

NON-BORROWING SPOUSES AND REVERSE MORTGAGES

OVERVIEW

WHAT IS A REVERSE MORTGAGE

The Home Equity Conversion Mortgage Program, i.e. the reverse mortgage, was enacted by Congress in 1987 to “meet the special needs of elderly homeowners.” Under the program, the United States Government insures reverse mortgages originated by private lenders.

A reverse mortgage is a loan that allows older homeowners to convert part of the equity in their homes into cash. It is the “reverse” of a traditional mortgage in which the borrower repays the borrowed sum on a monthly basis. Instead, reverse mortgage borrowers are not required to make monthly or other periodic payments to repay the loan. Rather, the loan balance increases over time, and the loan does not become due and payable until one of a number of defined events occurs – most commonly, the death of the borrower. For the duration of the reverse mortgage, the borrower is required to pay property taxes, homeowner association assessments or monthly dues, and maintain insurance on the property.

THE NON-BORROWING SPOUSE

Many eligible couples take a reverse mortgage in order to access their home equity without risking foreclosure, eviction, and homelessness. For a multitude of reasons, many couples decide to take a reverse mortgage that only lists one spouse as the actual borrower – more often than not, the older spouse. Common reasons for doing so include one spouse being younger than 62 at the time of origination (FHA guidelines require homeowners being over 62 to be eligible for a reverse mortgage), promises of a higher up-front payment or better mortgage terms if the younger spouse is excluded, or other sometimes unscrupulous lending practices.

Leaving one spouse off the reverse mortgage, i.e. the non-borrowing spouse, carries risks however. Until recently, many reverse mortgage lenders tied the term of the reverse mortgage only to the life of the borrower. Many surviving spouses suddenly found themselves facing foreclosure and eviction from their lifelong homes when the bank called the entire reverse mortgage due and payable not long after their borrower-husband/wife passed away.

ASSUMPTION OF THE REVERSE MORTGAGE AND MORTGAGEE LETTER 2015-15

The Department of Housing and Urban Development (“HUD”) issued new regulations regarding reverse mortgages on June 12, 2015, through Mortgagee Letter 2015-15. In the letter, HUD proposed a program called the “Mortgagee Optional Election” or MOE. Under the MOE, banks could elect to have HUD take over or assume reverse mortgages with a surviving non-borrowing spouse. After assuming the reverse mortgage from the bank, HUD would then hold the loan until the death of the non-borrowing spouse rather than foreclose, effectively extending the term of the reverse mortgage.

It is imperative that surviving spouses contact their bank immediately to ensure that the bank is electing to have HUD assume the reverse mortgage. This packet, with the attached material, will go over step-by-step, the application process and the documents you will need to provide to the bank to take advantage of this new program offered by HUD.

ELIGIBILITY REQUIREMENTS

To be eligible for the MOE, non-borrowing spouses must meet the following requirements:

- 1) The spouse must have been married to the borrower at time of origination AND remained married until time of the borrower's death;
- 2) The property is the primary residence for the spouse AND the borrower for the duration of the reverse mortgage;
- 3) The spouse must currently reside in the property;
- 4) The spouse must obtain or be able to obtain marketable title within 90 days following the death of the deceased to remain in the property for life.
- 5) The spouse MUST CURE any defaults in taxes and insurance prior to HUD assuming the reverse mortgage.

If the spouse meets these eligibility requirements, they should contact their reverse mortgage lender immediately, and follow the steps outlined below (with attached material) to apply for a MOE.

The bank must elect to have HUD assume a reverse mortgage within the following timeframes:

- 1) BEFORE October 10, 2015 (if the borrower died before June 12, 2015); or
- 2) BEFORE 120 days of the borrower's death (for deaths after June 12, 2015).

APPLYING FOR THE MOE

The application process for the MOE may be different for each spouse, depending on which bank holds the reverse mortgage. In many situations the bank may not even contact the surviving spouse to inform them that this program is available. The spouse should compile and then send their bank the following checklist of documents to demand their lender have their reverse mortgage assigned to HUD:

- 1) A written demand letter demanding the bank have HUD assume the reverse mortgage pursuant to Mortgagee Letter 2015-15. Two fillable demand letter templates are attached to this packet, depending on whether or not the reverse mortgage is being actively foreclosed.
- 2) A signed and notarized Eligible Non-Borrowing Spouse Certification. A fillable Certification Template form is attached to this packet. It must be signed and notarized before being sent to the bank.

- 3) Copy of Social Security Card (for Deceased Borrower and Surviving Spouse) or other evidence of Social Security Number;
- 4) Birth Certificate (of Surviving Spouse) or State/Federally-issued identification (e.g. driver's license, passport, etc.);
- 5) Marriage Certificate or, for common law marriages, a formal legal opinion attesting to the legality of your marriage, including the date of marriage;
- 6) Proof of current residency in the Property (e.g. utility bills, Social Security benefits letter, etc.).
- 7) **IF APPLICABLE:**
 - a) If the deceased borrower's estate has been probated, attach the following documents as well (as applicable):
 - i) court order appointing the spouse as personal representative and/or;
 - ii) personal representative's deed transferring title to the spouse.
 - b) If the deceased borrower died with a will but has NOT been probated, record the will with the County Recorder, and attach a copy of the recorded will.

Once you have compiled these documents, contact the bank to have the packet mailed (preferably certified) to begin the application process. Contact the bank on a weekly basis to ensure receipt of documents and that no further documentation is requested. Keep a copy of the documents you submit.

[Use the following letter template to send to your lender if you
are not in a pending judicial foreclosure lawsuit]

[Remember to Attached Exhibit A (Mortgagee Letter 2015-15) and Exhibit B
(Your documents, including the Surviving Non-Borrower Spouse Certification) to
the letter when you mail it to your lender.]

[Date]

[Name of Lender]

[Address of Lender]

Re: Request for Assignment of HECM Reverse Mortgage to HUD
Pursuant to HUD Mortgagee Letter 2015-15

To Whom It May Concern at [Name of Lender]:

I am writing this letter regarding me and my deceased spouse's HECM reverse mortgage. I am the surviving non-borrower spouse on a HECM reverse mortgage, Account No.
_____.

Based upon the Department of Housing and Urban Development's (HUD's) recent Mortgagee Letter 2015-5, (**attached as Exhibit A**) I am formally requesting that [name of lender] elect to have HUD take assignment of my HECM. [Lender] is permitted to do so as outlined under Mortgagee Letter 2015-5. The letter's terms are:

"A mortgagee who has made the MOE [Mortgagee Optional Election] Assignment election, may only assign a HECM loan that satisfies the following requirements:

1. There is an Eligible Surviving Non-Borrowing Spouse;
2. The Eligible Surviving Non-Borrowing Spouse agrees to certify annually that he or she continues to satisfy all eligibility requirements;
3. The HECM is not in default or eligible to be called due and payable for any other reason;
4. There are no allegations or claims that would invalidate the HECM or any such allegations or claims have been judicially resolved in favor of the mortgagee;
5. The mortgagee has taken all steps necessary to ensure the HECM remains a valid and legally enforceable first lien under state law in accordance with this Mortgagee Letter and no Statute of Limitations or other barrier exists to the exercising of rights to gain good, marketable title under the mortgage;
6. The mortgagee agrees to indemnify the Secretary for any loss incurred by

the Secretary as a result of any impediment to the Secretary obtaining good and marketable title, unless such loss is solely due to acts of the Secretary after assignment; and

7. The mortgagee has obtained all required information, certifications, and agreements from any Eligible Surviving Non- Borrowing Spouse and any other necessary party as set forth in this Mortgagee Letter.

I qualify for an MOE assignment. I am the remaining, eligible non-borrower surviving spouse. [I am current on my home's property taxes and insurance, and my reverse mortgage is not in default. **[or]** I can bring my property taxes current by [date]. **[or]** I can bring the insurance by current by [date].]

HUD's Mortgagee Letter 2015-15 is welcome news for non-borrower surviving spouses, but is equally good news for [lender]. Assigning the HECM to HUD is the best option for [lender]. If [lender] went forward with the judicial foreclosure proceeding, it would incur additional costs in that lawsuit. And, it is also in [lender's] economic interests to make the assignment to HUD because my home would sell for less, at a foreclosure sale, than [lender] will be paid if it assigns the HECM to HUD.

Mortgagee Letter 2015-15 requires [lender] to exercise its option to assign my HECM to HUD no later than 120 days of the effective date of Mortgagee Letter 2015-15 – i.e. before October 10, 2015, or 120 days after the death of the borrowing spouse. Because Mortgagee Letter 2015-15 requires [lender], if it decides to assign my HECM, to provide HUD with the following documents, I am providing the highlighted documents to you with this letter. The documents I am providing are (in bold) and are then listed again below:

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. **Evidence of title or other ongoing legal right of an Eligible Surviving Non-Borrowing Spouse to remain in the property;**
4. An affirmation that no allegations that would invalidate the HECM mortgage exist or if there were allegations, evidence of the judicial resolution finding in favor of the mortgagee;
5. All HERMIT required packages/documentation for an assignment;
6. A signed Mortgagee Certification;
7. **A signed Eligible Surviving Non-Borrowing Spouse Certification; and**

8. The mortgagee must be able to certify the lien is a valid, legally enforceable first lien.

The list of documents I am providing in order to expedite [lender]'s MOE assignment election are enclosed as **Exhibit B**. Those documents are:

1. The HECM Borrower Death Certificate;
2. The HECM borrower and Eligible Surviving Non-Borrowing Spouse's Marriage Certificate;
3. Evidence of Title;
4. Proof of Occupancy;
5. Proof of Social Security Number;
6. Signed and Notarized Eligible Surviving Non-Borrowing Spouse Certification.

[lender] should take this opportunity to help itself and because of the strict time frames, act quickly. Please let me know, immediately, if there is anything, other than the documents enclosed with this letter, which [lender] needs to move ahead with the HECM assignment in this case.

Sincerely,

[print name]

[address]

[Use the following letter template to send to your lender if you
ARE in a pending judicial foreclosure lawsuit]

[Remember to Attached Exhibit A (Mortgagee Letter 2015-15) and Exhibit B
(Your documents, including the Surviving Non-Borrower Spouse Certification) to
the letter when you mail it to your lender.]

[date]

[name & address of lender]

Re: Request for Assignment of HECM Reverse Mortgage to HUD
Pursuant to HUD Mortgagee Letter 2015-15

To Whom It May Concern at [name of lender]:

I am writing this letter regarding me and my deceased spouse's HECM reverse mortgage. I am currently facing a judicial foreclosure by [name of lender] in [name of court], Case No.[add case number].

Based upon the Department of Housing and Urban Development's (HUD's) recent Mortgagee Letter 2015-5, (**attached as Exhibit A**) I am formally requesting that [name of lender] dismiss the judicial foreclosure and elect to have HUD take assignment of my HECM. [Insert Plaintiff/Lender] is permitted to do so as outlined under Mortgagee Letter 2015-5. The letter's terms are:

"A mortgagee who has made the MOE [Mortgagee Optional Election] Assignment election, may only assign a HECM loan that satisfies the following requirements:

1. There is an Eligible Surviving Non-Borrowing Spouse;
2. The Eligible Surviving Non-Borrowing Spouse agrees to certify annually that he or she continues to satisfy all eligibility requirements;
3. The HECM is not in default or eligible to be called due and payable for any other reason;
4. There are no allegations or claims that would invalidate the HECM or any such allegations or claims have been judicially resolved in favor of the mortgagee;
5. The mortgagee has taken all steps necessary to ensure the HECM remains a valid and legally enforceable first lien under state law in accordance with this Mortgagee Letter and no Statute of Limitations or other barrier exists to the exercising of rights to gain good, marketable title under the mortgage;
6. The mortgagee agrees to indemnify the Secretary for any loss incurred by

the Secretary as a result of any impediment to the Secretary obtaining good and marketable title, unless such loss is solely due to acts of the Secretary after assignment; and

7. The mortgagee has obtained all required information, certifications, and agreements from any Eligible Surviving Non- Borrowing Spouse and any other necessary party as set forth in this Mortgagee Letter.

I qualify for an MOE assignment. I am the remaining, eligible non-borrower surviving spouse. [I am current on my home's property taxes and insurance, and my reverse mortgage is not in default. **[or]** I can bring my property taxes current by [date]. **[or]** I can bring the insurance by current by [date].]

HUD's Mortgagee Letter 2015-15 is welcome news for non-borrower surviving spouses, but is equally good news for [lender]. Assigning the HECM to HUD is the best option for [lender]. If [lender] went forward with the judicial foreclosure proceeding, it would incur additional costs in that lawsuit. And, it is also in [lender's] economic interests to make the assignment to HUD because my home would sell for less, at a foreclosure sale, than [lender] will be paid if it assigns the HECM to HUD. **[They still would make the money back from servicing fees/accrued interest].**

Mortgagee Letter 2015-15 requires [lender] to exercise its option to assign my HECM to HUD no later than 120 days of the effective date of Mortgagee Letter 2015-15 – i.e. before October 10, 2015. Because Mortgagee Letter 2015-15 requires [lender], if it decides to assign my HECM, to provide HUD with the following documents, I am providing the highlighted documents to you with this letter. The documents I am providing are **(in bold)** and are then listed again below:

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. **Evidence of title or other ongoing legal right of an Eligible Surviving Non-Borrowing Spouse to remain in the property;**
4. An affirmation that no allegations that would invalidate the HECM mortgage exist or if there were allegations, evidence of the judicial resolution finding in favor of the mortgagee;
5. All HERMIT required packages/documentation for an assignment;
6. A signed Mortgagee Certification;
7. **A signed Eligible Surviving Non-Borrowing Spouse Certification; and**

8. The mortgagee must be able to certify the lien is a valid, legally enforceable first lien.

The list of documents I am providing in order to expedite [lender]'s MOE assignment election are enclosed as **Exhibit B**. Those documents are: [list them].

1. The HECM Borrower Death Certificate;
2. The HECM borrower and Eligible Surviving Non-Borrowing Spouse's Marriage Certificate;
3. Evidence of Title;
4. Proof of Occupancy;
5. Proof of Social Security Number;
6. Signed and Notarized Eligible Surviving Non-Borrowing Spouse Certification.

[lender] should take this opportunity to help itself and because of the strict time frames, act quickly. Please let me know, immediately, if there is anything, other than the documents enclosed with this letter, which [lender] needs to move ahead with the HECM assignment in this case.

Sincerely,

[print name]

[address]

EXHIBIT A



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: June 12, 2015
To: All Approved Mortgagees
Mortgagee Letter 2015-15

Subject Mortgagee Optional Election Assignment for Home Equity Conversion Mortgages (HECMs) with an FHA Case Number assigned prior to August 4, 2014.

Purpose Pursuant to the authority granted in the Reverse Mortgage Stabilization Act of 2013, this Mortgagee Letter amends regulations for HECMs with an FHA Case Number assigned prior to August 4, 2014, to provide an alternative option for claim payment for an eligible HECM with an Eligible Surviving Non-Borrowing Spouse. Nothing in this Mortgagee Letter or any other document interferes with the rights retained by mortgagees to exercise their rights under the mortgages and contract of mortgage insurance as originally entered into.

Effective Date This Mortgagee Letter is effective immediately.

Mortgagees must notify HUD of their election to evaluate a HECM with an FHA Case Number assigned prior to August 4, 2014, and initiate assignments subject to the timeframes specified in this Mortgagee Letter.

Affected Topics Only for HECMs assigned an FHA Case Number prior to August 4, 2014, the following sections of HUD's regulations are affected:

- 24 C.F.R. § 206.3 Definitions
- 24 C.F.R. § 206.27 Mortgage provisions
- 24 C.F.R. § 206.39 Principal residence
- 24 C.F.R. § 206.107 Mortgagee election of assignment
- 24 C.F.R. § 206.125 Acquisition and sale of the property
- 24 C.F.R. § 206.129 Payment of claims

Handbooks 4235.1 and 4330.1 Rev 5, Chapter 13 are also affected and superseded in some cases as described below.
The HECM regulations and handbook provisions that address when a reverse

mortgage becomes due and payable remain in effect for all situations in which, after the death of the borrower, there is no Non-Borrowing Spouse. When there is a Non-Borrowing Spouse, the additional and alternative requirements explained in this letter apply.

Authority

Reverse Mortgage Stabilization Act of 2013, 12 U.S.C. § 1701 note; also National Housing Act Section 230, 12 U.S.C. § 1715u.

Background

FHA previously issued Mortgagee Letter 2015-03 providing for a Mortgagee Optional Election (MOE) Assignment that required a HECM to comply with either the Factor Test or the Principal Limit Test in order to be eligible for a MOE Assignment.

FHA subsequently reviewed its record for issuing Mortgagee Letter 2015-03, and determined additional information was required for FHA to make a final determination as to the MOE.

During this review, FHA determined that it is possible for it to make the MOE Assignment claim option available to mortgagees without requiring satisfaction of either the Factor Test or the Principal Limit Test. FHA determined that it will continue to impose the other requirements and conditions set forth for the MOE Assignment and as such, these requirements and conditions are set forth below and will be put in place as originally published.

FHA is now issuing this Mortgagee Letter, implementing a modified MOE Assignment claim as the only alternative path to claim payment outside of Part 206 of Title 24 of the Code of Federal Regulations for existing HECMs with FHA Case Numbers issued prior to August 4, 2014, and to alert mortgagees that no other alternative path to claim payment exists. This modified MOE Assignment requires no Factor Test or the Principal Limit Test in determining eligibility. This MOE Assignment continues to require full compliance with specific terms and conditions set forth in this Mortgagee Letter, which were also previously set forth in connection with the MOE Assignment.

Further, we are now making the policies set forth herein available to the HECMs that are referenced in Attachment I at the election of the mortgagees holding those HECMs.

Additionally, this Mortgagee Letter requires mortgagees filing an Assignment claim - when a HECM with an outstanding principal balance reaches 98% of the Maximum Claim Amount and there is at least one borrower living - to advise the borrower of certain specific information about the future servicing of the HECM. This information must: (1) be provided by the mortgagee to the borrower prior to assignment; and (2) explain the requirements for a deferral of due and payable status once the HECM has been assigned to the Secretary.

OPERATIVE PROVISIONS

Eligibility for Assignment

1. No mortgage is eligible for assignment if the mortgage is eligible for due and payable status under the terms of the original mortgage as entered into between the mortgagee and borrower for any reason other than the death of the last surviving borrower.
 2. Notwithstanding the previous clause, where a mortgagee elects the MOE Assignment and all conditions and requirements for the MOE Assignment established in this Mortgagee Letter are satisfied, such a HECM is eligible for assignment.
-

Available Paths for Mortgagee Election to Claim Payment

Where a deceased borrower is survived by a Non-Borrowing Spouse, a mortgagee may elect to either:

1. Foreclose in accordance with the contract as endorsed; or
2. Utilize the MOE Assignment.

Where a mortgagee elects to consider utilizing the MOE Assignment, the terms and conditions set forth below shall apply.

Where a mortgagee does not elect to utilize the MOE Assignment upon the death of the last surviving borrower or determines that a HECM is ineligible for the MOE Assignment, the mortgagee shall notify the Secretary that the loan has become due and payable and shall commence foreclosure within six months from the date of the last surviving borrower's death or within six months from the publication date of this Mortgagee Letter, whichever is later.

References to Mortgagor in 24 C.F.R. Part 206, Handbook 4235.1, and Handbook 4330.1 Rev 5, Chapter 13

When reference is made herein to the HECM regulations or applicable handbooks, all references to "mortgagor" therein should be read as "borrower" as defined in this Mortgagee Letter.

Notification to Secretary Within 60 days of the borrower's death or within 30 days of a determination that the HECM is ineligible for the MOE Assignment, whichever is later, a mortgagee must notify the Secretary that the mortgage is eligible to be called due and payable under the original terms of the mortgage entered into between the mortgagee and the borrower.

Notification to borrower when a HECM assigned a case number prior to August 4, 2014 is assigned to the Secretary prior to the death of the last surviving borrower When a HECM, assigned a case number before August 4, 2014, reaches 98% of the maximum claim amount prior to the death of the last surviving borrower and the mortgagee exercises its option to assign the HECM to the Secretary, the mortgagee must notify the borrower:

- that the HECM is being assigned to the Secretary;
- that if the borrower is married to a non-borrowing spouse, the non-borrowing spouse may be eligible for a Deferral Period provided that the non-borrowing spouse qualifies as an Eligible Surviving Non-Borrowing Spouse and all of the conditions and requirements for a Deferral Period are met and continue to be met; and
- of the requirements for an Eligible Surviving Non-Borrowing Spouse as well as the conditions and requirements for an applicable Deferral Period.

Due Date for Purposes of Payment of Claim For the purposes of this Mortgagee Letter, the "Due Date" for purposes of payment of claim means the date when a mortgagee notifies the Secretary under this Mortgagee Letter, that it has determined not to utilize the MOE Assignment, *or* if applicable, that it has elected the MOE Assignment but then determined that the mortgage is not eligible for assignment because all established conditions and requirements for the MOE Assignment are not met.

Definitions "Borrower" means the original borrower under a note and mortgage. The term does not include successors or assigns of a borrower.

"Mortgagee Optional Election (MOE) Assignment" means the optional assignment elected by a mortgagee for an eligible HECM assigned an FHA Case Number prior to August 4, 2014, and associated with an Eligible Surviving Non-Borrowing Spouse.

"Mortgagee Optional Election Assignment Deferral Period" means the period of time following the death of the last surviving borrower for an eligible HECM assigned an FHA Case Number prior to August 4, 2014 and associated with an Eligible Surviving Non-Borrowing Spouse during which the due and payable status of a HECM is further deferred based on the continued satisfaction of the requirements for an Eligible Surviving Non-

Borrowing Spouse under this Mortgagee Letter and all other FHA requirements.

“Non-Borrowing Spouse” means the spouse of a borrower who is not also a borrower.

“Eligible Surviving Non-Borrowing Spouse” means a Non-Borrowing Spouse of a HECM borrower where the HECM 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 reside(d) or the state of celebration - to the HECM borrower at the time of loan closing and who remained married to the HECM borrower 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 was legally married prior to the death of the borrower, as determined by the law of the state in which the spouse and borrower reside(d) or the state of celebration, to the HECM borrower and remained married until the death of the borrowing spouse;
2. Currently resides and resided in the property secured by the HECM as his or her principal residence at origination of the HECM and throughout the duration of the HECM borrower’s life; and
3. Who has or is able to obtain - within 90 days following the death of the last surviving borrower - good, marketable title to the property or a legal right (e.g., executed lease, court order, etc.) to remain in the property for life.

“Principal Residence” is defined as the dwelling where the borrower 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 borrower who is temporarily in a health care institution provided the borrower’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 borrower spouse, who physically resides in the property.
- During a MOE Assignment 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 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.

Terms of the HECM are Unaffected

Nothing in this Mortgagee Letter confers any right to a Non-Borrowing Spouse to an assignment or any other action by HUD or the mortgagee. Further, nothing in this Mortgagee Letter interferes with any right of the mortgagee to enforce its private contractual rights under the terms of the HECM. All private contractual rights and obligations remain unaffected by anything in this Mortgagee Letter. Where a mortgagee chooses to enforce its contractual rights, the standard regulatory timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure will apply.

The Ability to Purchase or Sell a HECM Property

After the death of the last HECM borrower, a Non-Borrowing Spouse may elect to satisfy the HECM and retain the property securing the HECM for the lesser of the unpaid principal balance or 95% of the property's appraised value.

Further, after the death of the last surviving borrower, the property securing the HECM may be sold by the borrower's estate and/or the borrower's heir(s) (regardless of the presence of any Non-Borrowing Spouse) for the lesser of the unpaid principal balance or 95% of the property's appraised value. Nothing in this Mortgagee Letter may be construed as interrupting or interfering with the ability of the borrower's estate or heir(s) to dispose of the property if they are otherwise legally entitled to do so.

Mortgagee Election

To notify HUD of its election, the mortgagee must upload into HERMIT a statement of its election on company letterhead. The loan will begin a Deferral Period with the mortgagee's election to pursue a MOE Assignment. This election must be made in HERMIT no later than 120 days after the death of the last surviving borrower or 120 days after the effective date of this Mortgagee Letter, whichever is later.

When the mortgagee elects the MOE Assignment, the mortgagee must perform an assessment in accordance with the requirements of this Mortgagee Letter to determine whether the Non-Borrowing Spouse and the HECM loan meet the eligibility requirements for this election. This assessment is to be performed within 60 days of the mortgagee's MOE Assignment election.

If, after the assessment, the mortgagee determines that the HECM loan is ineligible, the MOE Assignment Deferral Period ends and the mortgagee must proceed with foreclosure in accordance with the provisions of the regulations, if it wishes to perfect its claim for mortgage insurance benefits. The applicable regulatory timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure will apply as of the date it is determined that the HECM loan is ineligible for the MOE Assignment.¹

Regardless of the election made by the mortgagee, a mortgagee may provide any Eligible Surviving Non-Borrowing Spouse or the HECM borrower's estate with a period not to exceed six months from the date of the death of the last surviving borrower, unless such period is extended by HUD in its sole discretion, to purchase or to market and sell the property in accordance with this Mortgagee Letter.

**Election to
Foreclose in
accordance
with the
Contract as
Endorsed**

A mortgagee may elect to enforce its private contractual rights in accordance with the terms of the note, security instrument, or HECM loan agreement.

**MOE
Assignment**

A mortgagee may elect to proceed in accordance with the amendment provided by this Mortgagee Letter, which provides for an optional assignment of an eligible HECM immediately after the death of the last surviving borrower provided all of the conditions and requirements established in this Mortgagee Letter are satisfied.

Any assignment made pursuant to such an election must be initiated within 120 days (i.e., this timeframe includes the aforementioned 60 day period for assessment) from the MOE Assignment election. Only a HECM that comprises a valid first lien security interest in real property under applicable state law and which will continue to be a valid first lien may be assigned. A HECM that has been extinguished through foreclosure cannot be assigned.

¹ The date it is determined that the HECM is ineligible for the MOE Assignment is the beginning date of the period for the applicable regulatory timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure.

**MOE
Assignment
Modification of
Contract**

A mortgagee who elects the MOE Assignment must ensure that appropriate protections are put in place to ensure a valid, legally enforceable first lien will be assigned to the Department, which may include a modification of the loan documents to provide the following provisions:

1. A deferral of the due and payable status that ordinarily results from the death of the last surviving borrower;
2. The deferral must immediately cease upon the death of any such Eligible Surviving Non-Borrowing Spouse, an Eligible Surviving Non-Borrowing Spouse ceases to satisfy the definition requirements, or the occurrence of an event besides death that would make the HECM eligible to be called due and payable, whichever occurs first;
3. Upon the occurrence of any of these events, the HECM must become immediately due and payable;
4. An obligation of any Eligible Surviving Non-Borrowing Spouse to continue to meet all contractual obligations of the HECM borrower;
5. An obligation of any Eligible Surviving Non-Borrowing Spouse to meet the certification and other requirements contained in this Mortgagee Letter; and
6. An express waiver of any right to any disbursement under the HECM note, security agreement, and loan agreement.

The Department expects that a mortgagee electing the MOE Assignment will take whatever action necessary to preserve the lender's ability to foreclose on the HECM should any of the following occur before the assignment to the Secretary has been completed:

- the Non-Borrowing Spouse dies,
- the MOE Assignment Deferral Period ends, or
- any event of default, other than the death of the borrower, occurs.

The Department will consent to a modification if the mortgagee deems it necessary to preserve this ability.

**Eligible HECM
Loans for MOE
Assignment**

A mortgagee who has made the MOE Assignment election, may only assign a HECM loan that satisfies the following requirements:

1. There is an Eligible Surviving Non-Borrowing Spouse;
2. The Eligible Surviving Non-Borrowing Spouse agrees to certify

- annually that he or she continues to satisfy all eligibility requirements;
3. The HECM is not in default or eligible to be called due and payable for any other reason;
 4. There are no allegations or claims that would invalidate the HECM or any such allegations or claims have been judicially resolved in favor of the mortgagee;
 5. The mortgagee has taken all steps necessary to ensure the HECM remains a valid and legally enforceable first lien under state law in accordance with this Mortgagee Letter and no Statute of Limitations or other barrier exists to the exercising of rights to gain good, marketable title under the mortgage;
 6. The mortgagee agrees to indemnify the Secretary for any loss incurred by the Secretary as a result of any impediment to the Secretary obtaining good and marketable title, unless such loss is solely due to acts of the Secretary after assignment; and
 7. The mortgagee has obtained all required information, certifications, and agreements from any Eligible Surviving Non-Borrowing Spouse and any other necessary party as set forth in this Mortgagee Letter.

Where the above requirements are not met within 120 days after the MOE Assignment election, if the mortgagee wishes to perfect a claim, the mortgagee must proceed to foreclosure. As such, the standard regulatory timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure apply as of the date the HECM is deemed ineligible.²

To be eligible, a HECM loan that is 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 this Mortgagee Letter, whichever is later.

² The date it is determined that the HECM is ineligible for the MOE Assignment is the beginning date of the period for the applicable regulatory timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure.

**MOE
Assignment
Conditions for
Acceptance and
Ongoing
Obligations of
the Eligible
Surviving Non-
Borrowing
Spouse**

The mortgagee must secure the following information, certifications, and enforceable agreements and provide documentation of such with the assignment:

1. The mortgagee must obtain and verify any Eligible Surviving Non-Borrowing Spouse's social security number;
2. The mortgagee must confirm that the property is and has been (since the origination of the HECM) the Principal Residence of any Eligible Surviving Non-Borrowing Spouse, and obtain a written agreement from such Eligible Surviving Non-Borrowing Spouse that he or she will continue to occupy the property securing the HECM as his or her Principal Residence;
3. The mortgagee must confirm that all obligations of the HECM borrower(s) contained in the loan documents have been and continue to be satisfied, and obtain a written agreement from any Eligible Surviving Non-Borrowing Spouse to continue to satisfy the obligations of the HECM borrower(s);
4. The mortgagee must obtain a written acknowledgement and agreement from the Eligible Surviving Non-Borrowing Spouse that no further disbursements under the HECM are required to be or will be made;
5. The mortgagee must obtain a written acknowledgement and agreement from the Eligible Surviving Non-Borrowing Spouse that the HECM may immediately be called due and payable if any event of default other than the death of the last surviving borrower occurs at any time; and
6. The mortgagee must obtain a written acknowledgement and agreement from any Eligible Surviving Non-Borrowing Spouse that the HECM will become immediately due and payable should such Eligible Surviving Non-Borrowing Spouse cease to meet any of the eligibility requirements, conditions for acceptance, or ongoing obligations under the HECM.

**Reinstatement
of MOE
Assignment
Deferral
Period and
Foreclosure
Timeframes**

If a Non-Borrowing Spouse fails to meet, or ceases to meet at any time, the definition of an Eligible Surviving Non-Borrowing Spouse, the MOE Assignment Deferral Period terminates immediately and there is no opportunity to cure the failure to meet this required definition.

When the MOE Assignment Deferral Period ceases or is determined to be unavailable solely because the HECM is eligible to be called due and payable for a reason other than the death of the borrower (e.g., default due to unpaid property charges, taxes and/or hazard insurance), an Eligible Surviving Non-Borrowing Spouse will be provided 30 days to cure the default and reinstate the MOE Assignment Deferral Period as follows:

- All defaults must be cured in fact within the time period permitted; a default is not cured by entering into a repayment plan.
- If the default is cured within such time, the MOE Assignment Deferral Period must be reinstated, unless:
 - A reinstatement of the MOE Assignment Deferral Period has occurred within the past two years immediately preceding the current notification to the Eligible Surviving Non-Borrowing Spouse that the mortgage is due and payable;
 - Reinstatement of the MOE Assignment Deferral Period will preclude foreclosure if the mortgage becomes due and payable at a later date; or
 - Reinstatement of the MOE Assignment Deferral Period will adversely affect the priority of the mortgage lien.
- If the default is not cured within such time, the mortgagee must proceed in accordance with the established timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure as required by 24 C.F.R. § 206.125 and all other regulations and requirements if it wishes to perfect its claim for insurance benefits.
- Even after a foreclosure proceeding is begun, an Eligible Surviving Non-Borrowing Spouse may cure the condition which resulted in the MOE Assignment Deferral Period ceasing; thus reinstating the mortgage and MOE Assignment Deferral Period, and allowing the mortgage insurance to remain in effect. The mortgagee may require the Eligible Surviving Non-Borrowing Spouse to pay any costs that the mortgagee incurred to reinstate the mortgage, including foreclosure costs and reasonable attorney's fees. Such costs may not be added to the mortgage balance and must be paid from some other source of funds. Such reinstatement is solely at the election of the mortgagee.

The mortgagee may refuse to reinstate the mortgage and the MOE Assignment Deferral Period if:

- The mortgagee has accepted a reinstatement of either the MOE Assignment Deferral Period or mortgage within the past two years immediately preceding the current notification to the Eligible Surviving Non-Borrowing Spouse that the mortgage is due and payable;
- Reinstatement of either the MOE Assignment Deferral Period or mortgage will preclude foreclosure if the mortgage becomes due and payable at a later date; or
- Reinstatement of either the MOE Assignment Deferral Period or mortgage will adversely affect the priority of the mortgage lien.

A mortgagee may not assign a mortgage to HUD where the MOE Assignment Deferral Period has ceased, but may assign a mortgage after the MOE Assignment Deferral Period has been reinstated.

**MOE
Assignment
Required
Mortgagee
Certification**

Mortgagees must certify at assignment to the following:

“I, _____, as authorized representative of _____, the Mortgagee certify that I have personally reviewed the HECM documents as well as the information provided by _____, the Eligible Surviving Non-Borrowing Spouse and certify that the following are true and correct:

1. The HECM is not eligible to be called due and payable for any reason other than the death of the last surviving borrower and all other obligations of the HECM borrower have been and continue to be met;
2. There are no allegations or claims that would invalidate the HECM or any such allegations or claims have been judicially resolved in favor of the Mortgagee;
3. There is a valid, legally enforceable first lien with no impediments to securing good, marketable title;
4. [Insert as applicable based on Mortgagee’s election: The HECM note, security agreement, and loan agreement have been modified establishing the conditions and requirements for the deferral of due and payable status as well as obligating any Eligible Surviving Non-Borrowing Spouse to continue to meet all contractual obligations and expressly waiving any right to any disbursements under the HECM note, security agreement, and the loan agreement]; and

5. I have determined that there [is/are] (#) Eligible Surviving Non-Borrowing Spouse(s), identified as [insert Names], eligible to remain in the property following assignment and have obtained all required information, acknowledgements, agreements, and certifications from such Eligible Surviving Non-Borrowing Spouse(s).

I certify that the information provided in connection with this assignment is true and correct. I hereby agree on behalf of the Mortgagee that it will indemnify the Secretary for any amounts paid pursuant to this election should any of the information provided prove false. Further, I hereby agree on behalf of the Mortgagee that it will indemnify the Secretary any amounts paid pursuant to this election in the event the Secretary is subsequently impeded from obtaining good and marketable title as a result of the Mortgagee's failure to assign a valid, legally enforceable first lien."

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.

**MOE
Assignment
Required
Eligible
Surviving Non-
Borrowing
Spouse
Certification at
MOE
Assignment
Election**

Mortgagees 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. I certify that the information provided in this agreement, acknowledgement and certification is true and correct. 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 mortgage 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 permitted to remain in the property until my death 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;
2. continue to occupy the property securing my spouse's HECM as my principal residence;
3. maintain at all times an established legal ownership or some other ongoing legal right to remain (e.g., executed lease, court order, etc.) in

- the property securing the HECM;
4. acknowledge and agree that I will receive no disbursements from my spouse's HECM;
 5. 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;
 6. 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;
 7. annually certify that all conditions necessary for assignment are and continue to be met; and
 8. provide any documentation required by the mortgagee 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 remain in the property further."

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.

**MOE
Assignment
Process
and
Documentation
Requirements**

Any assignment pursuant to the MOE Assignment must be initiated within 120 days after the MOE Assignment election. The mortgagee must initiate the assignment process through HERMIT. In addition to the documentation requirements for assignment, a mortgagee electing to assign a HECM 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. Evidence of title or other ongoing legal right of an Eligible Surviving Non-Borrowing Spouse to remain in the property;
4. An affirmation that no allegations that would invalidate the HECM mortgage exist or if there were allegations, evidence of the judicial resolution finding in favor of the mortgagee;

5. All HERMIT required packages/documentation for an assignment;
6. A signed Mortgagee Certification;
7. A signed Eligible Surviving Non-Borrowing Spouse Certification; and
8. The mortgagee must be able to certify the lien is a valid, legally enforceable first lien.

Notice of Election to Eligible Surviving Non-Borrowing Spouse and/or Borrower's Estate

Within 30 days after the mortgagee's election, the mortgagee must provide notice as applicable based on the election made under this Mortgage Letter:

- If the mortgagee elects to enforce its contractual rights, the mortgagee must inform the Eligible Surviving Non-Borrowing Spouse and the borrower's estate that it will be provided a period not to exceed six months to elect to purchase or to market and sell the property in accordance with this Mortgage Letter.
- If the mortgagee elects to apply the MOE Assignment Deferral Period and assign the HECM, the mortgagee must provide the requirements for assignment contained in this Mortgage Letter to the Eligible Surviving Non-Borrowing Spouse and borrower's estate.

Failure to Pay Property Charges

Loss mitigation is only authorized in connection with HECMs where there is a surviving borrower. However, mortgagees are permitted to allow Eligible Surviving Non-Borrowing Spouses 30 days to cure a default as set forth above. No HECM with unpaid property charges or that is otherwise eligible to be called due and payable for any reason other than the death of the last surviving borrower is eligible for the MOE Assignment.

Claim Payment

A MOE Assignment claim will be calculated and paid in the same manner as a standard assignment claim.

Information Collection Requirements

Paperwork reduction information collection requirements contained in this Mortgage 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, 2502-0429, and 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.

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

Edward L. Golding
Principal Deputy Assistant Secretary for Housing

Attachment

Attachment I
 Schedule of Loans in Active Litigation with the Department

Borrower Last Name	FHA Case#	Mortgagee	Jurisdiction of Litigation in U.S. Courts	Docket Number
Welte	048-4314469	Wells Fargo	D.D.C.	14-326
LaBonte	251-3270514	Financial Freedom Senior Funding Corp. (IndyMac Bank)	D.D.C.	14-326
Plunkett	095-0908538	James B. Nutter & Co.	D.D.C.	14-326
Barlock	332-4460014	Financial Freedom Senior Funding Corp. (IndyMac Bank)	D.D.C.	14-326
Bennett	241-8421933	James B. Nutter & Co.	D.D.C.	14-326
Joseph	374-5138056	MetLife Home Loans	D.D.C.	14-326
Harris	105-2782019	Financial Freedom (OneWest Bank)	N.D. Ga.	14-3110

EXHIBIT B

For Exhibit B you will attach the following documents (that were also listed in the letter:

1. A copy of the HECM deceased borrower's death certificate;
2. A copy of the HECM borrower and Eligible Surviving Non-Borrowing Spouse Marriage Certificate, legal opinion certifying the validity of the marriage, or other evidence sufficient to establish the legal validity of the marriage;
3. A signed and notarized Eligible Surviving Non-Borrowing Spouse Certification (a template is attached hereto).
4. Proof of Occupancy (e.g. utility bill, Social Security benefit letter, etc.);
and
5. Proof of Social Security Number for Eligible Surviving Non-Borrowing Spouse and deceased HECM borrower (e.g. copy of Social Security card).
6. Include any of the following as proof of marketable title IF APPLICABLE or in your possession:
 - a. Quitclaim deed transferring title to the property
 - b. Court order assigning Non-Borrowing Spouse as Personal Representative of Deceased Borrower's Estate
 - c. Personal Representative's Deed
 - d. Tax Statement from County Assessor listing Non-Borrowing Spouse on Title
 - e. Title Report

SURVIVING NON-BORROWING SPOUSE CERTIFICATION

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. I certify that the information provided in this agreement, acknowledgement and certification is true and correct. 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 mortgage 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 permitted to remain in the property until my death 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;
2. Continue to occupy the property securing my spouse's HECM as my principal residence;
3. Maintain at all times an established legal ownership or some other ongoing legal right to remain (e.g., executed lease, court order, etc.) in the property securing the HECM;
4. Acknowledge and agree that I will receive no disbursements from my spouse's HECM;
5. 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;
6. 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;
7. Annually certify that all conditions necessary for assignment are and continue to be met; and
8. Provide any documentation required by the mortgagee to evidence my compliance with the requirements of the assignment and deferral of due and payable status.

