

## THE REVERSE MORTGAGE AND ITS ETHICAL CONCERNS

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### ABSTRACT

A reverse mortgage is a special kind of home loan that allows elderly homeowners to borrow against the equity accumulated in their house. A reverse mortgage was designed to help “house-rich” and “cash-poor” elders access additional income to meet expenses, such as paying for home repairs and home improvements, paying off debts or taking care of existing home loans. When an elderly person considers obtaining a reverse mortgage, ethical issues related to respecting the elderly persons’ autonomy, concern for dignity, and awareness of beneficence and communicative ethics must be considered by family members, loan officers, and reverse mortgage counselors in the reverse mortgage industry. This paper used interviews with a potential borrower, a borrower’s family, two reverse mortgage counselors, a reverse mortgage specialist, and a representative from the National Reverse Mortgage Lenders Association to generate a hypothetical case scenario. The hypothetical case scenario will be used to review and discuss the reverse mortgage process and the ethical issues that arise during the process. It is essential that when an elderly person wishes to explore the reverse mortgage process, individuals closest to the elderly homeowner respect the person’s autonomy while considering positive paternalism that can instill dignity in the decision making process.

Research & Theory

### Introduction

In 1987, under the National Housing Act, Department of Housing and Urban Development (HUD) and its subsidiary Federal Housing Administration (FHA) created the Home Equity Conversion Mortgage (HECM), a reverse mortgage program, to assist an older homeowner with a financial vehicle to

withdraw equity from their house without moving or selling their current home (Bell, 2005; HUD, 2000). A reverse mortgage is a special kind of home loan which allows elderly homeowners to borrow against the equity accumulated in their house, but not be obligated to pay back until the person dies, sells the house, or moves away from home for more than one year. At that time, the person or borrower's heir(s) can either pay the balance due and keep the house, or sell the house to pay off the mortgage. The home equity represents a source of income allowing individual and family members a sense of financial and psychological security as they age (Cutler, 2003).

With all the good intentions and precautions built in HECM to protect senior homeowners, a reverse mortgage nevertheless is a "complex financial instrument poorly understood by those who embrace it" (Levine, p. 3). Norma Garcia, staff attorney for the Western regional office of Consumers Union commented that reverse mortgage is "an area ripe for fraud" (Levine, p. 3). This comment was made when she referred to several lawsuits in the reverse mortgage history that alleged lenders "misrepresenting the interest rate, finance charges, the borrower's life expectancy, and the terms and conditions of the reverse mortgages" (Levine, 1994, p. 4). Those law suits accused "the lender(s) deprived consumers of information necessary to make an informed decision... bilked millions of dollars from trusting senior citizens" (Levine, 1994, p. 4). Garcia's comment was made in viewing the elderly a vulnerable population.

### **Considering Ethics and the Reverse Mortgage Process**

The main purpose of this manuscript is to understand and discuss the potential ethical issues which may occur in the process of receiving a reverse mortgage for senior homeowners. The discussion will cover issues in every step of getting a reverse mortgage, but emphasizing those in the counseling stage, since counseling is the most critical part of the process. There are three types of reverse mortgage: lender's proprietary program, Fannie Mae Home Keeper program and HUD/FHA HECM program. This paper will focus only on the HUD/FHA HECM program, since it enjoys at least 95% of market share (Sisk, 2003), bolstered by the advantage of being the only government-insured reverse mortgage program. Insurance is another unique feature of HECM, which protects both lenders and borrowers. It compensates lenders should the final proceeds of house sales fall short to cover the outstanding mortgage balance. Also, the insurance guarantees borrowers will continuously receive their payment if their lenders ever default.

### **History of Reverse Mortgage**

Private lenders first introduced the concept of a reverse mortgage in

1950s, but it did not become national in scope until 1987, when Department of Housing and Urban Development (HUD) and its subsidiary Federal Housing Administration (FHA) were involved in the reverse mortgage market by implementing the Home Equity Conversion Mortgage (HECM) program. According to HUD, the original purpose of the HECM Demonstration project was (HUD, 2000, p.3):

- (1) to permit the conversion of home equity into liquid assets to meet the special needs of elderly homeowners;
- (2) to encourage and increase participation by the mortgage markets in converting home equity into liquid assets; and
- (3) to determine the extent of demand for home equity conversion and the types of home equity conversion mortgages that best serve the needs of elderly homeowners.

Initially, a demonstration program, after 10-years of operation, the HECM Demonstration was evaluated as successful, and has been converted into a permanent HUD program in 1998. HUD stated in its final report concluding the demonstration phase that HECM has “made significant progress toward achieving the original purposes. ... elderly homeowners have chosen HECM loans to help them with their financial needs and the program continues to grow steadily” (HUD, 2000, p. iv).

Based on first quarter Census statistics, among Americans 65 and older, 80.5% were homeowners in 2005 as compared to 69.1% of all age groups in the U.S. (Census Bureau, 2005). At the same time, Census Bureau data showed that, in 2004, the median annual income of all seniors aged 65 or older was a mere \$23,152; for Caucasians (not Hispanic) \$24,154; for African Americans \$16,376; for Asians \$25,153 and \$18,164 for Hispanics (Census Bureau, 2004). HUD projected that the reverse mortgage could lead to substantial increases in income for senior homeowners in need (Egner & Colleney, 1996).

Although originally designed to help “house-rich” and “cash-poor” elders to access additional income to meet expenses, the reverse mortgage often is used by middle income households to convert their home equity into liquid assets (HUD, 2000). In the past four years, many seniors suffered negative impacts from the plunge of the stock market, the reduction of interest income from savings and the increase in oil prices since the Iraq war, while also being faced with soaring health care costs. To help make ends meet, a reverse mortgage will play a more significant role as a source of retirement income for seniors in the future.

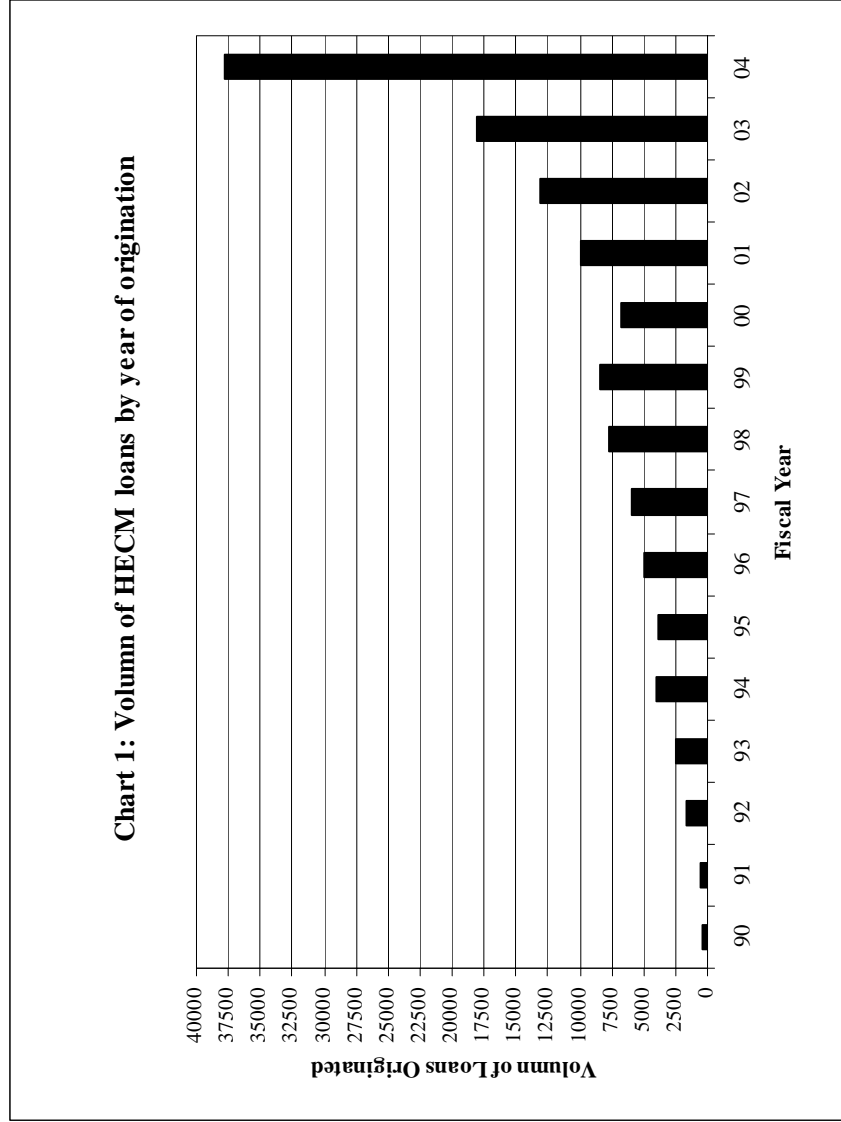
### **Complexity of a Reverse Mortgage**

The reverse mortgage is a complicated financial vehicle, which requires an understanding of numbers and figures to make a truly informed decision. Unfortunately, many senior citizens are generally not financially sophisticated. Furthermore, what is involved in a reverse mortgage could be overwhelmingly confusing, and the loan documents can present a frightening and daunting appearance for many seniors.

To incur debt later in life is an issue of graveness to most senior homeowners. Older adults are, understandably, afraid to make mistakes regarding their final assets and their legacy (Leviton, 2001). Senior homeowners may hesitate to apply for a reverse mortgage or any other equity conversion programs because of a desire to leave a bequest and an aversion to debt. Several studies report (e.g., Edwards, 2005; Green, 2005) that many older home owners are aware of reverse mortgages, but only a small percentage are willing to use this financial option. Seniors are likely to cite reasons of perceived risks of impoverishment and depleting their children's inheritance as reason not to consider a reverse mortgage. To ensure that elderly homeowners make well-informed decisions, borrowers are required by law to obtain counseling with HUD approved counselors before they can apply for a HECM loan (HUD, 1999). Counseling is a unique feature of HUD/FHA HECM reverse mortgage; it is free to the borrower, and is an essential part of the reverse mortgage process to help seniors make an informed financial decision.

### **Growth of the Reverse Mortgage**

At the first five years after its introduction, the number of HUD/FHA reverse mortgages originated was less than 1,000 loans per year (HUD, 2000). However, with time and public awareness the level of sales has grown dramatically in recent years (see Chart 1). In 2004, reverse mortgage loans grew to a record of 37,829, a 109% increase from 18,079 loans in 2003 and increasing again from 2002 sales of 13,049 (Reverse Mortgage Advisor, 2005; Sisk, 2003; Record Annual Volume, 2001). The first five months of the 2005 federal fiscal year (September 30, 2004 to February 28, 2005) HUD insured 16,731 HECMs. It is predicted by HUD and the lending industry that reverse mortgage will continue its growth pace, fueled by current extreme low interest rates and the increased awareness and acceptance of the program among elderly homeowners.



*Note: Figures compiled from HUD. (2000); Record Annual Volume. (2001); Sisk. (2003); and Reverse Mortgage Advisor (Spring 2005).*

### **How the Reverse Mortgage is Used**

Initially designed to help “house-rich” and “cash-poor” seniors to pay for living expenses, the reverse mortgage has been adopted by more affluent and financially sophisticated borrowers (Sisk, 2003). Seniors are using the money not just to survive, but to maintain a certain standard and level of living during retirement.

Borrowers can use the funds anyway they wish. However, the major uses of reverse mortgage funds often include:

1. Paying for living expenses as a supplement to their income
2. Paying off an existing home loan to avoid foreclosure
3. Paying off other debts, such as, an outstanding credit card balance
4. Paying for health care costs not covered by Medicare
5. Paying for supplement insurance and long term care insurance premiums
6. Paying for property taxes
7. Paying for home repairs or home improvements.
8. Paying for gifts to family members, for example, college tuition for a grandchild.

In the role of being supplemental retirement income, HECM does make a difference in providing senior homeowners with needed funds to keep them above the poverty line. A study conducted by HUD in 1990, three years after the program launched, indicated that, compared with the entire older population, borrowers of reverse mortgage funds tended to be older and have less liquid wealth. It was also reported that after receiving a reverse mortgage, the percentage of elderly borrowers below the poverty line was reduced from 15.9% to 4.2% (Mayer & Simons, 1994).

### **Generating a Hypothetical Case Scenario**

To investigate the possible ethical issues involved in the reverse mortgage process, a hypothetical case scenario was created after interviewing a potential borrower, a borrower’s family, two counselors, two lenders, a reverse mortgage specialist, and a representative from trade organization National Reverse Mortgage Lenders Association. All the interviews took place in spring 2003. This case study is a compilation of facts, information, and details discussed in the interviews. Even though the person and family mentioned in the case study are fictitious, the information presented is accurate and represents several real ethical dilemmas, which may face an elderly homeowner.

## Reverse Mortgage Hypothetical Case Scenario

### *Mr. Smith's Dilemma*

Mr. Smith, 79 years old, has a wife 76 years old with Alzheimer's. Mr. Smith owns a house in an upscale neighborhood in Southern California. The house was worth one million dollars and has no mortgage.

Mr. Smith is considering getting a reverse mortgage so he can hire a home care professional to take care of his wife, which will cost \$3,000 a month.

When he discussed this idea with his son, he encountered some objections. His son promised to share the task of taking care of his mother so the house would not be mortgaged. But Mr. Smith was not sure how much his son could help him. His son worked full-time and lived in another community.

However, Mr. Smith's grown-up granddaughter is keen to see her grandfather get a reverse mortgage. She was starting her own business, and asked her grandfather to invest in her company with the money from the reverse mortgage. She was confident that her business would take off soon, and she would have no problem to pay for the hired home care personnel for her grandparents as interest payment to her grandfather's investment in her company.

Mr. Smith, accompanied by his granddaughter, went to meet with a loan officer, Mr. Brown, whose bank is a reverse mortgage lender for HUD. Mr. Brown told them that Mr. Smith needed to see a reverse mortgage counselor and get a Certificate of HECM Counseling. He said the counseling was free of charge to Mr. Smith, and he gave Mr. Smith information on a counselor to contact.

The counselor, a Ms. Jones, was very nice to Mr. Smith and his granddaughter. She was also very efficient. She plunged into showing them many computer printouts right away which were full of tables and charts about the money Mr. Smith will get every month, the interest, and the total loan costs. Mr. Smith got a headache by being swamped with so many numbers and figures. Ms. Jones seemed very sure that a reverse mortgage was the best solution for Mr. Smith's situation, and Mr. Smith's granddaughter voiced the same optimism. However, Mr. Smith was confused and did not know what to do.

Mr. Smith needed some advice and suggestions about getting a reverse mortgage. If you were Mr. Smith's closest friend and he came to you for

advice, what would you tell him? Would your advice be different if you were a friend, a relative, or a reverse mortgage specialist?

### **Ethical Issues In The Reverse Mortgage Process**

From the created hypothetical case scenario involving a reverse mortgage issuing process, it is noticed that there are potential ethical issues at different stages of the process. Typically, there are five steps an individual needs to go through in receiving a reverse mortgage: awareness, initiation, counseling, application, and processing. Each step contains its own potential ethical issues involving the families, the lenders, or the counselors. The most critical part of the process is the counseling phase, because it is from the counselor that the reverse mortgage borrower is supposed to get unbiased and complete information critical for the mortgagee to decide whether a reverse mortgage is right for their needs. The remainder of this paper will discuss the potential ethical concerns in all the five steps of the reverse mortgage process.

Ethical considerations include aspects of autonomy, dignity, beneficence, positive paternalism, and commutative ethics. As an elderly person begins to make a decision regarding a reverse mortgage, family, friends, and reverse mortgage specialists must consider assisting the borrower in making an informed decision that does not jeopardize their autonomy or dignity, while also exercising communicative ethics and positive paternalism.

### **Awareness Stage and Respecting Autonomy**

Most senior homeowners learn about a reverse mortgage through family members, usually a middle-aged son or daughter (Cutler, 2003; Sisk, 2003). Most often, the younger generation suggests the reverse mortgage to their parents for the financial benefits. But it is reported that there is a steady increase in the number of people in their late 50s requesting information on reverse mortgages to plan for retirement income (Cutler, 2003; Sisk, 2003).

In some cases, it is an immediate family member who needs funds for personal use, therefore, persuades the senior homeowner to get a reverse mortgage. In those cases, senior homeowners do not exercise autonomy, but are cajoled or coerced into the debt reluctantly. One of the reverse mortgage counselors interviewed for this paper vividly remembers that a grandmother, during the counseling session, said through clinched teeth to her granddaughter, "Wendy, I told you I am fine. I don't want to get my home mortgaged." The counselor concluded that the grandmother did not initiate the reverse mortgage process voluntarily.



The concept of autonomy refers to the ability to make ones own decisions and choices without being coerced or forced by others. Each person has the ability to make their own decisions regarding life's circumstances as long as the decision does not endanger or cause harm to others. Autonomy is seen as truly an American value that each person can freely decided what is best for them (Moody, 1993). Even though a person rarely makes a decision in total isolation or vacuum from others, autonomy sets the tone for an idealized standard to emulate. Autonomy is the ability to choose rationally among alternatives that are clearly defined and understood.

### **Initiation Stage and Concern for Dignity**

When senior homeowners initiate the process of applying for a reverse mortgage without first conferring with family members (i.e., sons and daughters), tension can arise between generations. This is not prevailing, but not uncommon either, according to the reverse mortgage counselors interviewed. The main reason is that the younger generation does not want to see their inheritance reduced by a reverse mortgage. The heir(s) may exercise pressure on parents to discourage them from applying for a reverse mortgage. Pressure from children may be influential, and affects the decision made by the senior homeowner, since older adults generally have a strong desire to leave a legacy (Leviton, 2001).

While autonomy suggests that others will accommodate another person's wishes, dignity implies honoring and being sensitive to the actions of others. The ethics of autonomy supports the underlying concepts of dignity (Moody, 1993). Reverse mortgage specialists and family members should realize that older adults have the right to make decisions, which are appropriate to their needs and wishes. Providing guidance and understanding to elderly relatives who are considering a reverse mortgage is more beneficial than forcing, deception, non-disclosure of information or using coercion to influence them in making an unwanted decision.

### **Counseling Stage and Awareness of Beneficence and Communicative Ethics**

Mandatory counseling is critical in helping senior homeowners with informed decisions. The counselor is the only disinterested party among all involved in the loan process, because all others; borrower, borrower's family, and lender all have a stake in the transaction. The counselor is there to protect the senior borrowers; therefore, some positive paternalism is often exercised if called for. Positive paternalism or beneficence requires that we treat others with reciprocity and paraphrasing the golden rule: "People should treat others as they would like to be treated themselves." As a professional, the reverse

mortgage counselor should contribute to the overall welfare of their client (the elderly borrower). Moody (1993) suggests that professionals and family members pay attention and listen to the elderly as they communicate their wishes and desires. Listening and honoring to older adults wishes is part of communicative ethics.

Stipulated by HUD, regardless of whether the reverse mortgage borrower feels he/she needs counseling, the counselor is required to cover the following topics in the counseling session (HUD, 2000, p. 65):

- Options other than a home equity conversion mortgage that are available to the homeowner, including other housing, social service, health and financial options;
- Other home equity conversion options that are or may become available to the homeowner, such as sale-leaseback financing, deferred payment loans, and property tax deferral;
- The financial implications of entering into a home equity conversion mortgage; and
- A disclosure that a home equity conversion mortgage may have federal tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and heirs of the homeowner.

However, in some situations, not all counselors are able or care to fulfill their job responsibilities, or sometimes, communicative ethics is not met, which results in three serious problems (HUD, 2000). Three possible ethical dilemmas are: (1) quality of counseling, (2) omission of alternative comparison, and (3) affiliation between counselors and lenders.

*Quality of counseling.* The biggest problem is misinformation or incomplete information, particularly regarding loan costs. The total loan costs (expressed as TALC rate; Total Annual Loan Cost rate) could add up to 4% to 5% of the loan claim amount, and routinely is as high as \$12,000 to \$14,000 (Whitehouse, 2002). Loan costs are a major concern for borrowers (HUD, 2000), and could be the single most important factor for potential borrowers to decide whether to pursue the loan. Loan closing costs, a part of loan costs, are charged and added to the loan claim amount when a reverse mortgage is issued, regardless how long the borrower will keep that loan or how much of the approved loan amount the borrower will eventually utilize. Loan closing costs could amount to a large percentage of a loan. This is especially true when a borrower terminates the loan early, due to death or the borrower permanently moving into a nursing home.

The counselor needs to ask how long the elderly homeowner plans to stay in his/her house. Both counselors interviewed thought that it is a better bargain if a borrower can stay at least 10 years in the house, and the borrower should be made aware of this fact.

The high cost of a reverse mortgage is not unethical itself, but when it is not communicated clearly and successfully to the potential borrower, it becomes a serious communicative ethics problem. In such cases, a counselor fails a professional obligation to the senior homeowner and misleads the borrower into a decision not made in a fully informed manner. This could result in a senior homeowner not fully understanding the costs involved and paying more than expected which can lead to feelings of unhappiness and dismay about the transaction. This is evidenced by the findings from a series of focus group studies conducted by HUD (2000). The leading reason of borrowers' dissatisfaction, according to the findings, is the surprise of high closing costs after receiving a reverse mortgage, which indicates the existence of a communicative ethics problem.

*Omission of alternatives comparison.* HUD (2000) requires counselors to discuss other alternatives in detail and prescribed a list of other options that counselors should go through with potential borrowers. However, not every counselor abides by the rules. The evidence is the lengths of counseling sessions vary from one to two hours with different counseling agencies (HUD, 2000).

Judging from the experience of sitting in a counseling session, the researchers conclude that it is difficult for a counselor to help each client reach an informed decision within an hour's length of time. There is a wealth of information to be dispersed and many topics to be discussed. It takes time to compare different loan programs, disclose the loan costs, and explain how the final loan amount is generated. The process may take even longer with the elderly who are not used to deal with financial figures and numbers. Also, it is critical to compare alternatives which may fit the borrower's needs. HUD (2000) requires that alternatives to be discussed should include at least, but not limit to:

- Other public reverse mortgages provided by local or state governments
- State or local governments' Deferred Payment Loans
- Property Tax Deferral loans
- Sale-leaseback financing
- Other public social service programs

If alternatives are not evaluated, it is impossible for a potential borrower to reach an informed decision. And the failure of a counselor to discuss options could cost borrowers thousands of dollars. For example, counselors are supposed to remind potential borrowers of state or local governments' Deferred Payment Loans. Both are single-purpose, low interest reverse mortgage loans with no closing costs. These "public sector" loans generally can be used for only a specific purpose, like home repairs. Many are

only available to persons with low to moderate incomes. But the low cost can make these loans very attractive (AARP, 2005). If a potential borrower is qualified to receive a public sector reverse mortgage to meet his/her financial need, but the counselor fails to inform the borrower about the existence of such an alternative, the borrower may apply for a commercial reverse mortgage like HECM, thinking that is the only choice available. This lack of disclosure of information and poor quality counseling can actually cost the borrower excess expenses.

*Affiliation between lenders and counselors.* To qualify as a HUD approved counselor, the counseling agency must be independent and not affiliated with any lenders. And lenders, if asked by potential borrowers for reference to counseling, are supposed to be impartial and not direct them to any specific agency. Vice versa, the counselor is not to refer his/her clients to any lender. The lender should provide a list of counselors in the area located conveniently to the borrower, and the choice should be entirely the borrower's. However, it is not uncommon that the lender sends the potential borrower to a counselor whom he has a special working relationship with. In this type of situation, the counselor may influence the prospective borrower to receive a reverse mortgage from the lender. HUD (2000, p. 80) acknowledges "some counselors are reported to have developed relationships with certain lenders and recommend that owners use these lenders." This kind of practice seriously jeopardizes the impartial position of counselors and compromises the interest of potential borrowers.

The variation in the quality of counseling is rooted in two problems:

- (1) There is no required examination or certification, neither any specific qualification, stipulated by HUD for becoming a reverse mortgage counselor. Any employee of HUD approved housing agencies can provide face-to-face HECM counseling. These housing counselors can be specialized in other types of mortgage counseling and not necessarily receive adequate training for HECM counseling.
- (2) There is no ear-marked compensation for HECM counseling. HUD/FHA fund counseling agencies with grants mainly to assist families in becoming first time homeowners and avoiding foreclosure after purchase; reverse mortgage counseling is an added-on service and paid with the same grant money. Reverse mortgage counseling may be regarded by some counselors as more complicated than conventional mortgages, and older adults more time consuming to counsel.

HUD recognized the variation of counseling quality as a "significant" problem in its year 2000 HECM evaluation report (HUD, 2000). Starting

in 2001, HUD has collaborated with the AARP Foundation to train, test and certify HECM counselors (AARP, 2005). AARP trained counselors met qualifying standards on the HECM counseling examination and have been approved by HUD to provide telephone counseling nationwide (HECM Resources, 2005). Contrarily, the untrained counselor can only provide face-to-face counseling within their locality.

### **Application/Disclosure**

This is the stage that a borrower formally applies for a reverse mortgage from a lender, receives the loan document disclosure, and pays for the housing appraisal fee. The appraisal fee is the only fee to be paid out of the borrower's own pocket, while all other fees can be financed through the reverse mortgage. HUD clearly specifies that the application should only be accepted after the mandatory counseling is complete and the borrower is sure about his/her commitment. But some lenders will ask for the appraisal fee before sending the potential borrowers to counseling. A national lender interviewed for this paper admitted conducting this kind of practice and excused itself by calling that "a deposit" for future appraisal. It is a tactic to give senior borrowers pressure, as if they had already committed to the loan, thus reducing the possibility of their withdrawal.

### **Processing**

This is the final stage of the application process. Lenders order an appraisal for the borrower's house at this stage. The appraiser is then responsible for assigning a value to the home. The appraisal process is not an exact science, and it leaves room for over-estimating or under-estimating the house value, which may affect the loan amount the borrower, will receive. This represents a potential unfairness to the senior homeowner. However, this is a problem shared by all types of mortgages, not just unique to the reverse mortgage.

### **Conclusions**

Elderly homeowners enter into a reverse mortgage transaction because they want to age in place. A reverse mortgage could be a blessing, even a life-saver for financially-struggling senior homeowners. For example, an elderly widow may be forced to choose between purchasing medicines or groceries. Because of the high monthly prescription costs some elderly choose to forego needed medications (Connolly, 2004; Schoen, Neuman, Kitchman, Davis & Rowland, 1998). A reverse mortgage for a senior homeowner in such situation can be life saving.

It has been almost 20 years since HUD introduced its reverse mortgage program. Although growing slowly but steadily, so far, it is only about 1 in a 1,000 senior homeowners who have a reverse mortgage (Fernandez, 2001). To popularize the reverse mortgage to benefit more senior homeowners, it is crucial for HUD and lenders to strive for low closing costs. It is also necessary for HUD to ensure the quality of counseling. To initiate a nation-wide mandatory certificate requirement is one way to improve the quality, but it also requires allocating compensation to motivate an agency to comply.

It cannot be overstated how important counseling is in the application process of receiving a reverse mortgage. Senior borrowers rely on counseling to make an informed decision. In order not to fail them, counselors should exercise communicative ethics and positive paternalism conscientiously. The entire reverse mortgage process encompasses a deliberate effort from reverse mortgage professionals and family members to respect the elderly borrowers autonomy and dignity, while considering positive paternalism and carefully listening to their needs and wishes.

The reverse mortgage is a means to help older adults to age in place as they wish, and a tool to enhance the well-being of the older population. The reverse mortgage should be made more accessible to senior homeowners in need. It calls for collaboration between HUD, lenders and counselors to lift the barriers for senior homeowners, as seen in the lack of awareness, unfavorable high loan costs, or availability of unbiased counseling in the reverse mortgage issuing process.

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