U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: April 25, 2014

To: All Approved Mortgagees

Mortgagee Letter 2014-07

Subject Home Equity Conversion Mortgage (HECM) Program: Non-Borrowing Spouse

Purpose of Mortgagee Letter This Mortgagee Letter uses the authority granted HUD in the Reverse Mortgage Stabilization Act of 2013 to amend the Federal Housing Administration's (FHA) HECM program regulations and requirements concerning due and payable status where there is a Non-Borrowing Spouse at the time of loan closing.

Effective Date The requirements contained in this Mortgagee Letter will be effective for all Case Numbers issued on or after August 4, 2014.

Affected Topics The following sections of HUD's regulations and Handbook 4235.1 are amended and where they conflict are superseded in accordance with this Mortgagee Letter:

Regulations
24 CFR § 206.3 Definitions
24 CFR § 206.27 Mortgage provisions
24 CFR § 206.39 Principal residence
24 CFR § 206.40 Disclosure and verification of Social Security and Employer Identification Numbers
24 CFR § 206.41 Counseling
24 CFR § 206.125 Acquisition and sale of the property
24 CFR § 206.211 Annual determination of principal residence

Affected Topics (continued)

Handbooks and Mortgagee Letters
4235.1 Chapter 1-4 and Chapter 5-5, 5-6, and 5-7 Principal Limit
4235.1 Chapter 1-13 Recovery of Mortgage Proceeds
4235.1 Chapter 2 Borrowers Counseling
4235.1 Chapter 6-11 Required Documents for Endorsement
4330.1 Rev 5 Chapter 13-3 B. Repayment of the Mortgage
4330.1 Rev 5 Chapter 13-33 Disposition of Due and Payable Mortgages
4330.1 Rev 5 Chapter 13-34 Foreclosure
Mortgagee Letter 2010-22 Home Equity Conversion Mortgage Program Submission of Case Binder Documents
Mortgagee Letter 2010-07 Revisions to Model Home Equity Conversion Loan Agreement
Mortgagee Letter 2011-31 Home Equity Conversion Mortgage (HECM): Revised Form HUD 92902, Certificate of HECM Counseling and Clarification of Counseling Guidance
Mortgagee Letter 2013-27 Changes to the Home Equity Conversion Mortgage Program Requirements

Background

Subsection 255(j) of the National Housing Act provides that a HECM that does not contain a "Safeguard to Prevent Displacement of Homeowner," which defers repayment of the loan obligation until "the homeowner's death, the sale of the home, or the occurrence of other events specified in the regulations of the Secretary," is ineligible for FHA insurance. FHA has, since the inception of the HECM program, interpreted this provision in its regulations as requiring HECMs be called due and payable upon the death of the last surviving mortgagor, the sale of the home, and other conditions, including the failure to reside in the property and the failure to pay required taxes and insurance.

FHA continues to believe that its original interpretation gives full force and effect to the intent of the statute. Nevertheless, recent events have advanced another possible interpretation of Subsection 255(j). This alternative interpretation would extend the mortgage insurance eligibility requirements concerning the safeguard to the mortgagor and any Non-Borrowing Spouse of the mortgagor, at the time of origination.

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Background (continued)

FHA currently offers a variety of ways for the estate of the deceased HECM mortgagor to satisfy the HECM loan obligation. For many years, Non-Borrowing Spouses were able to refinance HECMs upon the death of their mortgagor spouses in order to retain the homes. However, FHA recognizes that, for some Non-Borrowing Spouses this option has become more difficult. This has, in some cases, left few viable options for a Non-Borrowing Spouse if they wanted to remain in the home they had previously shared with their spouse.

This Mortgagee Letter implements, prospectively only, this alternative interpretation of Subsection 255(j) in order to ensure the viability of the HECM program and the Mutual Mortgage Insurance Fund. Because FHA's traditional interpretation is embedded in existing, legally binding contracts, FHA has no authority to alter it with respect to existing loans. Extending the insurance eligibility "Safeguard" requirement in new HECMs to both the mortgagor and the Non-Borrowing Spouse, including common law spouses, will obviate the need for these Non-Borrowing Spouses to refinance the HECM loan upon the death of the mortgagor.

While FHA is using the authority granted to it in the Reverse Mortgage Stabilization Act of 2013 to immediately implement these changes, FHA intends to publish a rule for notice and comment that will revise its existing regulations to codify these revisions or to make such other or alternative changes as may then seem appropriate. To inform the development of this proposed rule, FHA intends to issue a notice, in the *Federal Register* and on www.Regulations.gov, seeking comment on the Mortgagee Letter. FHA expects to publish that notice no later than May 2, 2014.

Definitions

"Non-Borrowing Spouse" is defined as the spouse, as determined by the law of the state in which the spouse and mortgagor reside or the state of celebration, of the HECM mortgagor at the time of closing and who also is not a mortgagor.

"Deferral Period" is defined as the period of time following the death of the last surviving mortgagor during which the due and payable status of a HECM is further deferred based on the continued satisfaction of the requirements for a Non-Borrowing Spouse under this ML and all other FHA requirements.

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Definitions (continued)

"Principal Residence" is defined as the dwelling where the mortgagor and, if applicable, Non-Borrowing Spouse maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one Principal Residence at any one time. The Property shall be considered to be the Principal Residence of any mortgagor who is temporarily in a health care institution provided the mortgagor's residency in a health care institution does not exceed twelve consecutive months.

The Property shall be considered to be the Principal Residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, as long as the Property is the Principal Residence of his or her mortgagor spouse, who physically resides in the property.

During a Deferral Period, the Property shall continue to be considered to be the Principal Residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, provided the Non-Borrowing Spouse physically occupied the property immediately prior to entering the health care institution and the Non-Borrowing Spouse's residency in a health care institution does not exceed twelve consecutive months.

Changes to Disclosure and Verification of Social Security and Employer Identification Numbers

A Non-Borrowing Spouse must comply with FHA's requirements for disclosure and verification of Social Security and Employer Identification Numbers by mortgagors.

Changes to Due and Payable Status for Married Mortgagors

For any HECM with a case number issued after the effective date of this Mortgagee Letter, in order to be eligible for FHA insurance, the HECM must contain a provision deferring the due and payable status that occurs because of the death of the last surviving mortgagor, if a mortgagor was married at the time of closing and the Non-Borrowing Spouse was identified at the time of closing. Specifically, the HECM documents must contain a provision deferring due and payable status until the death of the last surviving Non-Borrowing Spouse or until another listed event occurs.

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Qualifying Attributes of the Deferral Period for the Non-Borrowing Spouse

In order for the Deferral Period to apply to a Non-Borrowing Spouse, the Non-Borrowing Spouse must:

1. Have been the spouse of a HECM mortgagor at the time of loan closing and have remained the spouse of such HECM mortgagor for the duration of the HECM mortgagor's lifetime;
2. Have been properly disclosed to the mortgagee at origination and specifically named as a Non-Borrowing Spouse in the HECM documents; and
3. Have occupied, and continue to occupy, the property securing the HECM as the Principal Residence of the Non-Borrowing Spouse.

Requirements for the Deferral Period of Due and Payable Status Due to Death of Mortgagor

In the event the last surviving mortgagor predeceases a Non-Borrowing Spouse, the due and payable status will be deferred for as long as a Non-Borrowing Spouse continues to meet all the qualifying attributes stated in the above section. In addition, such Non-Borrowing Spouse must satisfy and continue to satisfy the following:

1. Within ninety days from the death of the last surviving HECM mortgagor, establish legal ownership or other ongoing legal right to remain (e.g., executed lease, court order, etc.) in the property securing the HECM;
2. After the death of the last surviving mortgagor, ensure all other obligations of the HECM mortgagor(s) contained in the loan documents continue to be satisfied; and
3. After the death of the last surviving mortgagor, ensure that the HECM does not become eligible to be called due and payable for any other reason.

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Requirements for the Deferral Period of Due and Payable Status Due to Death of Mortgagor (continued)

Should a Non-Borrowing Spouse fail to meet any of the qualifying attributes or should any of the requirements for deferral cease to be met, the Deferral Period of the due and payable status shall cease and the HECM will become immediately due and payable as a result of the death of the last surviving mortgagor.

Mortgagee Obligations during Deferral Period of Loan Due and Payable Status

During any Deferral Period, the Mortgagee may not require immediate payment in full until the end of the Deferral Period.

The Mortgagee shall notify any Non-Borrowing Spouse that the due and payable status of the Loan is in a Deferral Period only for the amount of time that such Non-Borrowing Spouse continues to meet all requirements established by the Secretary and the property continues to be the Principal Residence of such Non-Borrowing Spouse. If any conditions cease to be met, the Deferral Period ends and the Loan immediately becomes due and payable. The Mortgagee is not required to obtain any approval from HUD at the end the Deferral Period to call a loan due and payable.

Changes to Availability of HECM Proceeds

While the due and payable status may be deferred, as provided above, the HECM is not assumable. Because of this non-assumability, the proceeds of the HECM will not be used on behalf of or be available for disbursement to any Non-Borrowing Spouse during a Deferral Period. The proceeds of the HECM will be made available during a Deferral Period only for those specific items identified in this Mortgagee Letter and the loan documents.

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Unaffected Terms of the HECM

While repayment of a HECM is subject to a deferral following the death of the last surviving mortgagor, all applicable terms and conditions of the mortgage, loan agreement and note must continue to be satisfied, as well as all FHA requirements. In accordance with the terms of the Loan Agreement and Mortgage, no HECM funds may be disbursed to the mortgagor, the mortgagor's estate, or the Non-Borrowing Spouse once the loan is in deferred due and payable status. The following terms are not affected during the Deferral Period:

- The mortgage will still continue to accrue interest in accordance with the terms of the mortgage and loan agreement.
- The mortgagee must still remit mortgage insurance payments to the FHA.
- The mortgagee is still permitted to collect servicing fees in accordance with the terms of the mortgage.
- Except as noted in this paragraph, no funds may be disbursed during a Deferral Period for repairs to or the maintenance of the property. If a Repair Set-Aside was established as a condition of the HECM, which was evidenced by the execution of a Repair Rider, funds may be disbursed from the Repair Set-Aside during a Deferral Period for the sole purpose of paying the cost of those repairs that were specifically identified prior to origination as necessary to the insurance of the HECM. Additionally, such repairs may only be paid for using funds from the Repair Set-Aside if the repairs are satisfactorily completed during the time period established in the Rider. No unused funds may be disbursed.
- The mortgagee may still request that the loan be assigned to HUD after death of the mortgagor if the loan balance reaches 98% of the Maximum Claim Amount, provided the HECM is not eligible to be called due and payable for any other reason and all other assignment criteria are met.

Ability of Mortgagor, Mortgagor's Estate and/or Mortgagor's Heirs to Sell the Property to Satisfy the Outstanding HECM Balance Unaffected

The mortgagor maintains the ability to sell the property, whether or not the mortgage is due and payable, for at least the lesser of the outstanding balance or the appraised value. Further, if the mortgage is due and payable, the mortgagor maintains the ability to sell the property for at least the lesser of the outstanding balance or 95% of the appraised value or present the mortgagee with a deed-in-lieu.

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Ability of Mortgagor, Mortgagor's Estate and/or Mortgagor's Heirs to Sell the Property to Satisfy the Outstanding HECM Balance Unaffected (continued)

If the mortgage is due and payable by reason of the last surviving mortgagor's death, the mortgagor's estate and/or the mortgagor's heir(s) have the ability to "sell" the property for at least the lesser of the outstanding balance or 95% of the appraised value. In order for any Deferral Period to remain in effect after the last surviving mortgagor's death, any Non-Borrowing Spouse must meet all requirements, which include establishing legal ownership to the property or an ongoing legal right to reside in the property. Nothing in this ML, or the existence of a Non-Borrowing Spouse under this ML, may be construed as interrupting or interfering with the ability of the mortgagor or the mortgagor's estate or heir(s) to dispose of the property if they are otherwise legally entitled to do so.

Changes to Model Note, Mortgage and Agreement

FHA is revising the model loan documents to incorporate these changes. These revised documents are attached to this ML.

Changes to Application Requirements

Mortgagees must require all HECM mortgagors to state whether or not they are legally married at the time of initial application and confirm this information at closing. Mortgagees must obtain and verify the name and age of any Non-Borrowing Spouse. Non-Borrowing Spouses do not have to be 62 years old in order for a fully qualified HECM mortgagor to obtain a HECM.

Required Mortgagor and Non-Borrowing Spouse Certifications at loan Closing

While mortgagees do not have to verify marital status, mortgagees nevertheless must obtain a signed certification at loan closing from the mortgagor(s) and Non-Borrowing Spouse(s), if any, verifying the truth and accuracy of the information provided in the application with respect to the mortgagor's marital status and Non-Borrowing Spouse, if applicable.

At closing, the mortgagee must obtain the following certification from each mortgagor identified as unmarried:

"I hereby certify that I am not married and I understand that my HECM loan does not contain a deferral of a due and payable status to prevent the displacement of any spouse to whom I may become legally married to in the future."

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Required Mortgagor and Non-Borrowing Spouse Certifications at Loan Closing (continued)

At closing, the mortgagee must obtain the following certification from each mortgagor identified as married to a Non-Borrowing Spouse:

"I hereby certify that I am currently married and the information I have provided with respect to my spouse, _____, is true and correct.

I understand that my HECM loan contains a deferral of a due and payable status to prevent the displacement of _____, my current spouse, that will not apply to any other person I may marry in the future. I further understand that this safeguard will only remain available to ____, my current spouse, if:

1. _____ remains my spouse for the remainder of my life;
2. I have truthfully disclosed the name and age of my current spouse to the mortgagee;
3. _____ continues to occupy the property securing my HECM as [his/her] principal residence;
4. ____ is able to establish legal ownership or some other ongoing legal right to remain (e.g., executed lease, court order, etc.) in the property securing the HECM after the death of the last surviving mortgagor.
5. All my other obligations as the HECM mortgagor continue to be satisfied after the death of the last surviving mortgagor; and
6. All other terms and conditions of the HECM continue to be satisfied after my death."

WARNING: Federal law provides that anyone who knowingly or willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry may be criminally prosecuted and may incur civil administrative liability.

At closing, the mortgagee must obtain the following certification from each Non-Borrowing Spouse of a HECM mortgagor:

"I hereby certify that I am currently married to _____, a HECM mortgagor, and the information provided about me is true and correct.
I understand that my spouse's HECM contains a deferral of a due and payable status to prevent my displacement from the property following the death of the last surviving mortgagor under my spouse's HECM only if:

1. I remain(ed) the spouse of the HECM mortgagor, identified above, for the remainder of [his/her] life;
2. The HECM mortgagor, identified above, and I truthfully disclosed my name and age to the mortgagee;

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Required Mortgagor and Non-Borrowing Spouse Certifications (continued)

3. I continue to occupy the property securing my spouse's HECM as my principal residence;
4. I am able to establish legal ownership or some other ongoing legal right to remain (e.g., executed lease, court order, etc.) in the property securing the HECM after the death of the last surviving mortgagor under my spouse's HECM;
5. All other obligations of the HECM mortgagor continue to be satisfied after the death of the last surviving mortgagor; and
6. All other terms and conditions of the HECM continue to be satisfied after the death of the last surviving mortgagor."

WARNING: Federal law provides that anyone who knowingly or willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry may be criminally prosecuted and may incur civil administrative liability.

Mortgagees must include the applicable certifications in case binders submitted to the Homeownership Centers.

Ongoing Requirements for Mortgagor and Non-Borrowing Spouse Certifications

Mortgagors that identify themselves as being married with a Non-Borrowing Spouse must submit the above certification on an annual basis. Upon the death of the last surviving mortgagor, the mortgagee must obtain the above Non-Borrowing Spouse certification from any Non-Borrowing Spouse within 30 days of receiving notice of the last surviving mortgagor's death and then no less than annually thereafter for the duration of the Deferral Period. Mortgagees must document these certifications in their case files where applicable.

In the event of a divorce between a HECM mortgagor and his/her Non-Borrowing Spouse, mortgagees are required to obtain a copy of the final divorce decree. Such Non-Borrowing Spouse is no longer eligible for the protections outlined herein and the mortgagee is no longer required to have such HECM mortgagor, the former spouse, satisfy the Non-Borrowing Spouse certification requirements.

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Changes to Principal Limit

Where a HECM mortgagor has identified a Non-Borrowing Spouse, the mortgagee must base the Principal Limit on the age of the youngest mortgagor or Non-Borrowing Spouse.

Mortgagees will be required to use Factor Tables based on the age of the youngest Mortgagor or Non-Borrowing Spouse, if applicable. HUD is developing new Factor Tables and will release them through Mortgagee Letter prior to the effective date of this Mortgagee Letter.

Changes to Housing Counseling Requirements

Counselors shall discuss the implications of marital status in states that recognize common law marriage the same as they were previously directed to in Mortgagee Letter 2011-31 for any spouse who was not also a mortgagor. The counselor must continue to obtain the signed statement required by ML 2011-31 from the Non-Borrowing Spouse. The counselor must also obtain this same signed statement from any "common-law" spouse.

Counselors shall counsel prospective mortgagors and Non-Borrowing Spouses about the requirement that a Non-Borrowing Spouse obtain ownership of the property or other legal right to remain upon the death of the last surviving mortgagor. Counselors must emphasize that the failure to obtain ownership or other legal right to remain in the property will result in the HECM becoming due and payable and a Non Borrowing Spouse will not receive the benefit of the deferral as set forth in this Mortgagee Letter.

Nothing in this Mortgagee Letter authorizes or requires any counselor to opine on any question of state law. If a particular transaction appears to raise any state law question, the counselor should advise the prospective mortgagor and any Non-Borrowing Spouse to consult with a qualified attorney.

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FHA Connection System Changes

To accommodate the requirements of this Mortgagee Letter, mortgagees must use the instructions below in FHA Connection.

Case Number Assignment Screen

System Field	Mortgagee Entry
Married to a N.B. Spouse?	Select Yes or No
N.B. Spouse Full Name	Enter the Last, First and Middle Initial
N.B. Spouse DOB	Enter the Date of Birth
N.B. Spouse SSN	Enter the Social Security Number

Changes to Annual Determination of Principal Residence

The mortgagee must annually determine whether the property remains the Principal Residence of at least one mortgagor and must require the mortgagor to annually certify to his or her continued residence in the property.

Where a Non-Borrowing Spouse has been identified, for HECM loans with a case number issued on or after the effective date of this ML, the mortgagee must obtain an additional certification from the HECM mortgagor spouse confirming that his/her Non-Borrowing Spouse remains his/her spouse and his/her Non-Borrowing Spouse continues to reside in the property as his/her Principal Residence.

If a HECM mortgagor with a Non-Borrowing Spouse has died, the Mortgagee is required to obtain this annual certification from the Non-Borrowing Spouse of such mortgagor.

If a Non-Borrowing Spouse ceases to be married to his/her HECM mortgagor spouse for any reason other than death or fails to reside in the property as his/her Principal Residence, the deferral of a due and payable status that would prevent the displacement of such Non-Borrowing Spouse will no longer be in effect.

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Interest Accrual and the Definition of "Due Date" for Claim Purposes

During the Deferral Period, the HECM mortgage must continue to accrue interest at the note rate in accordance to the loan agreement at origination.

The date that the due and payable deferral ends, and the loan is effectively called due and payable, will be considered the "due date" in accordance with 24 CFR § 206.129(d)(1) for the purpose of the mortgagee filing for the payment of a HECM Claim Type 21, Foreclosure or Deed-in-Lieu of Foreclosure. Once the "due date" is established – when the loan is effectively called due and payable at the conclusion of the Deferral Period for a Non-Borrowing Spouse – the debenture interest rate as defined in 24 CFR § 206.129(d)(2)(iii) is payable from the due date to the date of settlement on the HECM Claim Type 21 claim.

For comparison, in accordance with 24 CFR § 206.129(e), debenture interest is paid from the date the mortgage was assigned to the Secretary to the date the claim is settled for HECM Claim Type 22 (assignment) claims. In accordance with 24 CFR § 206.129(f), debenture interest is paid from the deed recordation date to settlement for HECM Claim Type 23 (mortgagor or mortgagor's estate sale) claims.

Information Collection Requirements

Paperwork reduction information collection requirements contained in this Mortgagee Letter 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 Numbers 2502-0059 and 2502-0429. Revisions are being made to OMB Control Number 2502-0524. 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 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 Information Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Signature Carol J. Galante
Assistant Secretary for Housing-Federal Housing Commissioner

Attachments