUD's current sanctions for lenders who fail to make timely payments or who do not follow through on their servicing responsibilities are limited to the lender's loss of insurance, debarment, and limited denial of participation as a HUD mortgagee.²¹⁶ North Carolina's statute specifies that when a lender defaults and does not make payments to the borrower, "the lender shall forfeit any right to collect interest or service charges under the contract. The lender's right to recovery at loan maturity shall be limited to the outstanding balance as of the date of default."²¹⁷ Further, North Carolina further allows its Commissioner to act against a lender and allows for the borrower to have remedies through civil actions.²¹⁸

Utah is another state that has expanded the borrower's cooling off period after signing the loan from HUD's required three to five days.²¹⁹ The cooling-off period gives the borrower the ability to rescind the loan without any penalty. Because reverse mortgages are complex, having some additional time to weigh their advantages and disadvantages is important. The additional time in the cooling-off period gives borrowers some space to think and ensure this is the best decision based on their circumstances and may also give borrowers time to discuss this decision with potential heirs so that there are fewer surprises when the borrower passes away.

3. State-Run Reverse Mortgage Programs

Montana is the only state that has its own state-administered Reverse

213. Am. Advisors Grp., *California Tops List of Most Popular States for Reverse Mortgages According to AAG*, PR NEWswire (Jul. 20, 2021), <https://www.prnewswire.com/news-releases/california-tops-list-of-most-popular-states-for-reverse-mortgages-according-to-aag-301336951.html> [https://perma.cc/8MGT-RF3X].

214. S.C. CODE ANN. §§ 29-4-10–60 (2024); N.C. GEN. STAT. §§ 53-255–74 (2024); MO. REV. STAT. §§ 443.901–12 (2024); 765 ILL. COMP. STAT. §§ 945, 1–35 (2024); UTAH CODE ANN. §§ 57-28-201–08 (2024); and WASH. REV. CODE ANN. §§ 31.04.500–906 (2024).

215. See N.C. GEN. STAT. § 53-266 (2024).

216. 24 C.F.R. § 206.201.

217. N.C. GEN. STAT. § 53-266 (2024).

218. *Id.* at § 53-271 (2024).

219. UTAH CODE ANN. § 57-28-207 (2024).

Annuity Mortgage (“RAM”) program. The RAM program is available to qualifying Montana senior residents.²²⁰ The RAM program is not an FHA-insured HECM program, but is instead, provides for the Montana Department of Commerce to manage the loans.²²¹ In 1989, the RAM program was created by the Montana State Legislature when it was noticed that elderly homeowners had difficulty remaining in their homes with rising costs, inflation, and their lower fixed incomes.²²² Since its inception, the RAM program has issued 240 loans with an average monthly payment of \$540 a month.²²³

The qualifications for the RAM program have some similarities and some differences to the FHA-insured HECM loans. First, the Montana Board of Housing is the first lien holder on the home.²²⁴ Second, both loans require financial counseling before they can obtain a loan, but the counseling for the RAM program is done through Montana’s Aging Services Network.²²⁵ The RAM counselor continues to be a liaison between the borrower and Montana Housing staff throughout the loan process.²²⁶ Third, to qualify for Montana’s program, borrowers must be at least 68 years old and meet certain income limits.²²⁷ In certain circumstances, seniors who have high medical costs and are over the income limits, may deduct their verifiable and recurring medical costs from their income to qualify for the program.²²⁸ Fourth, the loan terms are for ten years.²²⁹ A borrower may continue to live in their home after ten years if it is still their principal place of residence. The interest will continue to accrue on their loan until it is paid.²³⁰ A downside of the RAM program is that some seniors may outlive the life of the loan or exhaust the equity in their homes, leaving them without additional income.²³¹ Fifth, the RAM program has a minimum and maximum loan amount available based on 80% of the

220. MONT. CODE ANN. § 90-6-502 (2024); *Reverse Annuity Mortgages*, MONT. DEP’T. COM., <https://commerce.mt.gov/Housing/Homeownership/Reverse-Annuity-Mortgages> [https://perma.cc/5UKD-27R7] (last visited Sept. 28, 2024).

221. *See Reverse Annuity Mortgage Loan Program Helps Montana Seniors Stay in Their Homes*, MONT. DEP’T COM. (Nov. 4, 2024), <https://commerce.mt.gov/News/newsletter-articles/Reverse-Annuity-Mortgage-Loan-Program-Helps-Montana-Seniors-Stay-in-their-Homes#:~:text=The%20Montana%20Board%20of%20Housing%2C%20administratively%20attached%20to,maintain%20financial%20flexibility%20while%20remaining%20in%20their%20home> [https://perma.cc/6ZNL-6Z5N].

222. Chris Clow, *Why Montana Is More Heavily Promoting Its State-Run Reverse Mortgage Program*, HOUSINGWIRE (Aug. 19, 2024), <https://www.housingwire.com/articles/why-montana-is-more-heavily-promoting-its-state-run-reverse-mortgage-program/> [https://perma.cc/6EL7-V7Y3].

223. MONT. DEP’T COM., *supra* note 221.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

homeowner's equity.²³² Borrowers can access funds through a lump sum payment up to \$10,000 or monthly payments.²³³ Lastly, the RAM program offers Montana seniors a low-interest rate that does not have additional fees for the administration or servicing of the loan.²³⁴

V. SUMMARY OF RECOMMENDATIONS FOR THE INDIANA CODE

While Indiana does have some statutory protections for reverse mortgage borrowers, there is still room for growth. First, Indiana should create more robust regulations to the counseling requirement of its current statute. This can be accomplished by creating a method to track the information provided in counseling sessions to Indiana borrowers and requiring borrowers and non-borrowing spouses to answer seven, rather than five of the ten questions correctly. Ensuring borrowers fully understand a reverse mortgage and its impact will help to reduce default and negative outcomes. Additionally, this tool will help Indiana know if counselors are familiar with Indiana's tax exemptions and if the counselors are giving adequate counseling to prospective borrowers.

Second, Indiana should also find ways to increase the number of HUD-certified counselors. With more local counselors, more seniors will have access to counseling sessions. Because the counselor must go through a lot of paperwork with the prospective borrower, it is best if both the counselor and prospective borrower are in the same location while going over this paperwork together. If a face-to-face session is not possible, the next best option is to utilize video chats, and phone counseling as a last resort. The ability for counselors to see the person they are counseling can help them determine if the borrower understands and has the mental capacity to understand this complex tool. Additionally, the counselor is more likely to know of Indiana's tax exemptions and programs that the prospective borrower may be eligible for.

Third, Indiana should require mandatory follow-up meetings with counselors after loan execution. While HUD creates an obligation for counselors to be available after the application process to answer applicant questions, it is not mandatory to have a follow-up meeting. Many seniors have questions about why the loan balance is so high, why their loan is assigned to FHA, or other issues. Requiring a counseling session six to twelve months after the start of the loan would be beneficial. This may, in turn, help reduce the rate of defaults and foreclosures since the counselor can verify that the borrower understands the terms of the loan and can help troubleshoot any issues. The problem with the current structure is that the initial counseling session takes place before the terms of the loan are executed. Because the counselor can only talk in general terms, having a mandatory follow-up session allows for more information to be given that is specific to the borrower.

232. *Id.*

233. *Id.*

234. MONT. DEP'T COM., *supra* note 221.

Fourth, the borrower and eligible non-borrowing spouse should both be financially assessed prior to loan execution. Because one spouse will pass away before the other, it is important to consider if one spouse alone can continue to meet the financial requirements to keep the loan from going into default while they continue to live in the home. The non-borrowing spouse will not be able to access any leftover equity in the house without refinancing the reverse mortgage; thus, there is a risk that they will not have their spouse's assistance to help cover the cost of property taxes or insurance, which may impact their ability to continue to meet financial obligations. For the borrower and non-borrower to plan properly, they should have information that will help them determine if it is likely the non-borrowing spouse will be able continue to make required payments.

Fifth, Indiana should expand its circuit breaker tax by making a tiered system that allows more seniors to qualify for tax benefits. This includes adding tiers based on income ranges that correlate with a cap on property tax increases. For example, a single senior with an income from \$33,654 to \$40,654 would be eligible for a cap that would prevent their property tax from increasing more than 3%.²³⁵ This expansion could lessen the financial burden on seniors and help them accurately project their property taxes.

An alternative for extending the circuit breaker tax would be for Indiana to create a property tax freeze for seniors within a certain income limit. If loss of revenue from property tax is a concern, then a property tax freeze for borrowers of reverse mortgages may lessen the occurrence of borrowers and non-borrowing spouses defaulting because they have been better able to project their annual property tax charges. Indiana could become a second lien holder on the property to later recoup the difference between the borrower's payment and the actual amount due. FHA regulations allow homeowners to have a second lien on the property, so long as FHA has priority and remains the first lien holder.²³⁶ Because these options could cause the county or city to lose revenue, an alternative to consider is reinstating Indiana's Homeowner Assistance Fund while mirroring the requirements of D.C.'s ReMit program. By taking this route, the money paid out by the state would be limited because only seniors with reverse mortgages, who have received a letter of foreclosure because of a missed property tax payment, would be eligible.

Sixth, Indiana should allow borrowers to make a change to their LESA election later or to end a LESA if they opted in at the loan's origination. A borrower may not want to set aside so much of their equity in a LESA in the beginning because they do not know how much they will need to pay for

235. Daniel Shackle, *Over 65 Circuit Breaker Income Threshold Calculation for Pay 2025*, Ind. Dep't of Loc. Gov't Fin., 1 (May 24, 2024), <https://www.in.gov/dlgf/files/2024-memos/240524-Shackle-Memo-Over-65-Circuit-Breaker-Income-Threshold-Calculation-for-Pay-2025.pdf> [<https://perma.cc/UBM9-GEFV>] (providing an overview of the 2025 threshold to cap a property tax increase at 2% is \$33,653.52 for a single senior).

236. 24 C.F.R. § 206.8.

expenses over time or how much to set aside that will still allow them to cover other costs in the future. Greater flexibility with the LESA, especially later in the life of the reverse mortgage when a borrower's mental capacity or physical capacity is declining, would be helpful in preventing default due to missed property tax and homeowners' insurance payments.

Seventh, Indiana should amend their statutes to specify when a borrower can claim their residence as their primary residence after an extended absence. Hospitalizations and follow-up care should be included as exceptions that allow the borrower to retain their primary residence after an extended absence. Moreover, Indiana should require additional efforts from lenders to track certification letters sent to borrowers, including sending these letters by certified mail. Indiana may also mandate alternative means of contact, such as requiring a certified letter to include alternative contacts or requiring additional attempts at contacting the borrower either by phone or in-person prior to initiating a foreclosure. An increase in methods to attempt contact will increase the likelihood that a borrower or alternative contact will be able to respond, and a needless foreclosure action will be avoided.

This note also recommends updating the Indiana Code to include adding sanctions against lenders who default. Sanctions could include the lender being unable to collect interest, charging service fees, and only being able to recover the amount of the loan at the date of the default when the loan matures. Currently, borrowers can file a complaint with the Attorney General's office or HUD, but they do not have a remedy for damages. Indiana should add a private right of action for borrowers to seek monetary damages against lenders who default.

Lastly, borrowers should be allowed an extended cooling-off period. The cooling-off period after closing allows a borrower to rescind the reverse mortgage loan without any negative implications. This extension is recommended because it gives the borrower some additional time to process the decision and make sure it is the best choice for them. These loans are complex and will have implications on the borrower, possible non-borrowing spouse, and heirs.

VI. CONCLUSION

Reverse mortgages play an important role for seniors who are income poor but asset rich. Because Indiana's senior population will make up nearly 19% of all Hoosiers by 2025, a number that will only continue to grow, it is necessary to find more tools to help them age in place. Most seniors want to be able to spend their remaining years in their homes and communities. A reverse mortgage would allow these senior homeowners to access money from the equity in their home while they still live there. The payments from the reverse mortgage loan could help them cover additional expenses, including healthcare costs, which they could not otherwise afford. Because this loan is not due and

payable until a specified event like death, it would also reduce the senior homeowner's monthly costs if they were still paying off their homes by getting rid of their mortgage payments.

While HUD has regulations in place for reverse mortgages, there is still room for Indiana to increase protections, as other states have done, and make reverse mortgages a valuable option for aging Hoosiers. The recommendations made in this note would help to increase borrower protections, increase lender accountability by providing oversight to lenders, and ensure conformity with best practices. Moreover, the protections recommended should help seniors remain in their homes for as long as they choose, and not have their homes placed in foreclosure because of mistakes, miscommunications, or lack of ability to cure the default. With greater protections, the reverse mortgage could live up to its original purpose of meeting the special needs of the elderly and allowing them to live their final years of life with dignity and comfort in their homes.

The proposed increased protections may lead more older Hoosiers to utilize the reverse mortgage tool, which could relieve some of the financial burden of their cost of care from Indiana's Medicaid system. It is important to note that reverse mortgages are only one tool in the toolbox for helping seniors age in place. These reverse mortgages will not be a tool that makes sense for every senior homeowner, but greater protections should be added for those seniors who can benefit from a reverse mortgage.