



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

June 23, 2004

MORTGAGEE LETTER 2004-25

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

**SUBJECT: Home Equity Conversion Mortgage (HECM) Program -- Clarification of
HECM Counseling Requirements**

The purpose of this Mortgagee Letter is to clarify the housing counseling requirements of the HECM program. Specifically, this Mortgagee Letter addresses:

- a) When a potential mortgagor must be referred for counseling;
- b) The acceptable listing of entities eligible to provide HECM counseling to which a client must be referred;
- c) The topics that must be covered in a counseling session;
- d) The types of counseling that are permissible;
- e) Acceptable means of documenting that a potential HECM borrower has received counseling;
- f) The counselor's responsibility for referring potential mortgagors to Federal Housing Administration (FHA)-approved HECM lenders; and
- g) How to notify the Department of Housing and Urban Development of concerns regarding the services of a HECM lender or HECM counselor.

All of the policies covered by this Mortgagee Letter are included in various policy documents, including Section 255 of the National Housing Act, 24 CFR 206.41, Mortgagee Letters 00-10 and 00-39, and Handbook 4235.1, REV 1. This Mortgagee Letter clarifies and consolidates the FHA's requirements. Given that some mortgagees and counseling agencies were confused about FHA's requirements and were not complying with the policies stated in this Mortgagee Letter, FHA will provide mortgagees and counseling agencies time to bring their operations into compliance. Therefore, all of the policies stated in this Mortgagee Letter take effect 30 days after the publication date.

Initial Contact between Mortgagor and Mortgagee

When a potential HECM mortgagor first contacts or communicates with an FHA-approved mortgagee, the mortgagee must explain that the HECM program requires counseling and refer the

client to a list of entities eligible to provide HECM counseling. To satisfy this requirement, the lender must provide the potential HECM borrower with information on the American Association of Retired Persons (AARP) Foundation HECM Counseling network and a list of all HUD-approved housing counseling agencies that offer HECM counseling within the state in which the potential borrower lives. The mortgagee may also provide the client the phone number for Fannie Mae's telephone counseling service. See below for more details on these eligible counseling entities.

The lender may not steer, direct, recommend, or otherwise encourage a client to seek the services of any one particular counseling agency, but must provide the entire listing of agencies located within the state in which the borrower resides, as described above. Further, before, during, or after the counseling session is completed, the lender may not contact a counselor or counseling agency to refer a client; discuss a client's personal information, including the timing or scheduling of the counseling; or request information regarding the topics covered in a counseling session.

Mortgagee Activities Allowed Prior to Counseling

HUD recommends and urges mortgagees to refer clients to counseling prior to taking initial application. However, if a mortgagee decides to discuss the program with a potential mortgagor and/or take initial application prior to counseling, the mortgagee may only undertake the following permissible activities: a) explain the HECM program to the potential client; b) discuss whether the potential borrower is eligible; c) provide information regarding the fees and charges associated with the HECM product; d) describe the potential financial implications of a HECM loan for the client; and e) provide the borrower with copies of the mortgage, note, and Loan Agreement. The potential HECM borrower is not obligated to pursue a HECM loan from a lender who takes initial application or discusses the HECM program with the potential mortgagor before the potential mortgagor completes the counseling.

Mortgagee Activities Prohibited Prior to Counseling

The mortgagee may not order an appraisal, title search, or an FHA case number or in any other way begin the process of originating a HECM loan before the potential mortgagor completes the required counseling. The mortgagee may only proceed to process the initial HECM loan application once the counseling is complete, as evidenced by the signed and dated counseling certificate (described below).

Fees and Charges

Until the mortgagee receives the required HECM counseling certificate indicating the counseling has been completed, the mortgagee may not charge the borrower an application fee, an appraisal fee, or charge for any other HECM-related services.

Entities Eligible to Provide HECM Counseling

Entities providing HECM counseling must be separate from HECM lending institutions. The only entities eligible to provide HECM counseling are: the AARP Foundation Network HECM Counselors; housing counseling agencies that are approved by HUD, including affiliates of HUD-

approved national and regional housing counseling intermediaries; state Housing Finance Agencies that receive grant funding from HUD to offer HECM counseling services; and the Fannie Mae Telephone HECM Counseling Service.

AARP Foundation Network Counselors – In response to a 1999 Congressional mandate, HUD worked with the AARP Foundation to develop a national network of expert HECM counselors. Counselors providing services through the AARP Foundation network must pass a rigorous exam and receive continuing education on the HECM program. The AARP Foundation counselors work at HUD-approved housing counseling agencies and provide both face-to-face counseling and telephone counseling services. HUD has established no conditions or requirements that limit the number or type of clients that may receive HECM counseling through the AARP Foundation network. HUD encourages lenders to inform all potential HECM borrowers that any client seeking HECM counseling may receive counseling services from an AARP Foundation counselor. The phone number for the AARP Foundation counseling service is 202-434-6082 (not a toll free number). Consumers can also obtain a listing of reverse mortgage counselors in the AARP Foundation network on the web at: <http://www.hecmresources.org/network.cfm>

HUD-Approved Housing Counseling Agencies – The list of HUD-approved housing counseling agencies (including affiliates of HUD-approved national and regional intermediaries) and state housing finance agencies that provide HECM counseling services is available on HUD’s website. This listing arrays agencies in alphabetical order by state, then by city. Lenders, as well as the general public, may obtain a copy of the most recent listing of the HECM housing counseling agency directory at: <http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm>.

Fannie Mae Telephone HECM Counseling – Fannie Mae has an agreement with HUD to provide telephone counseling services to potential HECM borrowers under a very limited set of circumstances. See the Telephone Counseling section of this mortgagee letter for the criteria that must be met for a client to receive telephone counseling from Fannie Mae.

Topics to be Covered

Financial Implications of and Alternatives to a HECM

In accordance with the HECM statute and regulations, the following information must be provided to the potential HECM borrower:

- a) options, other than a HECM, that are available to the homeowners, including other housing, social service, health, and financial options;
- b) other home equity conversion options that are or may become available to the homeowner, such as other reverse mortgage products, sale-leaseback financing, deferred payment loans, and property tax deferral;
- c) the financial implications of entering into a HECM;

- d) a disclosure that a home equity conversion mortgage may have tax consequences, affect eligibility for assistance under federal and state programs, and have an impact on the estate and heirs of the homeowners; and whether the potential HECM mortgagor has signed a contract or agreement with an estate planning firm that requires, or purports to require, the mortgagor to pay a fee on or after closing that may exceed amounts permitted by the Secretary under 24 CFR part 206 and the extent to which these services may not be needed or may be available at nominal or no cost from other sources, including the mortgagee (24 CFR 206.41(b)).

In providing information on the financial implications of entering into a HECM, a counselor must cover, at a minimum: a) the advantages and disadvantages of each payment plan; b) the steps followed in determining the borrower's principal limit, including all loan costs and set-asides; c) the increase in the loan balance and likely decrease in the borrower's equity over time; d) the growth of the HECM line of credit; and e) the borrower's ongoing responsibility to pay property taxes, ground rents, and insurance either directly or indirectly by electing to require the mortgagee to withhold funds from monthly payments or to charge such funds to a line of credit.

HECM Calculation Software

In providing this information, a counselor should use computer printouts generated by HUD's software, or similar software generating the same information, for calculating the maximum funds available to HECM borrower(s) and payment plan options. The HUD HECM software was recently updated and the most recent version must be used. For agencies that have never installed the HECM software, it can be downloaded from:

<http://www.hud.gov/offices/hsg/sfh/hecm/hecminst.cfm>,

For agencies already using the software, the upgrade can be downloaded from:

http://www.hud.gov/pub/chums/hecm_upgrade.html.

Costs to Obtain a HECM

Finally, counselors must explain for all HECM clients: what costs are required to obtain a HECM loan; the maximum amount HUD permits a mortgagee to charge for specific loan costs; which loan costs are the same for every lender and which costs may vary from lender to lender.

Prohibition on Dissemination of Specific Loan Product Information

A counselor must never provide information on the specific prices charged by any individual lender, because prices are subject to market fluctuations and may depend on variables that are not constant from client to client. The counselor should tell the client that information on prices must come from a loan officer. If a client presents a counselor with detailed information on a variety of loans offered by multiple lenders, the counselor may help the client compare the costs by pointing out the features described above (i.e., what costs are required, what HUD permits, what costs may vary and which may not).

Counseling Certificate

All parties shown on the property deed must receive counseling in order to obtain a HECM loan. For borrowers lacking legal competency, the counseling session may be conducted with a person holding a durable power of attorney, or with a court-appointed conservator or guardian (as specified in Handbook 4235.1, REV-1, paragraph 4-6). When the counseling session is successfully completed, the counseling agency will issue a certificate stating that counseling was provided. All owners shown on the property deed are eligible mortgagors and each of them (or legal representative, as described above) must sign the counseling certificate.

In the event that multiple parties shown on the deed are not located in the same place, counseling may be provided to these parties by one counseling agency via teleconference call or the individuals may receive counseling separately from distinct counseling agencies. So long as one party participating in the counseling resides in the state where the counseling agency conducting the telephone counseling is located, the counseling agency may offer this service across state boundaries. If the potential HECM mortgagors choose to receive counseling from separate counseling agencies, each of the parties would sign a separate HECM counseling certificate.

The certificate must contain the name of the counselor, the name of the counseling agency, and the Employer Identification Number (EIN) of the counseling agency. In addition, the certificate must be signed and dated by both the counselor and all potential mortgagors, indicating the counseling has been completed. The counselor must also provide the actual expiration date for the certificate. The certificate will expire 180 calendar days from the date the counseling was completed.

A sample certificate is attached for your convenience. This sample certificate replaces the sample previously provided by FHA in Handbook 4235.1, REV-1, Appendix 16. Consistent with the other provisions of this mortgagee letter, the new certificate must be used for all prospective HECM mortgagors referred for counseling 30 days after the mortgagee letter is published.

Mortgagee Responsibilities Regarding Counseling Certificate

The mortgagee must take initial application from a prospective mortgagor before the counseling certificate expires, but it is not necessary for a loan to close before the certificate expires. FHA prohibits the mortgagee and/or the potential mortgagor from waiving the certificate expiration date.

The mortgagee must verify that the housing counseling entity listed on the certificate is an entity that HUD has deemed eligible to provide HECM counseling. To do so, the mortgagee may check the name of the counseling agency identified on the certificate against the HUD's listing of eligible HECM counseling entities, provided on HUD's website.

As mentioned above, a mortgagee may not order an appraisal or request an FHA case number until the potential borrower completes the required counseling and presents the lender with the counseling certificate.

Permissible Types of Counseling

Face-to-Face Counseling

HUD expects potential HECM borrowers to meet face-to-face with a counselor to discuss their unique financial circumstances and decide what housing options are best for them. Face-to-face counseling enables the counselor to assess whether the homeowner understands the features of the HECM program and the financial implications of a HECM on his/her household.

Telephone Counseling

Should telephone counseling be necessary, the AARP Foundation Network of HECM counselors is the only entity permitted by HUD to provide telephone counseling with no special conditions or limitations. As mentioned above, AARP Foundation counselors work at HUD-approved housing counseling agencies and provide both face-to-face counseling and telephone counseling services. HUD has established no conditions or requirements that limit the circumstances under which a client may receive HECM counseling through the AARP Foundation network. In other words, any client, located anywhere in the country and under any circumstances, may receive telephone counseling from an AARP Foundation counselor.

Local housing counseling agencies (including affiliates of national and regional intermediaries) may provide telephone counseling only under a limited set of circumstances and only to clients residing in the state where the agency is approved to operate. Only under the following circumstances may a local housing counseling agency whose counselors are not part of the AARP Foundation network offer telephone counseling: the potential borrower has a mobility problem or medical condition that will affect his or her ability to travel to the local counseling agency or no counseling agency is located within 50 miles of the borrower's home. HUD encourages local agencies to refer clients in need of telephone counseling to the AARP Foundation Network of expert HECM counselors. If a local agency receives a telephone inquiry from a caller who resides in a state that is different from that where the agency is located, the agency must refer that caller to the AARP Foundation counselors or to an agency in the caller's state, which can be obtained by looking at the listing of agencies on HUD's web site.

Fannie Mae has an agreement with HUD to provide telephone counseling services to potential HECM borrowers, if any one of the following circumstances apply:

- a) There is no HUD-approved counseling agency within 50 miles of the potential HECM borrower's home;
- b) The local counseling agencies do not provide reverse mortgage counseling in the potential mortgagor's language;
- c) There is a waiting period of three or more weeks for a reverse mortgage counseling appointment;
- d) The potential HECM mortgagor is unable or unwilling to travel and the local agency does not make home visits; or
- e) The potential HECM mortgagor is experiencing an emergency such as foreclosure of

his/her present home and no counseling is immediately available in the local area.

Fannie Mae's toll-free counseling service can be reached at 800-732-6643, weekdays, from 9:00 am to 5:00 pm, Eastern Standard Time.

Exceptions to HECM Counseling Requirement

In accordance with the provisions of 24 CFR Part 206.53, HUD may waive the HECM counseling requirement for HECM mortgagors who are refinancing into a new HECM mortgage and choose not to receive counseling, only if the following conditions are met: a) the HECM mortgagor received the anti-churning disclosure form required by law; b) the increase in the mortgagor's principal limit exceeds the total cost of the refinancing by 5 times; and c) the timing between the closing on the original HECM loan and the date of the application for refinancing does not exceed five years. See Mortgagee Letter 04-18 for more details on this subject.

Lender Steering

Housing counseling agencies are not permitted to promote, represent, recommend, or speak for any specific lender. Potential borrowers seeking assistance in locating a lender may be referred to HUD's listing of approved HECM lenders located at: <http://www.hud.gov/ll/code/llplcrit.html>.

Concerns or Complaints Regarding a HECM Lender or HECM Counselor

If a consumer, lender, counselor, or representative from the housing industry has a concern or complaint about the services provided by a particular HECM lender or HECM counselor, they should immediately contact the homeownership center in their jurisdiction. Toll-free contact numbers for the Homeownership Centers are: Philadelphia (800) 440-8647; Atlanta (888) 696-4687; Denver (800) 543-9378; and Santa Ana (888) 827-5605.

Information Collection Requirements

The information collection requirements referred to 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. Chapter 35). The OMB number issued for this requirement is OMB 2502- 0546

If you have questions regarding this Mortgagee Letter, please contact your local Homeownership Center (HOC). The toll-free numbers for the four HOCs are listed above.

Sincerely,

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment