



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: May 6, 2021

Mortgagee Letter 2021-11

To: All FHA-Approved Mortgagees
All Direct Endorsement Underwriters
All Eligible Submission Sources for Condominium Project Approvals
All FHA Roster Appraisers
All FHA-Approved 203(k) Consultants
All HUD-Approved Housing Counselors
All HUD-Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Subject Amendments to HUD's Non-Borrowing Spouse Policy for all Home Equity Conversion Mortgage (HECM) Loans

Purpose Pursuant to the authority granted in the Reverse Mortgage Stabilization Act of 2013, 12 U.S.C. § 1715z-20(h)(3), this Mortgagee Letter amends regulations for Home Equity Conversion Mortgages (HECMs) regarding Non-Borrowing Spouses.

This Mortgagee Letter applies to all HECM loans, regardless of case number assignment, that comprise a valid first lien security interest in real property under applicable state law.

Effective Date Mortgagees may begin using the new procedures immediately for all HECMs but must implement all required procedures set forth in this Mortgagee Letter no later than 120 days from the date of publication of this Mortgagee Letter.

All updates will be incorporated into a forthcoming update of the HUD Single Family Housing Policy Handbook 4000.1.

Public Feedback

HUD welcomes feedback from interested parties for a period of 30 calendar days from the date of issuance. To provide feedback on this policy document, please send any feedback to the FHA Resource Center at answers@hud.gov. HUD will consider the feedback in determining the need for future updates.

Affected Topics

The following sections of HUD’s regulations and Mortgagee Letters are supplemented, amended and where they conflict are superseded in accordance with this Mortgagee Letter:

Regulations
24 CFR § 206.3 <i>Definitions</i>
24 CFR § 206.27 <i>Mortgage Provisions</i>
24 CFR § 206.39 <i>Principal Residence</i>
24 CFR § 206.55 <i>Deferral of Due and Payable Status for Eligible Non-Borrowing Spouses</i>
24 CFR § 206.59 <i>Obligations of mortgagee.</i>
24 CFR § 206.107 <i>Mortgagee Election of Assignment or Shared Premium Option</i>
Mortgagee Letters
Mortgagee Letter 2014-07, <i>Home Equity Conversion Mortgage (HECM) Program: Non-Borrowing Spouse</i>
Mortgagee Letter 2014-21, <i>Revised Changes to the Home Equity Conversion Mortgage (HECM) Program Requirements</i>
Mortgagee Letter 2015-02, <i>Home Equity Conversion Mortgage (HECM) Program: Policy Guidance and Certifications for Eligible and Ineligible Non-Borrowing Spouses and Seasoning Requirements Guidance</i>

Authority

Reverse Mortgage Stabilization Act of 2013, 12 U.S.C. § 1715z-20(h); also National Housing Act § 230, 12 U.S.C. § 1715u.

Background

On September 23, 2019, HUD issued policy guidance in Mortgagee Letter 2019-15, which eliminated several interim deadlines relating to the Mortgagee Optional Election (MOE) Assignment for HECM mortgagees and removed the requirement for a Eligible Non-Borrowing Spouse to establish good and marketable title or the legal right to remain in the mortgaged property in order to qualify for a deferral of Due and Payable status. The policies in that Mortgagee Letter were limited only to HECMs with FHA case number assigned before August 4, 2014.

Through this Mortgagee Letter, the provisions of Mortgagee Letter 2019-15, regarding the elimination of the requirement for an Eligible Non-Borrowing Spouse to establish good and marketable title or the legal right to remain in

the mortgaged property, are now available for all HECMs, regardless of Case Number assignment date, but must be implemented for all case numbers assigned on or after 120 days from the date of this Mortgagee Letter.

FHA is revising the deferral eligibility requirements to allow deferrals to occur when the Non-Borrowing Spouses continue to reside in their homes as their Principal Residences notwithstanding the borrowers remaining in health care facilities for a period that exceeds 12 consecutive months. The existing HECM policy creates inequities between Non-Borrowing Spouses based upon the reason that their spouse is no longer occupying the property. Specifically, the current policy treats a Non-Borrowing Spouse more favorably if the borrower passes away than if the borrower must move to a health care facility for more than 12 consecutive months.

Summary of Changes

The specific updates include the following:

- expands criteria which will begin a deferral period for HECMs with case numbers assigned on or after August 4, 2014;
- expands assignment criteria for Mortgagee Optional Election (MOE) Assignments for HECMs with case numbers assigned before August 4, 2014; and
- eliminates the requirement for an Eligible Non-Borrowing Spouse to establish marketable title or other legal right to remain in the property following the death of the HECM borrower.

Expanded Initiation of Deferral Period for HECMs with Case Numbers Assigned on or After 8/4/2014

For HECMs with a case number assigned on or after August 4, 2014, if the property is no longer the Principal Residence of a borrower due to the borrower's residence in a health care facility for more than 12 consecutive months but remains the Principal Residence of an Eligible Non-Borrowing Spouse and all qualifying attributes are met, the due and payable status may be deferred as long as the Eligible Non-Borrowing Spouse continues to meet the Qualifying Attributes and the requirements of 24 CFR § 206.55(d) and (e) as modified by this Mortgagee Letter.

**Expanded
Assignment
Eligibility for
HECMs with
Case Numbers
assigned
before
8/4/2014**

For HECMs with a case number assigned before August 4, 2014, the criteria for MOE Assignment eligibility is expanded to include HECMs eligible to be called due and payable under the terms of the original mortgage due to the property no longer being considered the Principal Residence of a borrower due to the borrower's residence in a health care institution for more than 12 consecutive months.

The definition of "Eligible Surviving Non-Borrowing Spouse" is expanded to include the spouse of a HECM borrower where the HECM loan was assigned an FHA case number prior to August 4, 2014, and who:

1. Was either:
 - a. legally married, as determined by the law of the state in which the spouse and borrower reside(d) or the state of celebration, to the HECM borrower at the time of loan closing and who either (i) remained married to the HECM borrower until the HECM borrower's death or (ii) remains married to the HECM borrower, in situations in which the HECM borrower has resided in a healthcare institution for more than twelve consecutive months; or
 - b. engaged in a committed relationship with the borrower akin to marriage but was prohibited, at the time of HECM loan origination, from legally marrying the HECM borrower based on the gender of both the borrower and Non-Borrowing Spouse, but was legally married prior to the death of the borrower, as determined by the law of the state in which the spouse and borrower reside(d) or the state of celebration, to the HECM borrower and (i) remained married until the HECM borrower's death or (ii) remains married to the HECM borrower, in situations in which the HECM borrower has resided in a healthcare institution for more than twelve consecutive months.
 2. Has occupied, and continues to occupy, the property securing the HECM as his or her Principal Residence.
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Elimination of Requirement for Eligible Non-Borrowing Spouse to Establish Marketable Title or Other Right to Remain in Property

FHA no longer requires, as a condition of a Deferral Period for Eligible Non-Borrowing Spouses, that the Non-Borrowing Spouse possess or demonstrate the ability to obtain good and marketable title to the property or a legal right to remain in the property for life. The Deferral Period effects only the HECM's due and payable status and does not confer or interfere with any other real property interests. FHA had previously eliminated this requirement for HECMs with FHA case numbers assigned before August 4, 2014 and hereby expands this provision to all HECMs.

The Deferral Period shall cease immediately once the Non-Borrowing Spouse ceases to occupy the property as his or her Principal Residence or fails to meet the requirements of 24 CFR § 206.55(d) and (e), as modified by this mortgagee letter. The HECM security interest is not adversely impacted by the removal of this requirement. The institution of a Deferral Period is not a determination by FHA of the property rights of the Non-Borrowing Spouse or any other party who might claim an interest in the property.

Information Collection Requirements

The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0059, 2502-0189, 2502-0524, and 2502-0611. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a currently valid OMB control number.

Questions

Any questions regarding this Mortgagee Letter should be directed to the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number by calling the Federal Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Signature

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