



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

September 28, 2006

MORTGAGEE LETTER 2006--25

TO: ALL APPROVED MORTGAGEES
ALL HUD-APPROVED HOUSING COUNSELING AGENCIES

SUBJECT: Home Equity Conversion Mortgage Program: Home Equity Conversion
Mortgage Counseling Requirements

The purpose of this Mortgagee Letter is to clarify housing counseling requirements for prospective Home Equity Conversion Mortgage (HECM) borrowers. This Mortgagee Letter clarifies who must receive HECM counseling, and what activities a HECM lender may perform prior to a prospective HECM borrower receiving HECM counseling.

All of the policies covered by the Mortgagee Letter are included in various policy documents, including Section 255 of the National Housing Act, 24 CFR 206.41, HUD Handbooks 4235.1 REV-1 (HECM Handbook); 7610.1 REV-4 (Housing Counseling Handbook); and Mortgagee letters 04-25, 00-39 and 00-10. This mortgagee letter clarifies the policy documents as they relate to HECM counseling. This mortgagee letter also outlines additional activities that a mortgagee may perform prior to counseling and therefore supplements the activities outlined in Mortgagee Letter 04-25.

Who Must Receive HECM Counseling

To be eligible for insurance under section 255 of the National Housing Act (NHA) (12 USC 1715z-20), a HECM must have been executed by a mortgagor who has received counseling by a third party other than the HECM lender. NHA Section 255(f) and FHA regulations at 24 CFR 206.41 provide what information a counselor must discuss with a prospective HECM borrower.

FHA has received several inquiries from HECM lenders, prospective HECM borrowers, and housing counselors regarding the provision of HECM counseling for prospective HECM borrowers, their spouses, children, and persons with a reversionary or remainder interest in the real estate, which will serve as the security for an FHA-insured HECM.

This Mortgagee Letter discusses counseling for the following parties:

- (1) The non-borrower spouse of a prospective HECM borrower.
- (2) A trustee, trust beneficiaries, or persons with a reversionary or remainder interest.
- (3) The children of a prospective HECM borrower(s).

Counseling Requirements for the Non-Borrower Spouse

It has been brought to FHA's attention that spouses of prospective HECM borrowers have quitclaimed their interest in real estate, which will serve as the security for an FHA-insured HECM, when the spouse of the prospective HECM borrower has chosen not to seek, or is ineligible for, an FHA-insured HECM.

To ensure that the non-borrower spouse of a prospective HECM borrower understands the implications of a HECM, and the risks posed by the non-borrowing spouse quitclaiming to the prospective HECM borrower his/her interest in the real estate, which will serve as the security for the HECM, FHA recommends that the HECM borrower's spouse receive HECM counseling. This includes: a) a spouse, who is currently on the title for the real estate that will serve as the security for the FHA-insured HECM and is eligible for a HECM, but instead will be removed from the title; b) a spouse, who is ineligible to receive a HECM, because she/he is under 62 years of age but is on the title for the property that will serve as the security for the FHA-insured HECM; and c) a spouse who is currently not on the title for the real estate. In the first two cases described above, the non-borrower spouse should quitclaim his/her interest in the property to the prospective HECM borrower prior to the HECM closing.

During counseling, all parties must be made aware that the FHA-insured HECM cannot be assumed by the non-borrower spouse upon the HECM borrower's death, or change of primary residence. In other words, the HECM becomes due and payable upon the HECM borrower's death, or when the real estate, which serves as the security for the FHA-insured HECM, is no longer the primary residence of the HECM borrower.

Counseling Requirements for Persons with a Reversionary or Remainder Interest, Trustees and Trust Beneficiaries

Under FHA regulations at 24 CFR section 206.35, if a HECM borrower holds a life estate in the property that will serve as the security for the FHA-insured HECM, persons with a reversionary or remainder interest in that property also must execute the HECM mortgage. The referenced "reversionary or remainder interest" is an interest in the real estate that will serve as the security for the FHA-insured HECM.

FHA will insure a HECM on property held in the name of the trust and beneficiaries/HECM borrowers according to the provisions described in the HECM Handbook 4235.1, Rev.1 and ML 93-22. The HECM Handbook and ML 93-22 provide, in part, that all beneficiaries of the trust should be eligible HECM borrowers at the time of origination and until the mortgage is released. Contingent beneficiaries of the trust, who will neither receive any benefit from the trust nor have any control over trust assets until the beneficiaries/HECM borrowers are deceased, need not be eligible HECM borrowers.

Current trust beneficiaries or individuals who are eligible HECM borrowers and seeking a HECM loan must be provided HECM counseling. However, a contingent beneficiary, an individual who will neither receive any benefit from the trust nor have any control over trust assets until the

beneficiaries/HECM borrowers are deceased or the mortgage is released, does not have to be provided HECM counseling. The trustee must also sign the mortgage. But the trustee is not required to attend counseling unless the trustee is also the beneficiary/HECM borrower.

While counseling is not required for persons, with a reversionary or remainder interest in the real estate, or trustees and trust beneficiaries who are not HECM borrowers, FHA strongly encourages that these individuals seek HECM counseling. Persons with a reversionary or remainder interest in the real estate, or trustees and trust beneficiaries, who do not attend HECM counseling should nonetheless be familiar with the program requirements for the FHA-insured HECM.

HECM counseling may be made available by a HUD-approved housing counseling agency, if requested by persons with a reversionary or remainder interest, or trustees and trust beneficiaries. Persons with a reversionary or remainder interest, or trustees and trust beneficiaries may go to a HUD-approved housing counseling agency of their choice. Counseling for these individuals does not have to take place at the same agency that provided HECM counseling to the HECM borrower. If a person with a reversionary or remainder interest in the real estate or trustees and trustee beneficiaries that are not HECM borrowers receives HECM counseling, they will not sign the HECM certificate.

Counseling Requirements for a Prospective HECM Borrower's Children

The children of a prospective HECM borrower, who do not qualify for a HECM, but who currently reside on the real estate, or who are on the title for the real estate that will serve as the security for the FHA-insured HECM, but will be removed from title prior to closing, are not required to receive HECM counseling. Although counseling for the child of a prospective HECM borrower is not required, it is permissible, and HECM counseling will be made available by a HUD-approved housing counseling agency, if requested by the child. Counseling for the children of a prospective borrower does not have to take place at the same agency that provided HECM counseling to the borrower.

Activities Permitted Prior To Counseling

FHA will now permit lenders to use automated valuation models (AVMs) to perform a preliminary estimation of the value of the real estate that will serve as security for the FHA-insured HECM. The AVM, however, does not take the place of the FHA appraisal. If the prospective borrower obtains a HECM, then the cost of the AVM should be included in the origination fee.

In addition, a HECM lender may order a preliminary title search prior to the prospective HECM borrower receiving counseling. However, the prospective HECM borrower may choose to seek counseling prior to or after the lender orders a preliminary title search. In other words a prospective HECM borrower does not have to wait until the HECM lender orders and reviews the preliminary title search to receive counseling.

The costs associated with the preliminary title search will be paid at closing. If a prospective HECM borrower does not proceed to closing on the HECM, the borrower may not be charged for this service.

New HECM Counseling Certificate

The HECM counseling certificate has been revised. Attached is a copy of the revised form. This form is available on HUD Clips at www.hudclips.org. The revised counseling certificate includes a statement that the counselor has explained to the prospective HECM borrower that the HECM will become due and payable when no remaining eligible borrowers reside at the real estate, which serves as the security for the FHA-insured HECM, or when an obligation of the HECM borrower under the HECM is not performed.

Preventing Mortgage Fraud Against HECM Borrowers

HUD has learned of a recent fraud scheme involving loan officers originating HECMs and arranging to keep the HECM borrower's loan proceeds. In one case the loan officer arranges for the title company to pay the loan proceeds through two checks. One check is sent to the senior and the other is kept by the loan officer. In another case loan officers are convincing seniors that a standard procedure in the HECM origination process is to sign over the loan proceeds to the loan officer for future disbursement to the HECM borrower. In these cases the loan officer may make a few payments but then keeps the balance of the funds. In an effort to warn HECM borrowers of these potential fraud schemes, HUD advises that HECM counselors to discuss the potential of mortgage fraud with their clients. Counselors are to explain the standard ways in which HECM borrowers can access their loan proceeds. Counselors should warn clients against signing over their funds to loan officers or other parties involved in the mortgage transaction. While this type of fraud does not happen in the majority of HECM transactions, HUD believes it is important to educate prospective HECM borrowers about how to avoid becoming victims of fraud schemes.

The provisions within this Mortgagee Letter are effective immediately. All other FHA-insured HECM housing counseling guidelines and requirements not superceded by this Mortgagee Letter remain in effect.

If you have any questions regarding this Mortgagee Letter, please call FHA's Resource Center at: 1-800-CALL-FHA (1-800-225-5342), and select "Option 2."

Sincerely,

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

Attachment