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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

**April 23, 2015** **Mortgagee Letter 2015-11**

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| **To** | **All FHA Reverse Mortgage Loan Servicers** |
| **Subject** | **Loss Mitigation Guidance for Home Equity Conversion Mortgages (HECMs) in Default due to Unpaid Property Charges** |
| **Purpose** | The purpose of this Mortgagee Letter is to communicate permissible loss mitigation options mortgagees may provide when property charges are not paid in accordance with the terms of a HECM. |
| **Affected Policy** | This Mortgagee Letter supersedes and rescinds Mortgagee Letter 2011-01 in its entirety. |
| **Effective Date** | This Mortgagee Letter is effective immediately for all property charge defaults occurring on or after the publication date. For defaults occurring before the date of this Mortgagee Letter, mortgagees have 180 days from the date of publication to review their portfolio to bring HECM loans into compliance with the requirements herein.<br><br>For HECM loans currently subject to a repayment plan, such plans may continue so long as they remain current. In the event that they cease to remain current, mortgagees must comply with the requirements of this Mortgagee Letter. |
| **Loss Mitigation not Available during a Deferral Period** | The loss mitigation options set out in this Mortgagee Letter are not available during a Deferral Period. In addition, HECM loans that are in default, and eligible to be called due and payable for reasons other than the death of the last surviving mortgagor, are not eligible for an assignment.<br><br>Nothing in this Mortgagee Letter confers any right to a Mortgagor or a Non-Borrowing Spouse to any action on the part of HUD or the mortgagee. |

**HECM Loans in Default due to Unpaid Property Charges**

Mortgagees are permitted to make property charge payments on behalf of mortgagors, who are borrowers on the HECM note, from the mortgagor's funds, available under the HECM. If the mortgagor has insufficient funds available under the HECM to satisfy these unpaid property charges, the mortgagor is in default, the mortgage is eligible to be called due and payable, and the mortgagee must submit a due and payable request.

During a Deferral Period, a mortgagee may not make property charge payments using HECM proceeds as no further disbursements are available under the HECM. If a property charge payment is missed during a Deferral Period, the mortgagee must notify any Eligible Non-Borrowing Spouse that an obligation of the mortgage was not satisfied and that the Deferral Period is ending unless the default is cured within 30 days.

If the default is cured within such time, the Deferral Period Reinstatement provisions of Mortgagee Letters 2015-02 and 2015-03 will apply.

If the default is not cured within such time, mortgagees must proceed in accordance with applicable regulations:

a) to initiate foreclosure; and
b) reasonable diligence in prosecuting foreclosure.

Should a default be cured after the mortgagee has initiated foreclosure, the Deferral Period Reinstatement provisions of Mortgagee Letters 2015-02 and 2015-03 will apply.

Mortgagees, regardless of the default, must take whatever steps are necessary to protect its and HUD's security interests.

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**HECM Mortgages with Set-Aside Accounts**

For HECM loans with set-aside accounts for the purpose of paying property charges, the mortgage will be considered in default if:

- The set-aside account has been exhausted of available funds to make property charge payments; and
- The mortgagor, after being notified of their outstanding property charge obligation, fails to remit the property charge payment in full within 30 days as required; and
- The Principal Limit has been exhausted, requiring the mortgagee to make the property charge payment using corporate funds.

The guidance herein will apply to all mortgages with a set-aside account either required by the mortgagee at origination or elected by the mortgagor.

**Requesting Due and Payable**

Except during a Deferral Period, mortgagees must submit to HUD a Due and Payable Request, within 30 days, whenever a mortgage becomes eligible to be called due and payable because an obligation of the mortgage is not met. Mortgagees must submit Due and Payable Requests via the Home Equity Reverse Mortgage Integrated Technology (HERMIT) system.

Where a mortgagee has determined that a loss mitigation option is available under this Mortgagee Letter and is willing to offer a HECM borrower the available loss mitigation option, a mortgagee may request a Property Charge Loss Mitigation Extension in the HERMIT system to extend the aforementioned foreclosure timeframes, provided that all requirements established herein are met.

Any approved extension of the aforementioned timeframes ceases immediately if, at any point, the mortgagee determines:

(1) That no loss mitigation options are viable; or
(2) The mortgagor is unwilling to reimburse the property charge payments advanced on their behalf either by self-certification or non-communication with a mortgagee for 60 days; or
(3) The mortgagor is unable to cure the default; or
(4) The last surviving mortgagor dies.

Any request for an extension to a foreclosure timeframe due to the mortgagee's election to offer a permissible loss mitigation option under this Mortgagee Letter must include documentation of the mortgagee's loss mitigation efforts to prevent foreclosure.

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**Content of Due and Payable Notice**

Mortgagees must inform mortgagors in writing that they have thirty (30) days to respond to a Due and Payable Notice[1]. All Due and Payable Notices sent to mortgagors must reference available loss mitigation options, if any, and inform the mortgagor of his/her ability to sell his/her property or execute a Deed-in-Lieu of foreclosure.

Mortgagees must refer mortgagors to a HUD-approved Housing Counseling Agency prior to initiating foreclosure.

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**Previous Due and Payable Requests**

Due and Payable Requests that were approved prior to the publication of this Mortgagee Letter will not be rescinded. In addition, HECMs currently subject to foreclosure actions are not eligible for the permissive loss mitigation guidance herein.

[1] The specific mortgagee requirements for a Due and Payable Notice are outlined in HUD regulations and previously published guidance.

**Curing the Default Post a Due and Payable Request**

At any time prior to a foreclosure, a HECM loan will no longer be considered to be in default if a Mortgagor or an Eligible Non-Borrowing Spouse becomes current on all property charges, including having repaid all corporate advances made by the mortgagee (if any) and has fully cured any outstanding reasons for default. If the loan was called due and payable, and foreclosure proceedings were initiated, HUD's regulations regarding reinstatement found at 24 CFR § 206.125 apply. Where the last surviving mortgagor has died and there is an Eligible Non-Borrowing Spouse, the Deferral Period Reinstatement provisions of Mortgagee letter 2015-02 and 2015-03 will apply.

A reinstated mortgage may be eligible for assignment provided all other FHA requirements for assignment have been satisfied. Mortgagees shall follow existing procedures for submitting assignment requests. Submitted requests must include documentation validating that the mortgage is in compliance with all FHA requirements.

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**Loss Mitigation for HECM Mortgagors with Outstanding Property Charges**

For HECM loans that are in default due to unpaid property charges, mortgagees shall provide a Property Charge Delinquency Letter to the mortgagor as soon as the mortgagee receives notice of a missed payment for property charges. Mortgagees may vary the actual structure of the letter, but must include the following substantive information:

(1) State that an obligation of the borrower to pay property charges has not been met;
(2) State that failure of the borrower to pay property charges will result in the loan becoming due and payable;
(3) Include, where a mortgagee has advanced corporate funds on behalf of the borrower, the amount advanced;
(4) Provide notice of availability of Housing Counseling; and
(5) Provide notice of any available loss mitigation options the mortgagee may offer.

Mortgagees may offer the following loss mitigation options for a mortgagor in default due to unpaid property charges:

(1) Refinancing the defaulted HECM into a new HECM if possible under all applicable HECM origination requirements; and
(2) Providing information, at no cost to the mortgagor, of local assistance programs (e.g., ELMORE) available for mortgagors.

If the aforementioned loss mitigation options are unavailable, have been declined by the mortgagor, or have been otherwise exhausted, mortgagees may offer the following:

Option (1): The option of a Repayment Plan to satisfy outstanding Corporate Advances made for Property Charge Defaults.

Option (2): The option for an extension of the foreclosure timeframes due to an "At Risk" HECM Mortgagor.

Mortgagees that elect to provide the aforementioned loss mitigation for HECM loans must update HUD about loans receiving such loss mitigation assistance. This includes maintaining loan level, loss mitigation data and updating the HERMIT system with the following information for loans associated with a Repayment Plan[2]:

- Total Outstanding Arrearage
- Monthly Surplus Income
- Term of Repayment Plan
- Amount of Monthly Repayment Plan Payment
- Due Date of Next Monthly Payment
- When a Mortgagor Experiences a Hardship
- Reason for Hardship

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**Option 1: HECM Loss Mitigation Repayment Plan**

Before offering this loss mitigation option, the mortgagee must determine the mortgagor's eligibility and likelihood of success under a Repayment Plan. If the mortgagor will not be able to repay the corporate advance within the permissible time, this loss mitigation option is not available. Additionally, any permissible Repayment Plan must provide that in the event the last surviving mortgagor dies before the Repayment Plan is paid in full, any outstanding amounts owed become immediately due and must be satisfied within 30 days.

Mortgagees must follow certain steps when evaluating a mortgagor for a Repayment Plan. These steps are as follows:

***A. How to Determine if a Mortgagor is Eligible for a Corporate Advance/Repayment Plan***

When assessing a mortgagor for a Corporate Advance/Repayment Plan, mortgagees must:

(1) Determine the total amount, less any outstanding HOA fees[3], of the HECM mortgagor's net outstanding balance of unpaid property charges and any property charges due for the next 90 days; and

[2] The HERMIT modifications required to capture the Repayment Plan data are targeted for release in June, 2015.
[3] Any outstanding Home Owners Association (HOA) fees are not eligible to be included in a Repayment Plan.

(2) Evaluate the mortgagor's ability, using the financial information provided by the mortgagor as set forth in section B below, to repay the mortgagee's corporate advances through a Repayment Plan of a time period determined by the mortgagee except that in no event may a Repayment Plan exceed five years or such shorter time period as necessary to ensure repayment before the mortgage reaches 98 percent of the Maximum Claim Amount (MCA).

### *B. Repayment Plan Calculation*

Mortgagees must calculate the terms of a Repayment Plan by:

Dividing the "Total Arrearage" in equal monthly installments, not to exceed 60 months or in such shorter time period as necessary to ensure repayment before the mortgage reaches 98 percent of the Maximum Claim Amount (MCA) and which do not exceed 25 percent of the mortgagor's monthly surplus income amount.

If only monthly installments exceeding 25 percent of the mortgagor's monthly surplus amount can be identified after performing the aforementioned calculation, mortgagees may extend the Repayment Plan to maximum remaining time available to achieve the lowest possible payment.

Calculating "Monthly Surplus Income"

For the purposes of this Mortgagee Letter, the mortgagor's "Monthly Surplus Income" is determined by subtracting the mortgagor's necessary living expenses – including healthcare, revolving and installment debt, any payment obligations, utility bills, and other household-related expenses - and a monthly amount needed for property charges due over the next twelve months from available sources of income as stated by the mortgagor.

Calculating "Total Arrearage"

For the purposes of this Mortgagee Letter, the "Total Arrearage" is determined by adding the outstanding corporate advances made for the account to any property charges, less any for HOA fees, due for the next 90 days. Anytime a property charge payment is missed, with the exception of a HOA fee, the "Total Arrearage" should be recalculated.

Please see Appendix A for sample calculations.

### *C. Options available where Additional Unpaid Property Charges are incurred or a Hardship is experienced after a Repayment Plan has been established.*

Additional Unpaid Property Charges

If the HECM mortgagor is currently subject to a Repayment Plan and again fails to pay required property charges, the mortgagee, may reevaluate the mortgagor for an additional corporate advance. Mortgagees must solicit new financial information from the mortgagor to conduct this new Repayment Plan assessment.

The revised Repayment Plan must recalculate the "Total Arrearage", which should include all outstanding corporate advances made. If the mortgagee determines that a new Repayment Plan is not reasonable after performing this calculation, this loss mitigation option is not available. No mortgagor may be given more than 60 months (*or such shorter amount of time as necessary to ensure repayment before the mortgage reaches 98 percent of the MCA*) total to repay any and all advances.

Experienced Hardships

If the mortgagor experiences a decrease in their available amount of surplus income due to a verified hardship (e.g., illness, death of a household member who was identified as a contributor of income in a previous Repayment Plan calculation, emergency home repair, loss of employment income, etc.) and seeks to have a Repayment Plan adjustment, mortgagees must solicit new financial information from the mortgagor to conduct a new Repayment Plan assessment.

If the mortgagee determines that the recalculated Repayment Plan is reasonable, the mortgagor may be provided with a new monthly payment amount and term. The mortgagee may make further adjustments to the recalculated Repayment Plan in accordance with this section. However, no mortgagor may be given more than 60 months (*or such shorter amount of time as necessary to ensure repayment before the mortgage reaches 98 percent of the MCA*) total to repay any and all advances.

### *D. Unsuccessful Repayment Plan Performance*

A mortgagor's Repayment Plan performance is unsuccessful when a full monthly payment is not made within 60 days of the monthly payment due date.

For a mortgagor failing to perform successfully under an existing Repayment Plan:

- If the outstanding arrearage is less than $5,000, the mortgagee may, after reevaluating the mortgagor, provide the mortgagor with a recalculated Repayment Plan if the mortgagee determines that it is reasonable; or
- If the outstanding arrearage is greater than $5,000 or the mortgagee determines that a recalculated repayment plan is not reasonable, the mortgagee may assess one of the subsequent loss mitigation options reflected below; or
- If the mortgage has reached or will reach – prior to curing the default – 98 percent of the Maximum Claim Amount (MCA), no further Repayment Plans should be entered into and any extensions provided to the aforementioned foreclosure timeframes cease immediately.

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**Option 2: "At Risk" HECM Mortgagors and Allowable Foreclosure Extensions**

If a Repayment Plan is insufficient or unsuccessful, any extension to the aforementioned foreclosure timeframes cease immediately and the mortgagee must proceed in accordance with HUD's regulations. However, mortgagees may request an additional extension to the foreclosure timeframes, if the following criteria are met:

- Youngest living mortgagor is at least 80 years of age; **and**
- The mortgagee, after employing acceptable and prudent servicing practices, has determined that the mortgagor has critical circumstances such as a supported terminal illness, substantiated long-term physical disability, or a "unique" occupancy need (e.g., terminal illness of family member receiving care at the residence).

Mortgagees seeking a Property Charge Loss Mitigation Extension in HERMIT in accordance with this section must carefully denote their request as **"AT RISK"**. The mortgagee must also include supporting documentation validating that the conditions stated above are met. And, if the request is approved, provide (on no less than an annual basis) supporting documentation that the conditions continue to be met. Should one of the aforementioned criteria cease to be met, any approved extension ceases immediately. Notwithstanding any other provision of this Mortgagee Letter, HUD will determine in its sole and exclusive discretion whether an extension request will be granted and reserves the right to require the mortgagee to timely proceed to foreclosure.

If the last-surviving mortgagor dies, the extension to the foreclosure timeframe allowed by the "AT RISK" criteria ceases immediately.

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**Repayment Plans Satisfied Immediately Upon Death**

Any approved Property Charge Loss Mitigation Extension immediately ceases when the last-surviving mortgagor dies. Any outstanding corporate advances owed become immediately due. If any amount owed is not satisfied within thirty (30) days, the mortgagee must proceed in accordance with applicable regulations.

If any outstanding amounts due are satisfied, the mortgagee must request that the due and payable status on the HECM loan related to the repayment of any approved property charges be rescinded.

If the loan has been approved for reinstatement and, if all other requirements for a Deferral Period are met, the Deferral Period for an Eligible Non-Borrowing Spouse begins. Mortgagees are required to adhere to all issued guidance related to a HECM Non-Borrowing Spouse.

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**Information Collection Requirements**

The information collection requirements contained in this document have been 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 Number 2502-0429. 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.

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**Questions**

Any questions regarding this Mortgagee Letter may be directed to the HUD's National Servicing Center at (877) 622-8525. Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

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**Signature**

Edward L. Golding
Principal Deputy Assistant Secretary for Housing

**Attachment**

# APPENDIX A – Calculating a Repayment Plan

## <u>**Initial Calculation**</u>

The following chart depicts an example of how mortgagees may perform and apply the Repayment Plan calculation for determining the mortgagor's potential Repayment Plan parameters:

| Total Arrearage | | Annual Surplus Income | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 5000 | | 15000 | 13000 | 11000 | 9000 | 7000 | 5000 | 3000 |
| Repayment Terms | Monthly Repayment | Monthly Surplus Income | | | | | | |
| | | 1250 | 1083 | 917 | 750 | 583 | 417 | 250 |
| 12 | 417 | 33% | 38% | 45% | 56% | 71% | 100% | 167% |
| 24 | 208 | 17% | 19% | 23% | 28% | 36% | 50% | 83% |
| 36 | 139 | 11% | 13% | 15% | 19% | 24% | 33% | 56% |
| 48 | 104 | 8% | 10% | 11% | 14% | 18% | 25% | 42% |
| 60 | 83 | 7% | 8% | 9% | 11% | 14% | 20% | 33% |

A mortgagor with a "Total Arrearage" equal to $5,000 and that is determined to have a surplus income of $1,250 per month, must be placed into a 24 month Repayment Plan agreement with monthly payments totaling $208. Note that the monthly repayment amounts for the 36, 48, and 60 month Repayment Plan intervals are also below 25% of the mortgagor's monthly surplus income, yet the 24 month agreement is correct as it is the shortest Repayment Plan time frame that the monthly repayment amount was less than 25% of the monthly surplus income.

If the mortgagor had a "Total Arrearage" of $5,000 and is determined to have a surplus income of $250 per month, the mortgagee must extend the Repayment Plan agreement out to five years with equal monthly payments totaling $83 since there is no repayment option less than 25% of the monthly surplus income.

## <u>**Recalculation Due to Reduction in Surplus Income or Missed Property Charge Payment**</u>

A Mortgagor has the following Repayment Plan identifiers:

| | |
|---|---|
| Surplus Income | $1,250 |
| Outstanding "Total Arrearage" | $2,912 |
| Initial Repayment Plan Length | 24 Months |
| Months Remaining on Repayment Plan | 14 Months |
| Monthly Repayment Plan Payment | $208 |

**If the mortgagor experiences a financial hardship…**

The mortgagee may recalculate the Repayment Plan using the following steps:

1. Determine the new Surplus Income of the Mortgagor

2. Determine the new Repayment Plan Length and Payment

- Calculate the potential Repayment Plan amount by dividing the outstanding "Total Arrearage" by 12, 24, 36, 48, 50 month intervals **(NOTE: Assessing the mortgagor for a 60 month Repayment Plan is no longer an option due to 10 months of previous repayment plan participation. Mortgagees must also adjust remaining availability if the Mortgage is projected to reach 98% of the Maximum Claim Amount within a time frame sooner than the amount of months available.)**

- Choose the Repayment Plan length and payment at the first annual time interval in which the repayment amount is less than 25% of the surplus income. If, as a result of this Repayment Plan calculation, there is no repayment option available for the borrower that is less than 25% of their monthly surplus income, the servicer may extend the Repayment Plan out to the maximum time remaining for mortgagor participation. Thus, in this example, the servicer may extend the Repayment Plan out to 50 months, if none of the recalculated repayment options were less than 25% of the borrower's monthly surplus income.

*Example:*

| Outstanding Total Arrearage | Annual Surplus Income |
|---|---|
| 2912 | 7500 |

| Repayment Terms | Monthly Repayment | Monthly Surplus Income 625 |
|---|---|---|
| 12 | 243 | 39% |
| 24 | 121 | 19% |
| 36 | 81 | 13% |
| 48 | 61 | 10% |
| 50 | 58 | 9% |

A mortgagor's new Repayment Plan identifiers:

| | |
|---|---|
| New Surplus Income | $625 |
| Outstanding "Total Arrearage" | $2,912 |
| New Repayment Plan Length | 24 Months |
| New Time Remaining on Repayment Plan | 24 Months |
| New Monthly Repayment Plan Payment | $121 |

**If the mortgagor misses another property charge payment…**

The mortgagee may recalculate the Repayment Plan using the following steps:

1. Ascertain the new "Total Arrearage" by adding the new corporate advances for the recently missed property charges (Mortgagees may include an estimated amount for upcoming property charges in the next six months).

2. Determine the new Repayment Plan Length and Payment

    - Calculate the potential Repayment Plan amount by dividing the outstanding "Total Arrearage" by the amount of time remaining on the initial Repayment Plan agreement.

    - If the new monthly repayment amount is still less than 25% of the mortgagor's monthly surplus income, then the time interval of the Repayment Plan does not extend. However, if the monthly payment plan amount surpasses 25% of the monthly surplus income, then the mortgagee must choose the Repayment Plan length and payment at the first annual time interval in which the repayment amount is less than 25% of the surplus income. If, as a result of this Repayment Plan calculation, there is no repayment option available for the borrower that is less than 25% of their monthly surplus income, the servicer may extend the Repayment Plan out to the maximum time remaining for mortgagor participation.

*Example:*

| Total Arrearage | Annual Surplus Income |
|---|---|
| 3600 | 15000 |

| Repayment Terms | Monthly Repayment | Monthly Surplus Income 1250 |
|---|---|---|
| 14 | 257 | 21% |
| 24 | 150 | 12% |
| 36 | 100 | 8% |
| 48 | 75 | 6% |
| 50 | 72 | 6% |

A mortgagor's new Repayment Plan identifiers:

| | |
|---|---|
| Surplus Income | $1250 |
| New Outstanding "Total Arrearage" | $3,600 |
| Time Remaining on Initial Repayment Plan | 14 Months |
| New Repayment Plan Length (No change) | 14 Months |