Putting Equity Back in Reverse Mortgages:

Helping Seniors Retire with Dignity

by Andrew C. Helman

Policymakers can help some seniors age in place through policies to strengthen private-sector reverse mortgages. In reverse mortgages, individuals who may be "house rich but cash poor" can use their home's equity to receive regular income or get money through a credit line. Andrew Helman argues that state legislatures can help seniors avoid the "tricks and traps" of reverse mortgages by establishing programs in which lenders who agree to play by rules that ensure the safety and security of such mortgages are placed on a "preferred" list for seniors seeking a loan. He observes that laying the groundwork now can help a larger group of seniors age with dignity.

We should provide for our age, in order that our age may have no urgent wants of this world to abstract it from the meditations of the next. It is awful to see the lean hands of Dotage making a coffer of the grave!

—Edward Bulwer, Lord Lytton (Bulwer 2006)

INTRODUCTION

As the great recession continues to linger, financial pressures are putting the squeeze on Maine seniors for basic needs such as gas, groceries, and medical expenses (Morin and Taylor 2009). And retirement for baby boomers is right around the corner, even as their parents' wealth evaporates. Given these realities, Maine, like many other states, is at a crossroads: How do policymakers ensure seniors retire with dignity in spite of a down economy, evaporating wealth, and diminished resources for social welfare programs?

Given emerging data showing that the vast majority of seniors would prefer to age in place (Bayer and Harper 2009), one option some seniors will likely consider is a reverse mortgage. Reverse mortgages are rising debt/falling equity mortgages through which seniors can turn the equity in their homes into a stream of cash or credit line. In light of recent reports of fraud and abuse with reverse-mortgage transactions, however, significant reforms are needed to make reverse mortgages safe and secure for seniors.

This essay will discuss tricks and traps[1] plaguing reverse mortgages along with concrete steps that can be taken at the state level to remedy the problem for Maine seniors. While the private and public sectors are both able to help cash-strapped seniors, this essay argues that the reverse-mortgage market presents an option that is likely to become more popular and, therefore, would benefit from consumer-protection reforms. The basic premise is that legislators could induce private-sector lenders to agree to lend on terms that are free from common tricks and traps in exchange for placing lenders participating in this program on a preferred list that would be maintained by the appropriate state agency such as MaineHousing. Seniors would benefit from safe and secure loans, while lenders would benefit from the imprimatur of state government when accessing this largely untapped market.

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THE SCOPE OF THE PROBLEM

Many seniors face a threefold problem. First, for the vast majority of seniors, wealth tends to be tied up in the equity of their homes (Hammond 1993). As a result, much of their financial resources are in the form of an illiquid asset that is often unable to produce income—a problem compounded by the fact that seniors have higher rates of homeownership than other age groups (U.S. Census Bureau 2005). Yet, at the same time, housing costs are seniors' largest expenditure (Loonin and Renuart 2007). Second, according to an article in the July 2, 2008, issue of *USA Today* by Lynn O'Shaughnessy, expenses for necessary items such as food, fuel, and medicine "have galloped beyond reach," and many seniors are "living on fixed incomes" and "just getting crushed on food and medicine that they can't do without." Third, incomes tend to be lower for those over 65 years old, and about 75 percent of all seniors have incomes below $33,000 (DeNavas-Walt, Proctor and Smith 2009; Purcell 2009). For seniors, lower incomes make it especially difficult to keep up with rising expenses such as property taxes, which tend to increase as property values go up, because seniors' incomes usually do not rise correspondingly (Loonin and Renuart 2007).

Unfortunately, there is every reason to believe that we are looking at the tip of the iceberg (Brandon 2008). On one hand, "the population of seniors will increase 35 percent to nearly 55 million by 2020" (Salkin 2009: 292). On the other hand, from October 2007 to October 2008, retirement accounts lost between $1.6 and $2 trillion, which will disproportionately affect baby boomers nearing retirement because they have less time to recover their wealth (Brandon 2008).

On top of that, according to an article in *Baby Boomer Magazine* (www.babyboomer-magazine.com/news/119/ARTICLE/1108/2009-02-10.html) many boomers can expect smaller inheritances because the generation before them is living longer and also has been hit hard by the current financial crises. And that does not take into consideration that many boomers expect retirement to be more active than the preceding generation, which means their expenses will likely be about 15 percent higher.

Taken together, the problem stands in stark relief. The current group of seniors is "sitting on a large amount of home equity," but face trouble making ends meet (Loonin and Renuart 2007: 180). The baby boomers, who are rapidly approaching retirement, are facing diminished retirement savings due to the economic downturn and have no substantial hope of being bailed out by inheritances from their parents.

> Given the relatively high rates of home ownership and stagnant or declining incomes among seniors, many "face the dilemma of being 'house rich, but cash poor'" (Hammond 1993: 76).

MAINE'S FAILED PUBLIC SECTOR SOLUTION

Policymakers in Maine have tried to help seniors cope with financial stress in the past (L.D. 1088, Statement of Fact [114th Legis. 1989]; House Amend. H to Comm. Amend. A. to L.D. 1088, No. H-388 [114th Legis. 1989]; Legis. Rec. 1890 [1989]). In 1989, the legislature enacted the Elderly Tax Deferral Program, which called on state government to pay local property taxes for some low-income seniors in exchange for liens on the seniors' homes that were enforceable upon transfer of the property or death of the senior.[2] But due to the costs, the program proved to be unsustainable, and for the same reason, efforts to revive it have mostly stalled (David Ledew, personal communication). While the state has recouped virtually all of the money invested in the program, it tied up scarce resources that could have been directed to other programs, and it essentially put the state in the business of lending, which the private sector may be better equipped to do.

The details of the program were fairly simple. For seniors who met eligibility criteria—at a minimum, 65 years old and earning less than $32,000 a year—Maine state government picked up the municipal property taxes, which allowed the senior to defer payment. In exchange for accepting the state's help, seniors agreed to repay the amount of money advanced plus interest, which was set at six percent per year. Four major classes of events triggered a repayment obligation: death of the participant; sale of the property; the participant moved for reasons other than health; or the property, such as a mobile home, was removed from the state.

The state secured its interest by recording a lien on the property. If the state did not recoup its money by April 30 of the year after the repayment obligation matured, the lien was treated as a mortgage with priority above all other encumbrance. While the program provided for a non-judicial foreclosure process, the state only foreclosed on one property in the program's history (David Ledew, personal communication).

Despite the program's modest enrollment—for example, 73 participants in year one, 90 in year four, and about 175 at the program's height—the legislature quickly became concerned about the growing cost of the program (David Ledew, personal communication). Thus, the legislature authorized the state tax assessor to pay less than the total amount due to municipal taxing authorities, which, to many people, signaled a lack of confidence in the program (David Ledew, personal communication). However, the real death knell came a few years later, in the wake of a fiscal crisis that led to a shutdown of state government in 1991 (David Ledew, personal communication). In 1994, as part of a supplemental budget bill, the legislature established a retroactive moratorium on new claims under the program. There was no floor debate or discussion in the press of this issue.

Recently, Rep. Kathleen Chase (R-Wells), attempted to breathe new life into the Elderly Tax

Deferral Program, but she was unable to win support from the legislature's Taxation Committee because of the cost of the program, even though she proposed raising the minimum age for participation to 70 (David Ledew, personal communication). Rep. Chase's effort was not entirely without success, however. The Taxation Committee amended her proposal and voted to allow municipalities to establish optional tax-deferral programs based on guidelines that are similar to the Elderly Tax Deferral Program (Comm. Amend. A. to L.D. 1121 [124th Legis. 2010]). But even this modest proposal may be a questionable use of public resources. It would tie up millions in scarce public resources; it could give lenders cold feet and add to borrowing costs; and it would likely add to administrative costs for enforcement proceedings.

A PRIVATE SECTOR SOLUTION

The Options

Given the relatively high rates of home ownership and stagnant or declining incomes among seniors, many "face the dilemma of being 'house rich, but cash poor'" (Hammond 1993: 76). The private sector, however, provides seniors with different ways to turn locked-up equity into cash through sales, sale-lease-backs, retaining a life estate, a support mortgage, or a reverse mortgage (Nelson and Whitman 1994; Hammond 1993; Thompson v. Glidden, 445 A.2d 676 [Me. 1982]). There are distinct advantages and disadvantages to each, especially for homeowners in states with housing costs similar to Maine, where the median sale price for a home in 2008 was $178,000, and the average monthly rent for a two bedroom apartment in the same year was $846.95.[3]

A sale is "the most obvious way for the elderly homeowner to convert home equity to an income-producing use" (Hammond 1993: 79). A homeowner can then invest the proceeds to generate income, or simply live off of the sale proceeds and buy or rent less expensive housing (Hammond 1993). Based on the 2008 median sale price and monthly rent for Maine, a senior would need to realize a return of 5.7 percent from investing the proceeds of a sale in order to cover rent—and that does not account for investment expenses or any return to principal needed to hedge against a further decline in the financial markets. Given that seniors have a relatively short time horizon for investing, however, their corresponding risk tolerance should be low, which rules out stocks and leaves as investment options cash, cash equivalents, or bonds. Yet, current interest rates are too low to generate the levels of income needed from cash, cash equivalents, or bonds.

Sale-leaseback transactions present another option, but they are often complex to navigate. In a sale-leaseback, a homeowner sells the house to an investor, often a family member, who then leases the home back to the senior (Hammond 1993). The senior-seller usually gets a down payment from the buyer, followed by monthly principal and interest payments, which may be used to offset payments due as a tenant (Hammond 1993). These are complex transactions that could put seniors in risky situations. For example, as tenants, seniors may be vulnerable to evictions or unscrupulous and inattentive landlords. Additionally, seniors who finance the sale-leasebacks themselves could be forced to take legal action if payments are delinquent.

For those seniors with good family relations, retaining a life estate or a support mortgage may be viable options, though both have the potential to create adversarial relationships with family members (Nelson and Whitman 1994; Hammond 1993). Retaining a life estate entails selling the right to possess and use the property upon the senior's death, while keeping an ownership interest for the remainder of the senior's life. This option would almost certainly require legal assistance, thus adding to the transaction costs. A support mortgage can be similarly complicated. Under this option, a senior would sell his or her home, and the buyer would grant a mortgage on the home to the senior; if the buyer-mortgagor failed to provide support for the senior-mortgagee, then the senior could foreclose upon the home. Even assuming the best of intentions, a support mortgage sets up a potentially adversarial relationship among family members.

Complicating any analysis is the fact that, according to a recent AARP survey, about 84 percent of those 55 or older want to age in place and stay in their homes if that is possible (Bayer and Harper 2000). In fact, the data strongly suggest that "the desire to remain in their current residence for as long as possible" is "more prevalent as age increases" (Bayer and Harper 2000: 25). About 82 percent of survey respondents would prefer to have help given to them in their current home, if it eventually becomes necessary, as opposed to moving to a skilled nursing facility or moving to a friend's or relative's home (Bayer and Harper 2000). Moreover, of the roughly 30 percent of survey respondents who said they do not expect to stay at home, 72 percent made no plans for when that day arrives—a statistic that seems to have held steady over more than a decade of repeated surveys (Bayer and Harper 2000).

For those seniors wishing to stay in their homes, reverse mortgages present a viable alternative, in part because the government and financial institutions have helped to create financial products to fill this niche. Broadly speaking, a reverse mortgage is a rising-debt/falling-equity loan that "allows a homeowner to withdraw the equity in her home in the form of a loan with a balance that increases rather than decreases over time" (Nelson 2009: 340). In a typical reverse-mortgage transaction, a homeowner can borrow money against the equity in his or her home and does not have to repay the loan until a triggering event occurs, such as selling the home (Nelson 2009).

Scholars, news reports, and senior advocates, however, have drawn attention to serious concerns about predatory and abusive lending practices along with significant costs associated with reverse mortgages (Twomey and Jurgens 2009; Nelson 2009). According to an article by Tara Siegel Bernard in the April 16, 2010, issue of *The New York Times*, some of the concerns focus on the cost of origination fees, the cost of insurance premiums designed to protect the lender if the home value declines, and the impact on intergenerational wealth transfer.

With prodding from state policymakers, however, reverse mortgages have the potential to be useful financial products that could help some seniors age in place. The key is eliminating tricks and traps, so that seniors and senior advocates can evaluate the financial costs associated with reverse mortgages and make informed decisions as to whether a reverse mortgage makes good financial sense in any given situation.

Reverse Mortgages and the Home Equity Conversion Mortgage (HECM) Program

Reverse mortgages function like a mirror image of traditional residential home loans. With a traditional residential home loan, lenders typically make single, lump-sum payments to borrowers at the beginning of the loan term, and that money is often used to purchase the property against which a mortgage is granted (Nelson and Whitman 1994). This traditional "forward mortgage," or rising equity/falling debt, loan is based on a borrower's personal credit-worthiness, personal guarantee, and projected income, which is used to make payments throughout the life of the loan. As the borrower makes payments under the terms of a traditional forward loan—excluding, for example, interest only loans, where borrowers' payments only cover the interest accruing—the amount of principle owed will slowly decline, and the homeowner's equity in the property will increase.

In contrast, reverse mortgages are typically nonrecourse[4, 5] loans secured by an elderly person's primary residence, and a balloon payment typically is not required until a specified event occurs such as transfer, death, or the senior moves out of the home permanently. Unlike traditional forward financing with regular, even monthly payments made by the borrower to the lender, reverse-mortgage lenders may make regular monthly payments to the borrower that increase the amount owed to the lender and are secured by the collateralized property (Nelson and Whitman 1994). To be eligible for insurance under the HECM program, however, a mortgage loan must allow for payment based on a line of credit, for a term set by the senior, for the tenure of the senior's ownership, or a mix of monthly payments and a credit line. Additionally, the lenders must allow the borrower to convert the method of payment during the term of the mortgage.

Three ingredients helped to make reverse mortgages more popular and accessible. First, in 1998, Congress made the Federal Housing Authority's (FHA) HECM program permanent (Nelson 2009). Second, "Fannie Mae established a secondary market for home equity conversion mortgages, which by increasing liquidity, helped increase the number of lenders willing to provide home equity conversion mortgages" (Nelson

2009: 340). Third, in 2006, the first reverse-mortgage-backed securities entered the market, with two private securitizations (Nelson 2009). Additionally, at the beginning of October 2006, Ginnie Mae announced that it also intended offer securities backed by FHA-approved reverse mortgages (www.ginniemae.gov/news2006/10-17presshud.asp?Section=Media).

Today, the bulk of all reverse-mortgage loans—about 90 percent—are insured by FHA and must meet the administration's standards for participation in the HECM program (Nelson 2009; Redfoot, Scholen and Brown 2007). FHA's standards are set by statute and rule and include lengthy requirements for borrowers and lender-loan originators, otherwise the loans cannot be insured by FHA . Under these guidelines, for example, the loan originator must be approved by the HUD Secretary, and mortgagors or the mortgagor's spouse must be at least 62 years old. Additionally, in terms of programmatic substance, a loan is only eligible to be insured by FHA if it meets consumer protection standards prescribed by statute. For example, the senior-mortgagor must receive counseling from an independent third party without an interest in the transaction along with a disclosure of all costs. Moreover, prepayment must be accepted without penalty; the loans must be nonrecourse, which means homeowners are not personally liable for the difference between the amount of indebtedness under the mortgage and the amount the mortgagee recovers at the time the mortgage is discharged; lenders must allow homeowners to select the way they wish to receive their distributions, whether in the form of a line of credit, on a monthly basis, or on some other basis; and mortgagees must allow mortgagors to convert the method of payment. Similarly, homeowners must be guaranteed payment, even if the lender defaults; lenders must agree to adhere to caps on origination fees of $6,000; and lenders must put firewalls in place so that loan originators have no financial incentive to provide other financial or insurance products.

Tricks and Traps

In the past few years, the reverse-mortgage industry has earned bad press for predatory practices. Some of the criticism has centered around poor adherence to pre-borrowing counseling standards set by FHA, concerns about fraud by individuals and predatory practices within the industry, and misleading marketing. As a result, leading senior advocacy organizations, such as AARP, have issued strong warnings against reverse mortgages. Bluntly put, AARP said: "A word of caution to older Americans considering reverse mortgages: Tread carefully" (Fleck 2009).

Counseling is an important safeguard to inform seniors and help them to steer clear of transactions that may not be in their best interest. In June 2009, however, The General Accounting Office (GAO) cautioned Congress that "HUD's internal controls do not provide reasonable assurance that counseling providers are complying with HECM counseling" requirements (Scirè 2009). An undercover investigation by GAO revealed that nearly half of the counselors failed to cover all of the topics required by HUD, such as other financial products and options that could be a better fit for some seniors, and some counselors misstated the length of the counseling sessions in their officially filed records (Scirè 2009).

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Fraud and predatory practices continue to be a problem in the industry, garnering headlines in newspapers and cautions from the Federal Bureau of Investigation (FBI). For example, according to an article by Anne Tergesen in the August 27, 2009, issue of *The Wall Street Journal*, a Florida mortgage broker scammed seniors out of about $1 million by diverting money that should have gone to repay their conventional forward loans as part of reverse mortgage refinance transactions. Similarly, in a March 2009 bulletin, the FBI cautioned that "unscrupulous loan officers, mortgage companies, investors, loan counselors, appraisers, builders, developers, and real estate agents are exploiting Home Equity Conversion Mortgages

(HECMs) . . . to defraud senior citizens" (Federal Bureau of Investigation 2009: 1). Scholars and consumer advocates believe the problem extends beyond a few bad apples (Nelson 2009; Twomey and Jurgens 2009). With the economic downturn, "[s]ome lenders view reverse mortgages as a replacement for subprime lending as a new way to generate revenue" (Nelson 2009: 360). In fact, "[m]any of the same players that fueled the subprime mortgage boom—ultimately with disastrous consequences—have turned their attention to the reverse market" (Twomey and Jurgens 2009: 1). Considering that the penetration of reverse mortgages as a product is about one percent of its potential market, lenders "forecast tremendous growth due to the 10,000 baby-boomers turning sixty-two every day" (Nelson 2009: 360-361).

Furthermore, misleading advertising also plagues the industry (Scirè 2009). GAO found that lenders and HUD use broad language that can mislead seniors about the security of their homes or misrepresent reverse mortgages as a government benefit program, rather than a private sector lending option (Scirè 2009).

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Making Reverse Mortgages Safe and Secure

Despite the concerns discussed above, the reverse-mortgage market is expected to grow significantly over the next decade (Nelson 2009). The anticipated growth of this market presents an opportunity to transform home equity conversion products into safe and secure borrowing options for seniors, the vast majority of whom would prefer to age in their homes (Bayer and Harper 2000).

Broadly speaking, state legislatures have an opportunity to establish programs in which lending institutions that agree to play by newly established rules aimed at ensuring reverse-mortgage loans are safe and secure could be placed on a list of preferred lenders provided to seniors seeking a loan. Those rules could require, for example, strong consumer protection standards, a ban on yield spread premiums, a suitability analysis, a "lite" product geared toward property taxes, prohibitions on inappropriate cross-selling of annuities and other financial or insurance products, and a private right of action for damages plus attorneys fees for violations of the program rules. For the vast majority of reverse-mortgage loans, these state standards could wrap around the basic requirements of FHA's HECM program.

Seniors would benefit from reverse mortgages provided by known lenders that agree to make sure their products meet these standards. Lenders would benefit from the imprimatur of the state government or agency administering the program and easy access to the expanding market of seniors. States would benefit by directing private resources to a problem that has beguiled legislators.

Among the many possible directions to go, here are a few recommendations that could form the basis of a discussion:

1. *Require participating lenders to meet tough consumer protection standards.* Ideally, HECM program standards could serve as a starting point to this discussion, especially because about 90 percent of the reverse-mortgage market already adheres to FHA's standards in order to benefit from insured loans. There would be several advantages to using HECM's standards as a starting point. First, consumers would be guaranteed that FHA will step in to provide performance if the lender defaults, and the lender would have a guarantee of a minimum return on its investment, in case real estate prices drop. Second, while GAO certainly raised valid concerns about

HUD's counseling requirement, the existence of the requirement benefits consumers and adherence can be improved through separate state standards or inducements. For example, the legislature could demonstrate how seriously it takes strict adherence to this requirement by suspending any lender making loans despite knowing that counseling was insufficient for a particular loan. This could be ensured by requiring loan originators to ask targeted questions for data collection about the substance of the counseling actually received and submit that paperwork to the state oversight agency for auditing purposes. Third, the program has reasonable caps on origination fees, and the legislature could always tighten these standards. Fourth, lenders are subject to substantial disclosure requirements, such as Truth in Lending.

However, HECM standards may not be appropriate in all instances. For example, current program standards limit the maximum amount a senior can borrow to $625,000. Requiring strict adherence to the program's standards would leave some asset-rich seniors out in the cold. But this may be a largely illusory problem in states like Maine, where the median sale price for a home in 2008 was $178,000.

2. *Require lenders or broker-originators to engage in a suitability analysis for reverse mortgages.* Arguably, seniors are in need of protection in a reverse-mortgage transaction. Seniors are considered to be more likely the victims of financial fraud or abuse, and the complexities of the transactions can be difficult to navigate (www.fbi.gov/majcases/fraud/seniorsfam.htm). Many brokers and lenders are trained to emphasize "the importance of building trust with potential customers" (Twomey and Jurgens 2009: 19). Because reverse mortgages are business deals "where each party ostensibly protects his or her own economic interests, in many states brokers and lenders owe no fiduciary duty to borrowers, and when problems arise brokers and lenders disavow any relationship of trust and confidence with borrowers" (Twomey and Jurgens 2009: 19).

   Requiring a suitability analysis would address some of these issues. A suitability analysis would establish "[a] standard of conduct that would require brokers and lenders to have reasonable grounds for believing that a reverse mortgage is suitable for the borrower" (Twomey and Jurgens 2009: 19). Consumer advocates have argued that it "is necessary to counteract market forces that favor profitability over responsible lending" (Twomey and Jurgens 2009: 19). Imposing a suitability analysis requirement emerged as a significant recommendation of the National Consumer Law Center and AARP for making the reverse-mortgage market safe (Twomey and Jurgens 2009; Redfoot, Scholen and Brown 2007). The use of a suitability analysis is well-established in securities law, imposing a duty on a securities broker only to sell securities that are suitable based on the buyer's financial wherewithal, tax status, overall investment objectives, and other factors (Hirsch 2008). But the use of a suitability analysis is only now gaining traction in the area of mortgage law due to the subprime mortgage meltdown (Hirsch 2008).

3. *Require appraisals conducted for reverse mortgages to be truly independent.* To avoid inflated values and abuse of the borrowing-lending process, it would be wise to require truly independent value appraisals for loans originated through this program. Doing so would remove another recently emerging area of fraud in the reverse-mortgage market: instances where speculators buy properties at low prices and, using inflated appraisals, sell them to seniors willing to take out a reverse mortgage as part of the transaction.

   A cost-effective way to tackle this issue would be to have the agency administering this program maintain a list of appraisers. During the application process, the lender or borrower could call the agency, which could then dispatch an appraiser directly to the property. The basic idea is to remove control in selecting appraisers from lenders. While appraisers are typically paid by and work for borrowers, as a de facto matter, lenders and broker-originators often set up the appraisal, which leads to an informal business incentive to keep the lender happy.

4. *Ban bonus payments to brokers for steering seniors to loans with interest rates higher than they could obtain.* Yield-spread premiums are payments from lenders to brokers "in exchange for the broker selling the borrower a loan with a higher interest rate than the borrower could have received" (Twomey and Jurgens 2009: 19). As it currently stands, neither HUD nor Congress have banned yield-spread premiums in the HECM program. Simply put, yield-spread premiums should be prohibited because they are an unscrupulous practice, especially in a market made up of seniors.

5. *Create a "lite" reverse-mortgage product specifically geared toward property taxes.* This suggestion would target one of the chronic complaints of many homeowners—that property taxes are too high for seniors to remain in their homes. A limited or "lite" product could be created with a streamlined application process, reduced origination fees, and an explicit requirement for quick and easy pay-off. Doing so would help seniors get targeted relief for property taxes, which could be made even more effective if lenders offer to escrow property taxes for borrowers. This suggestion would build on one of the key recommendations of AARP (Redfoot, Scholen and Brown 2007).

6. *Prohibit the sale of annuities, insurance, or other similar financial products; prohibit directing borrowers to other services where the broker, lender, or an affiliate would gain, directly or indirectly, in conjunction with a reverse-mortgage transaction.* Mostly, this is a belt-and-suspenders approach to piggy-back on recent changes to the HECM program. A state legislature, however, could expand the prohibition so that lenders, brokers, or their affiliates would be banned from directing borrowers to contractors or purveyors of other services, if the lender, broker, or an affiliate would gain financially. At its core, the motivating principle is that brokers and lenders should not gain from a transaction in which they help seniors tap into the equity of their homes only to redirect it back to themselves or an affiliate.

7. *Require adherence to advertising regulations aimed at eliminating misleading advertising.* As mentioned above, GAO identified six commonly appearing misleading claims in reverse-mortgage advertising materials. Lenders participating in this program should forgo all misleading advertising and claims, or lose their status as a preferred lender. To help with enforcement of this requirement, the agency administering the program could be authorized to deal with complaints of misleading advertising administratively, subject of course to judicial review.

8. *Lenders that are the subject of repeated substantiated complaints resulting in findings of program violations or other evidence impugning trustworthiness lose their preferred status.* This suggestion is aimed at providing recourse against a lender that flouts program regulations either as a matter of policy or as a result of a few bad apples. The carrot extended to lenders is participation as a preferred lender. If lenders fail to adhere to the program's guidelines, they should lose the benefit of that status.

9. *Provide the appropriate agencies with enforcement power as well as authorize a private right of action with the lender/broker paying attorney fees for the borrower if they are found to have preyed upon a senior.* This suggestion is a counter-point to (8) and serves as the stick. For consumer protection laws to be effective, there must be a punishment for action that harms consumers. With that in mind, legislatures should consider providing the appropriate agencies with enforcement powers to seek civil or even criminal penalties if conduct by lenders warrants it. Consumers should also be empowered to bring actions, with the lender bearing the cost if it turns out the lender has violated program rules and brought harm to the consumer. For example, in Maine, the state's Unfair Trade Practices Act provides a ready legal rubric within which these goals could be achieved, and it would be worth considering whether the most effective approach would be to deem violations of the reverse-mortgage program violations of the Maine Unfair Trade Practices Act, or a similar statute in another state.

Even if reverse mortgages can be successfully reformed to eliminate tricks and abusive practices, there are significant limitations to the product in the context of a broader analysis for seniors. Seniors, advocates, and those helping seniors through these decisions should give serious consideration to all available alternatives, especially when there are family members who could help to facilitate other alternatives. *The New York Times* article by Bernard provides an example of how to analyze whether a reverse mortgage makes sense in a given financial situation (www.nytimes.com/2010/04/17/your-money/mortgages/17money.html?8dpc).

CONCLUSION

Maine, like many states, is at a crossroads when it comes to policy options to help cash-strapped seniors. Maine tried a public sector solution through the Elderly Tax Deferral Program, but it lacked staying power, in part because it tied up significant resources. And recent efforts aimed at reviving the program—even with a higher minimum age for eligibility—demonstrate that policymakers are less than excited about the prospect of committing substantial public resources to this problem.

Whether now or later, state policymakers will be faced with the daunting task of planning for the support of an aging population.

That leaves the private sector, and state legislatures have a unique opportunity to help shape market forces so that seniors are offered a safe and secure financial product. Given the overwhelming desire of most seniors to remain in their homes, one way to guide the market would be for state legislatures to offer to place reverse-mortgage lenders on a preferred list if the lenders agree to play by rules designed to ensure fair transactions for seniors. Those rules could include, for example, tough consumer-protection standards, a ban on yield-spread premiums, a suitability analysis, a "lite" product geared toward property taxes, prohibitions on inappropriate cross-selling of annuities or other financial products, a private right of action for damages plus attorneys fees for violations of the program rules, along with the other suggestions discussed in this article.

Whether now or later, state policymakers will be faced with the daunting task of planning for the support of an aging population. By taking active steps now to get in front of the problem before it grows further, policymakers will be laying the groundwork for a larger group of seniors to age with dignity.

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ENDNOTES

1. "Tricks and traps" is a phrase often used by Harvard Law School Professor Elizabeth Warren to refer to murky arrangements and agreements in credit card contracts. A transcript of an interview with Elizabeth Warren about credit card "tricks and traps" is available on the PBS Web site: www.pbs.org/now/shows/501/credit-traps.html. The term seems equally as useful here.
2. Details about the Elderly Tax Deferral Program is found in Maine Revised Statutes, Title 36, Chapter 908: Deferred Collection of Homestead Property Taxes, particularly §§ 6250, 6251, 6254, 6255, 6257, 6259, and 6267. This information is available at www.mainelegislature.org/legis/statutes/36/title36ch908sec0.html.
3. Housing cost information comes from the Maine State Planning Office, Maine Economics and Demographics Program, which provides access to U.S. Census data and allowing users to build spreadsheets for particular data sets. Data cited comes from the housing data set for 2008. http://econ.maine.gov/index/sheet.
4. Nonrecourse financing refers to those arrangements where the borrower is not personally liable, and in this context means the estate of a deceased senior would not be responsible for any amount owed under the promissory note.
5. Specific legal information about reverse mortgages can be found in U.S. Code Title 12-Banks and Banking, 13-National Housing, Subchapter II-Mortgage Insurance §§ 1715z-20: Insurance of home equity conversion mortgages for elderly homeowners. This information is available at http://www.techlawreporter.com/toa/codes/usc/titles/TITLE12/12USC1715z-20.html.

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