



ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

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

Date: September 23, 2019

Mortgagee Letter 2019-15

To: All FHA-approved Mortgagees
All Direct Endorsement Underwriters
All FHA Roster Appraisers
All FHA Roster Inspectors
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 Updates to Mortgagee Optional Election (MOE) Assignment for Home Equity Conversion Mortgages (HECMs) with FHA case numbers assigned prior to August 4, 2014.

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 HECMs with FHA Case Numbers assigned prior to August 4, 2014, regarding HECM MOE Assignments.

This Mortgagee Letter applies to all HECM loans with FHA case numbers assigned prior to August 4, 2014, which comprise a valid first lien security interest in real property under applicable state law at the time of the MOE Assignment.

Effective Date This Mortgagee Letter is effective immediately. 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 terms of this Mortgagee Letter modify or supersede Mortgagee Letter 2015-15, Mortgagee Letter 2016-05, and Mortgagee Letter 2017-05, where there is conflict.

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

Background FHA previously issued Mortgagee Letter 2015-03, providing mortgagees the option, in circumstances involving a surviving non-borrowing spouse, to defer the due and payable date of a HECM meeting certain eligibility criteria and assign it to FHA. This assignment option is called the Mortgagee Optional Election (MOE) Assignment, which applies to eligible HECMs with FHA case numbers assigned before August 4, 2014. Mortgagee Letter 2015-03 was rescinded and FHA modified the MOE Assignment claim process on June 12, 2015, as stated in Mortgagee Letter 2015-15.

Since implementation of the MOE Assignment process pursuant to Mortgagee Letter 2015-15, FHA has determined that mortgagees have experienced difficulties complying with various requirements in Mortgagee Letter 2015-15. For instance, on February 12, 2016, FHA issued Mortgagee Letter 2016-05, which allowed mortgagees a 60-day extension to assess eligibility if delayed by certain factors outside a mortgagee’s or surviving spouse’s control. Mortgagee Letter 2016-05 also provided an alternative certification for mortgagees in states whose laws hindered truthful certification that: “At assignment, there is a valid, legally enforceable first lien with no impediments to securing good, marketable title; and upon assignment, the Secretary will have a valid, legally enforceable first lien with no impediments to securing good and marketable title.”

To address the complications mortgagees have experienced under Mortgagee Letter 2015-15, and to improve the fiscal safety and soundness of the HECM program, FHA is hereby modifying the requirements for MOE Assignment claims. To avoid future conflicts with state law and other difficulties, FHA is eliminating all interim deadlines for a MOE Assignment.

FHA has determined to align, as closely as possible, the Mortgagee’s election to pursue an insurance claim by MOE Assignment with the existing Mortgagee requirement to meet reasonable diligence timeframes in pursuing foreclosure. Accordingly, a Mortgagee must pursue an MOE Assignment with reasonable diligence in order to avoid curtailment of insurance benefits. A Mortgagee meets this reasonable diligence timeframe if the MOE Assignment is initiated in the Home Equity Reverse Mortgage Information Technology (HERMIT) system within 180 days of the death of the borrower or the issuance of this Mortgagee Letter, whichever is later.

This alignment with existing insurance claims based on an election to foreclose also means that FHA will no longer deny an MOE Assignment as a result of the mortgagee's lack of timeliness. Instead, the mortgagee's timeliness in carrying out the MOE Assignment claim process may affect the amount of the claim payment to the mortgagee under the contract of mortgage insurance. HECMs submitted for MOE Assignment must meet all other conditions and requirements for assignment.

In addition, FHA no longer requires, as a condition of meeting the definition of "Eligible Surviving Non-Borrowing Spouse," 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.

FHA has determined that the requirement to demonstrate good and marketable title or a legal right to remain in the property is not necessary to protect HUD's security interest nor to avoid FHA's involvement in any private litigation between heirs of the HECM borrower as the Deferral Period neither confers nor interferes with any property rights. Satisfying this requirement within the required timeframe has proved to be difficult for Non-Borrowing Spouses with little or no benefit resulting in protection of the HECM security interest. The issue of ownership of the property or the legal right to remain in the property is a matter of state law and is not dispositive on the ability of the Non-Borrowing Spouse to occupy the property. To be eligible for the Deferral Period, an eligible Non-Borrowing Spouse must occupy the property as his or her Principal Residence as defined in Mortgagee Letter 2015-15. A determination under state law that the Non-Borrowing Spouse does not have legal title to the property or other legal right to remain in the property will usually result in the Non-Borrowing Spouse vacating the property.

Summary of Changes

The specific updates include the following:

- Elimination of the MOE Assignment election and assessment deadlines, along with associated notification requirements;
- Elimination of the 120-day timeframe for bringing current all property charges on a HECM that is subject to a pre-existing loss mitigation repayment plan;
- Establishment of a 180-day reasonable diligence timeframe to initiate an MOE Assignment;
- Elimination of the requirement for an Eligible Surviving Non-Borrowing Spouse to obtain good and marketable title to the property which secured the HECM or demonstrate the legal right to reside in the property for life, and modification of related certifications and assignment criteria;

- Requirement for mortgagees to request information from borrowers to attempt to identify Non-Borrowing Spouses.

Elimination of Interim Deadlines and Notices

Mortgagees are no longer required to notify HUD of the election to pursue the MOE Assignment in HERMIT within 120 days of the death of the last surviving borrower. Mortgagees are, however, still required to notify FHA of their election in HERMIT as soon as the mortgagee determines to pursue an MOE Assignment.

Mortgagees are no longer required to complete an assessment of eligibility within 60 days of the MOE Assignment election.

FHA will no longer require that a HECM subject to a pre-existing loss mitigation repayment plan for unpaid property charges must be brought current on all property charges within 120 days following the death of the last surviving borrower or 120 days after the effective date of Mortgagee Letter 2015-15, whichever is later. However, to be eligible for an MOE Assignment, the HECM loan must be current on all property charges when the mortgagee files the MOE Assignment claim.

Reasonable Diligence Timeframe for Requesting MOE Assignment

For purposes of demonstrating reasonable diligence in processing an MOE Assignment and so avoiding any curtailment, the mortgagee must initiate any assignment made pursuant to the MOE Assignment in HERMIT within 180 days from the date on which the last surviving borrower dies, or the effective date of this Mortgagee Letter, whichever is later.

Failure to initiate an MOE Assignment within this reasonable diligence timeframe shall not render the HECM ineligible for assignment. A mortgagee may initiate an MOE Assignment of an eligible HECM more than 180 days from the date of the last surviving borrower's death or the effective date of this Mortgagee Letter. Mortgagees are hereby reminded that only a HECM which comprises a valid first lien security interest in real property under applicable state law and meets all other assignment criteria at the time of assignment will be eligible for an MOE Assignment. However, a mortgagee may still elect the MOE Assignment even after initiating foreclosure procedures, provided that at the time of assignment the HECM constitutes a valid first lien security interest against the real property under applicable state law.

Removal of Requirement to Establish Marketable Title or Other Right to Remain in the Property for Life

“Eligible Surviving Non-Borrowing Spouse” means a Non-Borrowing 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 resided or the state of celebration- to the HECM borrower at the time of loan closing and who either remained married until the HECM borrower’s death; 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 prior to the death of the borrower was legally married to the borrower, as determined by the law of the state in which the spouse and borrower resided or the state of celebration, to the HECM borrower and remained married until the HECM borrower’s death;
2. Since the date of loan closing, and continuing through the present, has maintained the property securing the HECM as his or her Principal Residence.

FHA no longer requires, as a condition of meeting the definition of “Eligible Surviving Non-Borrowing Spouse,” 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 under the MOE Assignment option affects only the HECM’s due and payable status and does not confer or interfere with any other real property interests. The Deferral Period shall cease immediately once the Non-Borrowing Spouse ceases to occupy the property as his or her Principal Residence for any reason.

The HECM security interest is not adversely impacted by the removal of this requirement. Acceptance of a MOE Assignment 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.

Updated Non-Borrowing Spouse Certification

The mortgagee must obtain a signed agreement, acknowledgement and certification at assignment from any Eligible Surviving Non-Borrowing Spouse verifying the established conditions and requirements are met.

The agreement, acknowledgement, and certification must state:

“I hereby agree, acknowledge, and certify that I was married to and remained married to _____, a HECM borrower, at the time the HECM was originated and throughout the remainder of [his/her] life; or, if, at the time of HECM loan origination, prohibited from legally marrying the HECM borrower based on the gender of both the borrower and the Non-Borrowing Spouse, I was engaged in a committed relationship with _____, a HECM borrower, at the time the HECM was originated, but prior to the death of the HECM borrower, I was legally married to the HECM borrower, as determined by the law of the state in which I and the borrower resided or the state of celebration. I certify that the information provided in this agreement, acknowledgement and certification is true and accurate. I acknowledge that my spouse’s HECM is currently eligible to be called due and payable under the original terms of the mortgage contract as a result of [his/her] death and that the mortgagee is electing to assign my spouse’s HECM to FHA. I further acknowledge and agree that if assignment is accepted, the HECM will not be called due and payable until my death or such time as I cease to be eligible for a deferral. As a result, I acknowledge that I will be granted a qualified deferral of the obligation to repay the loan, provided I continue to comply with the terms of this agreement and certification. I further understand and agree that in order to qualify for a deferral of due and payable status, I must:

1. disclose and provide consent to the verification of my Social Security Number or Taxpayer Identification Number;
2. continue to occupy the property securing my spouse’s HECM as my Principal Residence;
3. acknowledge and agree that I will not receive any disbursements from my spouse’s HECM;
4. ensure that all obligations of the HECM borrower continue to be satisfied without reliance on any disbursement from the HECM, including the obligation to pay property charges and insurance even if the HECM would have allowed for the payment of these charges from the available proceeds;
5. ensure the HECM is not and will not become eligible to be due and payable for any reason other than the death of the last surviving borrower;
6. annually certify that all conditions necessary for assignment are and continue to be met; and
7. provide any documentation required to evidence my compliance with the requirements of the assignment and deferral of due and payable status.

I agree and acknowledge that should any of these obligations cease to be met the Deferral Period shall cease, my spouse’s HECM will immediately become due and payable, and as a result I must satisfy the mortgage in accordance with existing HUD policy in order to avoid foreclosure of the mortgage and sale of the property.”

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 and administrative liability.

**Updated MOE
Assignment
Documentation
Requirements**

In addition to the documentation required for all assignment requests, a mortgagee electing to assign a HECM to the Secretary utilizing the MOE Assignment option must also provide the following:

1. The HECM borrower's Death Certificate;
 2. The HECM borrower and Eligible Surviving Non-Borrowing Spouse's Marriage Certificate, legal opinion certifying the validity of the marriage, or other evidence sufficient to establish the legal validity of the marriage;
 3. An affirmation that no allegations that would invalidate the HECM exist or if there were allegations, evidence of the judicial resolution finding in favor of the mortgagee;
 4. All HERMIT required packages and documentation for an assignment;
 5. A signed Mortgagee Certification;
 6. A signed Eligible Surviving Non-Borrowing Spouse Certification; and
 7. A signed certification that the HECM lien is a valid, legally enforceable first lien.
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**Identifying
Non-
Borrowing
Spouses**

Servicers must request information from borrowers to attempt to identify Non-Borrowing Spouses. This request must be sent to borrowers with the Annual Occupancy certification and include the following:

- Is the borrower currently married?
- Is the borrower's spouse a borrower on the HECM loan?
- If the borrower is currently married and the spouse is not a borrower on the HECM loan, please provide the following:
 - Non-Borrowing Spouse's Name;
 - Non-Borrowing Spouse's Social Security Number or Taxpayer Identification Number;
 - Non-Borrowing Spouse's Date of Birth; and
 - The Date of the couple's marriage.

Appendices A and B of this Mortgagee Letter provide a sample information collection form and fact sheet that servicers may use to model their request to borrowers.

Servicers must create a Non-Borrowing Spouse “Contact” in the HERMIT system for all Non-Borrowing Spouses identified through responses received from their information collection requests.

**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. Collection 2502-0059 has not been approved by OMB at this time. 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

Brian D. Montgomery
Assistant Secretary for Housing –
Federal Housing Commissioner

Model Document - APPENDIX A

**Home Equity Conversion Mortgage (HECM)
Non-Borrowing Spouse Information Sheet**

<p>Instructions. Please provide the information requested below to assist in identifying spouses who <u>may</u> potentially be eligible to remain in the mortgaged property after the death of the last remaining HECM borrower.</p> <p>Should you have any questions regarding this effort, please contact your loan servicer, _____, at (###) ### - #### or email _____.</p>		
HECM Loan Information		
Street Address	FHA Case Number	
City, State, & Zip	HECM Origination Date	
Name of Borrower		
Basic Eligibility Questions		
1. Is the borrower identified above currently single/unmarried?	Yes _____	No _____
2. If "no", is the borrower's current spouse named on the HECM?	Yes _____	No _____ N/A _____
Non-Borrowing Spouse Information		
<p>If the answer to both questions above is "no": The borrower's spouse <u>may</u> be eligible for a deferral, provided that the mortgagee election to assign the HECM to FHA. Please provide the following basic information concerning the non-borrowing spouse's potential eligibility. (If the non-borrowing spouse does not have a Social Security Number, the non-borrowing spouse's Taxpayer Identification Number may be provided.) Note that satisfaction of the eligibility criteria does not guarantee or require that the mortgagee will elect the MOE Assignment.</p> <p>If the answer to one or both questions above is "yes": It is not necessary to complete this section. Please mail this form to the address listed below.</p>		
3. Spouse's Full Name:		
4. Spouse's Social Security Number or Taxpayer Identification Number:		
5. Spouse's Date of Birth (MM/DD/YYYY):		
6. Date of Marriage (MM/DD/YYYY):		
7. Do the HECM borrower and his/her spouse meet Requirement 2a or 2b in the provided Fact Sheet? (If yes, please supply supporting documentation.)	Yes _____	No _____

Please mail the completed form and supporting documentation to (insert mortgagee's address below):

Model Document – APPENDIX B

**Home Equity Conversion Mortgage (HECM)
Eligible Surviving Non-Borrowing Spouse Fact Sheet**

HUD recently announced updates affecting HECMs with case numbers assigned prior to August 4, 2014, where the borrower has an Eligible Surviving Non-Borrowing Spouse. As a result the mortgage lender might, elect to assign the loan to FHA, thereby deferring the immediate obligation to pay off the loan after the last HECM borrower dies if, among other requirements, the following specific conditions are met and continue to be met throughout the duration of the deferral period:

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| 1. The HECM is not in default (or eligible to be called due and payable) for any reason other than the last borrower's death (e.g., failure to pay property taxes or make hazard insurance payments). |
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AND

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| 2. The borrower and his or her spouse were either:

a. Legally married ¹ at the time the HECM closed and remained married until the HECM borrower's death; OR

b. Engaged in a committed relationship akin to marriage but were legally prohibited from marrying before the closing of the HECM because of the gender of the borrower and Non-Borrowing Spouse, if the spouses legally married before the death of the borrower and remained married until the death of the borrowing spouse. |
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AND

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| 3. The Non-Borrowing Spouse lived in the property at loan closing and continues to live in the property as his or her Principal Residence ² . |
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¹ "Legally married" means a marriage that is legal under either 1) the law of the state in which the spouse and borrower lived or 2) the state in which the spouses married.

² "Principal Residence" is defined as the dwelling where the borrower and Non-Borrowing Spouse maintain their permanent place of abode, and typically spend 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 Non-Borrowing Spouse who is temporarily in a health care institution, as long as 1) the Property is the Principal Residence of his or her borrower spouse, who physically resides in the property, OR 2) there is no surviving borrower and the Eligible Surviving Non-Borrowing Spouse physically occupied the property immediately prior to entering the health care institution and the Eligible Surviving Non-Borrowing Spouse's residency in a health care institution does not exceed twelve consecutive months.