



OFFICE OF HOUSING

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

HECM Servicing Frequently Asked Questions (FAQs)

- 1. FHA regulations at 24 CFR 206.125(c) permit a sale of the mortgaged property for at least the lesser of the loan balance or 95% of current appraised value if the loan is due and payable. Is a conveyance of the mortgaged property by will or operation of law to the estate or heir after the mortgagor's death within the meaning of "sale?" **New 07/19/2011****

Yes. When a HECM loan becomes due and payable as a result of the mortgagor's death and the property is conveyed by will or operation of law to the mortgagor's estate or heirs (including a surviving spouse who is not obligated on the HECM note) that party (or parties if multiple heirs) may satisfy the HECM debt by paying the lesser of the mortgage balance or 95% of the current appraised value of the property. FHA regulations at 24 CFR 206.125(b) address time requirements pertaining to a mortgagee's obligation to obtain an appraisal of the property. Every appraisal must be performed by an appraiser whose name is on the FHA Appraiser Roster and must be conducted in accordance with Handbook 4150.2.

HUD's regulations at 24 CFR 206.125(c) state, in part, that "[i]f the mortgage is due and payable at the time the contract for sale is executed, the borrower may sell the property for at least the lesser of the mortgage balance or five percent under the appraised value" (*i.e.*, 95% of the appraised value of the mortgaged property). HUD interprets the word "sale" to include any **post-death** conveyance of the mortgage property (even by operation of law) to the borrower's estate or heirs (including a surviving spouse who is not obligated on the HECM note). A loan payoff that occurs simultaneously with or immediately following such a post-death conveyance will be regarded as a sale transaction for purposes of section 206.125(c).

- 2. In an event outlined in question 1 above, specifically, how will a payoff impact the mortgagee filing a claim? ("Mortgagee," as used herein, includes a servicer for the mortgagee) **New 07/19/2011****

a. Where the value of the property (and thus the payoff) is insufficient to pay the full balance of the HECM loan, does the mortgagee file its claim under Claim Type 23-Borrower's Sale for the shortfall up to the Maximum Claim Amount (MCA)?

Yes. Additional information for submission of claims will be provided at a later date.

b. FHA recently provided mortgagees with a Model Notice. If the Model Notice is to be sent to all related parties of the deceased borrower, will FHA provide an exception to the time frames a mortgagee must meet in order to avoid being curtailed debenture interest as part of the insurance claim? Mortgagees

are concerned that deadlines cannot be met while related parties are being identified.

FHA will treat actions taken by mortgagees to notify, via the Model Notice, the potential related parties who are heirs of the deceased borrower as a necessary exception to the time frames established in the regulations at 24 CFR 206.125 and 206.127.

Mortgagees should document their files to show that due diligence is being performed in sending the Model Notices, and the time frames for obtaining any responses prior to proceeding with foreclosure. In general, a reasonable time frame will be 45 days from the mortgagee's receipt of notification that the notice has been received. The mortgagee does not have to conduct a search for heirs. Notification can be made to the executor of the estate (if one exists), to the property address, and to any other heirs of whom the mortgagee is aware.

c. Will a mortgagee's expenses incurred in conducting a foreclosure, including circumstances where a foreclosure date has been confirmed by a court, be claimable by a mortgagee where a delay in the foreclosure or the foreclosure sale is precluded by state requirements? What if the foreclosure process has to be started all over again where the mortgagee has to initiate a new foreclosure because of the delay caused by sending out the Model Notice?

If the delay in the foreclosure was caused because the mortgagee stayed the foreclosure action to send out the Model Notice and await a response, FHA will reimburse mortgagees for the costs of the initial foreclosure and the costs incurred in starting a new foreclosure action, in accordance with present guidelines setting reasonable foreclosure costs. Mortgagees should document their servicing files to show that the sending of the Model Notice was the cause of the delay.

d. Is FHA requesting mortgagees to stay ALL foreclosures and evictions in process regardless of the current stage of the proceeding and regardless of the reason for default (e.g. tax or insurance default, or disrepair, death, non-occupancy, transfer of title)?

FHA is only requesting mortgagees to stay foreclosures and evictions that are based upon the borrower's death where there may be a non-obligor spouse or other heir interested in retaining title to the property.

e. What about the case of an heir who has clearly stated previously in writing that he or she does not have any intention to attempt to keep the property and repay the outstanding indebtedness?

If the statement was made prior to the issuance of this FAQ, the prospective heir may have declined ownership of the property due to not having or being able to raise sufficient funds to repay the outstanding indebtedness, but may have sufficient funds to pay the lesser amount of 95% of the appraised value of the property. Because of the possible confusion that may have existed on the part of such potential heirs, FHA is requesting mortgagees to make the request again by sending the Model Notice to these related parties.

f. How long should the mortgagee stay the foreclosure if the heir(s) indicate an interest in owning the property by paying off the lesser of the mortgage

balance or 95% of the appraised value of the property? Does the mortgagee have to file a request for an extension?

The heir should provide the mortgagee a written statement expressing his or her intent. The mortgagee should then grant the heir 90 days to make the required payment. FHA will treat the evidence of the written purchase request, as documented in the servicing file, as an automatic extension. Mortgagees should provide heirs that need more time to perfect ownership with additional time, up to a total of another 90 days. Mortgagees must submit an extension request on HUD Form 50012 to the National Servicing Center (NSC), through its loan servicing contractor, C & L Service Corporation (CLS), for the additional 90 day extension for purposes of documenting the servicing file. Extension requests may be emailed to HECMService@clstulsa.org or faxed to (918)935-2994. FHA believes that 180 days should be sufficient to effectuate the ownership. If the payment has not been consummated after 180 days of an heir's expression of intent, the mortgagee should proceed with foreclosure. There may be rare instances where a probate procedure causes further delay. In these rare instances, mortgagees must contact CLS for any further extensions.

g. Some HECM loans are placed in foreclosure AFTER there have been numerous extensions allowed under FHA procedures. Will FHA curtail debenture interest under the claims procedures because the mortgagee cannot complete the foreclosure within the allotted time frame due to further delays arising from sending the Model Notice and interest expressed by heirs in purchasing the property?

FHA will not curtail the debenture interest if mortgagees are sending out the Model Notice as requested by FHA and are entertaining requests for purchase in accordance with the time frames described above. FHA deems delays incurred as a result of sending the Model Notice and working through requests to purchase as acceptable grounds for the granting of extensions. Documentation supporting such delays must be retained in the servicing file for post claim reviews, and must demonstrate that delays are related to the factors discussed above.

**3. What information is required to be included in HECM claims when HUD has approved sale of an acquired property for less than the appraised value?
New 07/19/2011**

HECM claim type 21:

- a) If HUD approved a variance in the sales price (to sell the property for less than the appraised value), mortgagees MUST include a copy of the approved variance in the claim package and indicate the variance under "Mortgagee Comments." This information is essential to processing the claim for the appropriate amount.
- b) If the mortgagee sold the property for less than the appraised value AND did not obtain an approved variance, this detail must be annotated under "Mortgagee Comments." This information is essential to processing the claim for the appropriate amount.

Additional information for submission of claims will be provided at a later date.

4. What steps do mortgagees need to take to file supplemental claims where curtailment occurred for failure to notify HUD of the borrower's death within 60 days? Revised 12/22/2010

With the implementation of Mortgagee Letter 2009-44, failure to report the borrower's date of death to HUD within 60 days resulted in claim curtailments. HUD has temporarily discontinued curtailment for such failure to report and will accept supplemental claims to be filed where curtailment occurred strictly due to notification failure. All other applicable timeframes must have been met to prevent further curtailment.

Mortgagees should follow the instructions below to submit a supplemental claim on loans where a curtailment occurred for failure to report within 60 days.

Mortgagee Letter 2009-44 HECM Supplemental – Claim Type 24

- Complete a HECM supplemental claim using the instructions for the original claim type.
 - Enter all items identified as "Required"
 - Enter only the information necessary to correct the original claim
 - File a supplemental claim for additional reimbursement AFTER receipt of payment for the original HECM claim.
 - Submit a supplemental claim for additional amounts so that it is received by HUD no later than six (6) months after the payment of the original HECM claim.
- **SUPPORTING DOCUMENTS:** Whenever a supplemental claim is filed for reimbursement of additional amounts, attach copies of supporting documents, such as an extension letter, ledger cards, receipts, and so on, to the claim form submitted to HUD Headquarters.
- Mortgagees may file this claim type to claim reimbursement for expenses that were not included on the original claim or to correct any item from the original claim. HUD must receive a supplemental claim within six (6) months from the settlement of the original claim or it will be denied.
- Note: Any preservation expenses claimed on a supplemental are still subject to the HUD maximum for preservation and protection, which includes any reimbursements made on the original claim.
- Submit these claims to the following address:

U.S. Department of Housing and Urban Development
Single Family Claims Branch – HECM Processing
451 7th St., SW, Room 6251
Washington, DC 20410 – 8000
- Annotate the following phrase at the top of Part A, Form 27011:
Notification Curtailment Supplemental
- Prior to submission of a "Notification Curtailment Supplemental" confirm that the date of death is entered in IACS **New 12/22/2010**

- Note: Supplemental claims normally must be received by HUD within 6 months of the date the original claim was paid. For "Notification Curtailment Supplemental" submissions, supplemental claims must be **received** by HUD **no later than March 18, 2011**.
- HUD's Claims Branch may be contacted at FHA_SFClaims@hud.gov for additional guidance or questions regarding filing these supplemental claims.
Revised 12/22/2010
- New guidance will be issued at a later date regarding penalties for failure to provide any notification to HUD as required by regulations.

5. Is the mortgagee required to notify HUD of the borrower's date of death?
Revised 11/5/2010

The mortgagee is required to notify HUD when a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor. Notice must be sent to HUD as soon as possible following the death, but no later than 60 days from the date of the mortgagor's death. (See Mortgagee Letter 2003-22). **These notices must be sent to HUD's Loan Servicing Contractor, C & L Service Corp. (CLS) via email, fax or mail. Please see below for contact information.**

In addition to notifying HUD of the mortgagor's death, the mortgagee must enter the borrower(s) date of death in HUD's Insurance Accounting Collection System (IACS). HUD's Claims Branch will verify the date of death reported on the claim form against the date entered in IACS.

The Department expects mortgagees to exercise prudent servicing and reasonable diligence to ensure that occupancy is verified on an annual basis. HUD Handbook 4330.1, Rev-5, Section 13-22, "Mortgagor's Occupancy and Maintenance of the Property" states that the mortgagee must provide a written certification for the mortgagor's signature, to the mortgagor annually. Although written certification may be useful in determining the mortgagor's occupancy status, other supplemental measures may be needed to effectively determine date of death to meet the six (6) month requirement for first legal action. Mortgagees may consider subscribing to one of several commercial resources that offer a monthly match of loan files against a Social Security database of death records. Notification of the date of death applies to the "interest due date" on any subsequent claim submission (as also explained in Mortgagee Letter 2003-22).

6. What is the length of time that a Short Sale appraisal is valid?
New 11/5/2010

By issuance of Mortgagee Letter 2010-08, dated March 8, 2010, it advised the lending industry that effective April 1, 2010, REO Appraisals are valid for 120 days. The required short sale "As-Is" Appraisal is to be prepared by following HUD Handbook 4150.2 (Valuation Analysis for Home Mortgage Insurance) Appendix A and therefore valid for 120 days.

7. Mortgagee Letter 2003-22 allows for mortgagees to request an extension of time to file their claim if a sale will occur within 30 days from the date the mortgagee should have ordered a new appraisal. How do I request this extension? [New 11/5/2010](#)

24CFR206.127(q)(2) states "If the property will not be sold within six (6) months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal to be made". To alleviate the need to obtain a new appraisal when the property is under an executed sales contract, but the sale will not be completed until after the date the mortgagee should request a new appraisal, HUD may approve an extension of time.

The request must be submitted through HUD's EVARS system. Extensions may be approved for up to 30 days to allow the sale to proceed.

Please follow these guidelines when submitting the request in EVARS:

- The "Reason for the Request" will be "Other"
- Enter either the borrower's "Date of death" or the "Date of notice"
- The "Reason for Extension" will be the original default reason

Include the following information in the "Basis for Extension Request" box:

- A statement requesting an extension to the 6 month marketing period
- The date the mortgagee acquired marketable title (HUD considers marketable title to be when title to the property has been recorded in the mortgagee's name and the mortgagee has possession of the property.)
- Expiration date of the 6 month marketing period
- Date sales contract was signed
- Scheduled closing date

A copy of the fully executed sales contract must be included with the extension request.

8. In some situations, adherence to the first legal action to initiate foreclosure timeframes for HECM mortgages may appear to be contradictory to the borrower or to his or her estate. Will HUD consider extensions to initiate foreclosure? [New 9/24/2010](#)

This occurs most frequently where specific states have expanded or enhanced the pre-foreclosure notification requirements. In many states, the HECM mortgagee must begin the foreclosure process by sending the foreclosure notifications including the Notice of Intent to Foreclose (NOI) earlier than required in the past. In some situations, those notifications must be sent 60 to 90 days prior to taking the actual first public legal action to initiate foreclosure, causing confusion and stress to the borrower or their estate.

Effective 7/29/10, the date of the conference call to announce this benefit, mortgagees servicing HECM loans are authorized a 90-day automatic "servicer" extension to take the first public legal action to initiate foreclosure as required by 24 CFR 206.125(d), following expiration of the six month period during which the mortgagor or mortgagor's estate attempts to sell the property or pay off the mortgage. The automatic "servicer" extension is not provided to allow the

mortgagor or the mortgagor's estate additional time before they begin marketing the property or to take the property off the market for a temporary period. It is provided for the mortgagee to allow the mortgagor or their estate the full six months (plus any additional time approved under the regulations) to market the property, and then have sufficient time to perform the required notifications and meet the first legal deadline for the jurisdiction as established in Mortgagee Letter 2005-30. To be eligible for this 90 day automatic "servicer" extension, loans may not have been in default longer than six months as of 7/29/10. Loans in default for a period greater than six months, or any additional time approved by HUD, as of 7/29/10, for which the mortgagee has not met the first legal deadline for the jurisdiction, will be considered to be out of compliance with the regulations and subject to interest curtailment.

This 90-day "servicer" extension to take first legal action for initiation of foreclosure is applicable on all cases, with the exception of those in which the mortgagor or mortgagor's estate has clearly indicated that they will not pursue sale or deed in lieu of foreclosure. In those cases the mortgagee should commence with the foreclosure process immediately. However, the regulations provide additional time where state law or bankruptcy prohibits initiation of foreclosure within six months.

This clarification to existing policy will remain in effect until it is either revised or rescinded by the Department. Where the mortgagee is filing a claim for insurance benefits and is reflecting an approved extension of time based upon this clarification, annotate the Mortgagee's Comments, Part A, Form HUD-27011, with a reference to the 90-day automatic "servicer" extension. Written approval from HUD is not necessary for this automatic "servicer" extension. Mortgagees must correctly identify the following dates on the Form HUD-27011, Single Family Application for Insurance Benefits: the date of the first legal action to initiate foreclosure in Item 11; the expiration date of the automatic extension period in Item 19; the due and payable date in Item 29; and the date of the mortgagor's death in the mortgagee comments section. Further clarification on claim filing instructions will be provided in a mortgagee letter.

9. Will HUD approve an extension to execute a Deed in Lieu of foreclosure on a property? Revised 11/05/2010

24CFR206.125(a)(2) states that the mortgagee shall require the mortgagor to (i) pay the mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least 95% of the appraised value; or (iii) provide the mortgagee with a deed in lieu of foreclosure whenever the mortgage is due and payable. The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

HUD may grant a 30 day extension to obtain the signature of the borrower or the authorized party on the deed in lieu. The extension must be requested within any HUD approved timeframes or extensions. No extension will be granted if the initial six month timeframe or any applicable extension has expired.

The extension must be submitted **through HUD's EVARS system**. The "Reason for the Request" will be "Other". A statement requesting additional time to delay

foreclosure in order to obtain the signature on the deed in lieu document must be entered in the "Basis for Extension Request" box. Evidence to confirm the mortgagee can obtain a clear and marketable title to the property must be included with the extension request.

10. Repair riders allow up to 1 year for mortgagors to complete repairs after closing; however some repair riders indicate a date of less than 1 year for repairs to be completed. If the borrower is unable to complete or refuses to complete the repairs required by the Repair Rider, can the servicing mortgagee request an extension to allow additional time for the repairs to be completed? Revised 11/05/2010

HUD handbook 4330.1 Rev. 5, Section 13-11, states that the repair rider is not to exceed 12 months from closing. If the repair rider specifies an earlier date HUD may grant extensions on a case-by-case basis; however, the timeframe to complete the repairs may not exceed 12 months from closing. Repairs that have exceeded the 12 month timeframe will not be considered for extensions. The mortgagee is required to submit the following for consideration of an extension of time.

The request must be submitted **through HUD's EVARS system**. The extensions will be granted in 90-day increments and any subsequent extensions will be determined on a case-by-case basis.

Please submit the extension in EVARS using the following criteria.

- The date the repair rider expires should be entered in the "Date of Notice field.
- In the "Reason for Request" field, select "Other"
- The "Reason for Extension" should be "Failed to Maintain Property".
- Provide a brief overview of reason repairs have not been completed in the "Basis for Extension Request".

The items listed below must be included as an attachment to the extension request.

- Repair rider indicating required repairs
- Documentation from the borrower and/or the contractor stating why the repairs have not been completed

11. What action constitutes "initiation of foreclosure" on HECM mortgages? New 9/24/2010

Mortgagee Letter 2005-30, issued July 12, 2005, identifies what the Department considers as the first public legal action required to initiate foreclosure in all states and US territories. The same action identified in the mortgagee letter for forward mortgages also applies for HECMs. As provided in 24 CFR 206.125(d)(1), mortgagees are required to commence foreclosure within six months of giving notice to the mortgagor that the mortgage is due and payable, or within six months from the date of the mortgagor's death if applicable. The Secretary may approve additional time to meet this requirement.

A number of recent inquiries have confirmed that some mortgagees still consider that referral to the foreclosure attorney is the first public action required to initiate foreclosure for HECMs. When the Department first learned of this misunderstanding in September 2008, it provided clarification at HECM Servicing Training and updated the HECM Frequently Asked Questions (FAQs) to reflect that clarification.

Subsequent training and discussions held by the Department have continued to reiterate that ML 05-30 is the prevailing guidance.

12. There are instances when a borrower has permanently moved from their property or communicated their intent to permanently move and, therefore, immediately requested a Deed in Lieu (DIL) of Foreclosure. Does HUD require mortgagees to request due and payable approval before accepting a DIL? [New 9/24/2010](#)

The provisions of 24 CFR 206.125(f) state that the mortgagee may accept a DIL of foreclosure in order to avoid the additional delays and costs that would result from a foreclosure action. Therefore, mortgagees may accept a DIL without having first obtained HUD's due and payable permission where doing so avoids the time delays and costs of foreclosure. Mortgagees shall obtain a written request from mortgagors and shall identify the date of the written request from the mortgagor on the form HUD-27011, in Block 29.

13. Will HUD consider allowing the mortgagee to sell an acquired property for an amount less than the appraised value? [Revised 9/24/2010](#)

Upon acquisition of a property by foreclosure or a deed in lieu of foreclosure, the mortgagee shall sell the property for an amount not less than the appraised value unless written permission is obtained from The Secretary (24CFR 206.125(g)).

Due to the current economic conditions, HUD will review requests to accept an amount that is less than the appraised value on a case-by-case basis and determine if the sale is in the best interest of all parties involved. Please see below for the items required for review.

- Cover Letter
- Signed sales contract with a specified closing date
- Estimated HUD-1 or Net to Mortgagee Sheet
- Current appraisal completed by a HUD Roster Appraiser, no older than 6 months.
- Length of time on market
- Listing prices
- Offers to Date
- Market Statistics

The complete package must be sent to HUD's Loan Servicing Contractor, [C & L Service Corporation](#), for review.

14. When is it appropriate to proceed with foreclosure instead of honoring a request for deed in lieu of foreclosure? [New 6/30/2010](#)

Mortgagees should assess the expediency of deed in lieu versus foreclosure and proceed with whichever option will result in the shortest timeframe and the least expense.

15. Will HUD accept assignment on loans that have forced placed insurance?
Revised 6/30/2010

No. If the borrower does not maintain hazard insurance on their property, thus causing the mortgagee to acquire insurance on their behalf (force placed insurance), that is a failure to perform an obligation under the mortgage. Regulations prohibit assignment of the loan to HUD when the borrower has failed to abide by the covenants of the mortgage and maintain hazard insurance on their property.

Force placed insurance works as a master policy that insures the mortgagee rather than the borrower's property. These policies are generally not transferrable and are not renewable by HUD.

16. Multiple defaults: If a HECM has been called due & payable for reasons other than death, then the mortgagor(s) pass(es) away does the status change?
Revised 6/30/2010

If after receiving due and payable approval for reasons other than death, but before foreclosure has been initiated, it is determined that the last surviving mortgagor passed away, the mortgagee should allow time for the estate to sell the property. If the estate does not demonstrate interest in selling the property or paying off the loan within any time remaining under the legally required notification letters (i.e. the repayment notice and notice of intent to foreclose) the foreclosure should continue.

In accordance with Mortgagee Letter 2003-22, mortgagees are required to notify the Department of the death of the last surviving mortgagor (see 24CFR 206.125(a)). This Notice must occur as soon as possible following the death, but no later than 60 days from the date of the mortgagor's death.

17. What closing costs will HUD allow to be deducted from HECM sales proceeds for either mortgagor or mortgagee sales? **Revised 6/30/2010**

HUD does not dictate what closing costs may be deducted from HECM sales proceeds, but rather controls only what the mortgagee may be reimbursed through the claim process. It is the mortgagee's business decision to allow closing costs for which they may not be reimbursed.

There has been some confusion regarding how Mortgagee Letter 2006-04 applies to sale of properties with HECM loans. ML 2006-04 rescinded paragraph 5-2 of handbook HUD 4000.2, Rev-3, in which specific items were designated as allowable closing costs, and allowed mortgagees to "charge and collect from mortgagors those customary and reasonable costs necessary to close the mortgage." Although there was mention of HECM in that ML, the guidance was strictly applicable to loan origination. It addressed closing costs that could be collected from the borrower in relation to obtaining an FHA loan to purchase a home and also what costs mortgagees could charge to HECM borrowers for origination. References to seller's contributions applied only to forward mortgages for which FHA insured loans were being used to purchase a home.

That ML notwithstanding, HUD will reimburse mortgagees for reasonable and customary seller's costs, per jurisdiction, that have been deducted from the sales proceeds at settlement for sales of properties with HECM loans.

Allowable settlement costs include, but are not limited to:

1. Sales commission consistent with the prevailing rate but, not to exceed 6%;
2. Real estate taxes prorated to the date of closing;
3. Local/state transfer tax stamps and other closing costs customarily paid by the seller including the seller's costs for a title search and owner's title insurance;
4. Any charges required by state law or local ordinance to be paid by the seller, such as, but not limited to, attorney fees, probate fees, representative fees (i.e., personal representative for an estate).

Likewise, HUD will reimburse the mortgagee for costs that are customarily paid by the seller on the buyer's behalf in that jurisdiction. Those costs must be itemized on the HUD-1 at closing and may not exceed actual costs. **It is the mortgagee's responsibility to obtain satisfactory documentation to that effect and submit it to HUD with the claim if they request reimbursement for these items.** Lump sum contributions will not be considered.

Unacceptable closing costs, which will not be reimbursed by HUD regardless of local customary allowances, include, but are not limited to:

1. Repair reimbursements or allowances;
2. Home Warranty fees;
3. Tax service fees;
4. Discount points or loan fees for non FHA-financing;
5. Wire transfer fees;
6. Courier or messenger fees;
7. Any items identified only by the term "miscellaneous" or "other".

Claim Filing

All allowable settlement costs not claimed elsewhere in specified item numbers on the Form HUD-27011 are entered in Part D, item 408, with a clear explanation that the cost is customary for the jurisdiction. Documentation of customarily paid charges must be submitted to HUD with the claim package.

18. Under normal conditions, if a mortgagor fails to pay taxes and/or insurance, the mortgagee would adjust an existing payment plan to allow the mortgagee to be reimbursed for any advances made. Under Mortgagee Letter 2006-06 mortgagees can't make "forced" changes to a line of credit (LOC) or payment plan changes in Texas after 03/01/06, without the borrower's approval. Is that correct? Revised 5/21/2009

That is correct. The Texas Constitution prohibits mortgagees from unilaterally amending the terms of the document administering the extension of credit. Therefore, "forced" changes to the payment plan cannot be made without the approval of the borrower. Payments for taxes and/or insurance made on or after March 1, 2006 from an existing Line of Credit are not considered a payment plan change.

19. Will HUD approve a third extension to allow more time for the estate to sell the property? Revised 2/19/2009

It has been the policy of the National Servicing Center (NSC) to grant third extensions only when a sale is pending on the property. Due to the current market and economic conditions, HUD will temporarily consider third extensions on HECM loans where there is not a sale pending. These requests will be reviewed on a case-by-case basis to determine if it is in the best interest of HUD to grant additional time for the property to be sold. Because of the nature of the third extensions, additional documentation will be required to justify the approval of additional time. Please see the list below for required documentation.

- Documentation of attempts to sell the property since it was placed in a due and payable status.
- Current Listing Agreement.
- Market statistics showing home sales in area property is located.
- Personal Representative Letter from court or status of probate.
- Loan approval from mortgagee, if an heir of the estate is purchasing the property by paying the loan balance in full.
- Any additional documentation that may assist with the approval.

The approval of third extensions is a temporary resolution to the current market conditions and may be discontinued by HUD NSC at any time.

20. When is a mortgagee required to obtain appraisals? New 1/22/2009

Regulations at 24CFR 206.125(b) state the mortgagee shall obtain an appraisal of the property no later than 30 days after the mortgagor is notified that the mortgage is due and payable, or no later than 30 days after the mortgagee becomes aware of the mortgagor's death, or upon the mortgagor's request in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale.

21. What are mortgagees expected to do when mortgagors have completed Trust documents on a HECM loan after closing?

Once the mortgagee has either discovered or been advised of the Trust, it is expected to have its legal division review the documents. If there has been a violation of the covenants of the mortgage due to the Trust, the mortgagee should take whatever steps are necessary to rectify the violation. The mortgagor may change the terms of the Trust, or revoke it, to cure the default.

If all attempts to rectify the violation fail, the mortgagee may request permission from HUD to call the loan due and payable. HUD will evaluate the circumstances for declaring the mortgage due and payable and will respond in writing to the mortgagee within 30 days of receipt of the request either approving or denying the request. Until the reason for the default is cured and the loan removed from a due and payable status, the loan is not eligible for the assignment option.

22. Is there any provision for a mortgagee to be reimbursed more than 100% of maximum claim amount?

Regulations at 24CFR 206.129(b) prohibit payment of more than 100% of maximum claim amount for any reason.

23. Which default(s) can be cured? Can due and payable approval be rescinded if the reason for default has been cured?

At the discretion of the mortgagee, any default, other than death of the last mortgagor, can be cured and the mortgage reinstated. However, the Code of Federal Regulations provides flexibility to help deter repeated defaults. 24CFR 206.125(a)(3) states "The mortgagee may refuse reinstatement by the mortgagor if: (i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the mortgagor that the mortgage is due and payable."

24. How does repair set-aside affect assignment?

Repairs required as a condition of endorsement must be completed within the previously mentioned 12 months. Failure of the mortgagor to complete required repairs is a violation of the mortgage covenants and would trigger a mortgagee to first suspend payments under the payment plan and ultimately to request permission from HUD to call the loan due and payable. Loans that are in "due and payable" status cannot be assigned to the Department.

Reminder: If a mortgagee requests approval to assign a mortgage that shows funds still set aside for repairs, HUD's contractor will ask the mortgagee to confirm the repairs are complete and the funds have been appropriately disbursed. If there are excess funds after the repairs are complete, they should either be forwarded to the mortgagor or applied to the principal balance of the mortgage.

25. Does the 6-month timeframe for initiation of foreclosure begin with notification of date of death for the last mortgagor or the actual date of death?

Regulations at 24CFR 206.125(d)(1) require mortgagees to commence foreclosure within 6 months of the mortgagor's actual date of death.

Mortgagee Letter 2005-30 provides Reasonable Diligence Requirements and Effective Dates. This guidance includes a listing, by state, of the first legal action necessary, as well as the typical security instrument used to initiate foreclosure. These are important factors for mortgagees to consider.

26. How do I contact HUD for assistance on a HECM? Revised 07/19/2011

HUD employs the services of a loan servicing contractor for the majority of its' HECM related functions. The current contractor is:

C & L Service Corporation (CLS)
2488 E. 81st St., Suite 700
Tulsa, OK 74137

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