



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

March 27, 2009

MORTGAGEE LETTER 2009-11

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

SUBJECT: HECM for Purchase Program

On October 20, 2008, the Federal Housing Administration (FHA) published Mortgagee Letter (ML) 2008-33, announcing the Home Equity Conversion Mortgage (HECM) for Purchase program which allows qualifying seniors to use HECM proceeds for the purchase of a new principal residence. Since its publication, the reverse mortgage industry has sought additional guidance concerning HECM purchase transactions. This ML contains a compilation of guidance issued under ML 2008-33 and new guidance for the HECM for Purchase program and, therefore, supersedes ML 2008-33.

The Housing and Economic Recovery Act of 2008 (HERA) provides HECM mortgagors the opportunity to purchase a new principal residence with HECM loan proceeds. Section 2122(a)(9) of HERA amends section 255 of the National Housing Act to authorize the Department of Housing and Urban Development (HUD) to insure HECMs used for the purchase of a 1 to 4 family dwelling unit. Accordingly, eligible mortgagors now have the opportunity to purchase a principal residence with HECM loan proceeds. HECM for Purchase transactions, for which the FHA case number is assigned on or after the date of this ML, must satisfy existing HECM program requirements and the provisions of this ML.

The Federal Housing Administration (FHA) defines "HECM for Purchase" as a real estate purchase where: title to the property is transferred to the HECM mortgagor; the mortgagor will occupy the property as a principal residence; and, at the time of closing, the HECM first and second liens will be the only liens against the property. HECM mortgagors must occupy the property within 60 days from the date of closing. Lenders are required to ensure all outstanding or unpaid obligations incurred by the prospective mortgagor, in connection with the HECM transaction, are satisfied at closing.

PRINCIPAL RESIDENCE

In accordance with regulatory requirements found at 24 CFR 206.3, HECM mortgagors may have only one principal residence at any one time. Current HECM mortgagors that plan to sell their existing residence and use the HECM for purchase program to obtain a new principal residence must payoff the existing FHA-insured mortgage before the HECM for Purchase mortgage can be insured.

When prospective mortgagors under the HECM for Purchase Program intend to retain their existing home as a rental property, lenders must ensure they have sufficient income to:

1. maintain the costs associated with the new home financed with the HECM for Purchase (ie: taxes, insurance, maintenance);
2. satisfy the monetary investment for the HECM for purchase transaction; *and*
3. continue to make the mortgage payment and tax and insurance payments on the existing mortgage.

The intent of this guidance is to prevent the practice known as “buy and bail” where the homebuyer purchases, for example, a more affordable dwelling with the intention to cease making payments on the previous mortgage.

This guidance applies solely to a principal residence being vacated in favor of another principal residence and is not applicable to existing rental properties found on the tri-merged credit report and confirmed by tax returns (Schedule E of form IRS 1040).

ELIGIBLE PROPERTY TYPES

Only properties where construction is completed, as defined in ML 2007-06, are eligible for FHA insurance under the HECM for Purchase program. Loan proceeds may be used to satisfy outstanding payment obligations associated with a land contract, contract for deed or other similar purchase arrangements that will ensure the property, which will be used as collateral for the HECM, meets FHA’s title requirements. Those requirements, as provided in section 255(b)(4) of the National Housing Act and implemented in the HECM regulations at 24 CFR 206.45, provide, in part, that the HECM must be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor.

INELIGIBLE PROPERTY TYPES

The following property types are ineligible for FHA insurance under the HECM for Purchase program:

- Cooperative units;
- Newly constructed principal residences where a Certificate of Occupancy or its equivalent has not been issued by the appropriate local authority;
- Boarding houses;
- Bed and breakfast establishments;
- Existing manufactured homes built before June 15, 1976; and
- Existing manufactured homes built after June 15, 1976 that fail to conform to the Manufactured Home Construction Safety Standards, as evidenced by affixed certification labels (e.g. data plate and HUD certification label) **and/or** lack a permanent foundation as required in HUD’s Permanent Foundations for Manufactured Housing Guide **or** homes that are installed or occupied previously at another site or location.

PROPERTY FLIPPING

Prospective mortgagors should be alert to efforts to coerce them into obtaining a reverse mortgage as part of a purchase contract obligation, or purchasing a distressed home in need of substantial repairs but being sold at or above market rate, or schemes involving temporary rental arrangements.

As such, HECM lenders must take steps to ensure that: a) only current owners of record may sell properties that will be financed using FHA-insured mortgages; b) any resale of a property may not occur 90 or fewer days from the last sale to be eligible for FHA financing; and c) for resales that occur between 91 and 180 days where the new sale price exceeds 100% of the previous sale price, FHA will require additional documentation validating the property's value. Lenders providing HECM financing for purchase transactions must comply with FHA regulations at 24 CFR 203.37a and guidance provided in ML 2006-14.

REPAIR AND PROPERTY SET ASIDES

Properties being purchased using the HECM for Purchase program must meet FHA's minimum property requirements. For purchase transactions where major property deficiencies threaten the health and safety of the homeowner and/or jeopardize the soundness and security of the property, all repairs must be completed by the seller prior to closing. Appraisers must complete the appraisal report as "**Subject To**" the completion of these repairs. Additional appraisal guidance can be found in ML 2005-48 and Revised Appendix D of Handbook 4150.2 CHG-1.

Major Property Deficiency Examples:

- No running water
- Leaking roof
- No primary heating source
- Inadequate electrical systems (including lighting)
- Inoperable doors and windows (inhibited ingress and egress)
- State or local code violations

HECM mortgagors will continue to have the option of electing to have the lender set aside funds from their monthly payments or by charging such funds to the line of credit for payment of property charges such as ground rent, homeowner association fees, taxes, hazard insurance, etc.

MAXIMUM CLAIM AMOUNT CALCULATION

The maximum claim amount is used to determine the principal limit and mortgage insurance premium for FHA-insured mortgage transactions. For purchase mortgages only, the maximum claim amount will be the least of: 1) the appraised value; 2) sale price; or 3) FHA mortgage limit for a one family residence. This applies to all one-to-four unit properties. Neither the estimate of closing costs nor the initial mortgage insurance premium is used in the calculation of the maximum claim amount.

MONETARY INVESTMENT

The principal limit will be calculated in accordance with HECM regulations at 24 CFR 206.3, HUD Handbook 4235.1 REV-1, and applicable MLs. At closing, HECM mortgagors must provide a monetary investment which will be applied to satisfy the difference between the HECM principal limit and the sale price for the property, plus any HECM loan related fees that are not financed into the loan, minus the amount of the earnest deposit. HECM mortgagors may choose to provide a larger investment amount in order to retain a portion of the available HECM proceeds for future draws. A set of Required Investment Examples is contained in the attachment to this ML to assist lenders with the calculation.

FUNDING SOURCES

HECM mortgagors must use cash on hand or cash from the sale or liquidation of the mortgagor's assets for the required monetary investment. The monetary investment requirement can also be met by the use of approved funding sources as defined in HUD Handbook 4155.1 REV-5, section 2-10, with the exception of the following funding sources which may not be used:

- Sweat Equity
- Trade Equity
- Rent Credit
- Cash or its equivalent, in whole or in part, from the following parties, before, during or after loan closing:
 - The seller or any other person or entity that financially benefits from the transactions, or
 - Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in the previous bullet.

FHA prohibits seller contributions (also known as “seller concessions”), the use of loan discount points, interest rate buy downs, closing cost down payment assistance, builder incentives, gifts or personal property given by the seller or any other party involved in the transaction. This includes customary charges that are normally paid on behalf of the borrower by the seller.

VERIFICATION OF FUNDING SOURCES

Lenders will be required to verify the source of all funds prior to closing. Supporting documentation, as specified in section 2-10 of HUD Handbook 4155, REV-5, must be provided in the FHA case binder. Failure to provide the necessary documentation may result in a notice of rejection, delay of endorsement and administrative action.

GAP FINANCING

Consistent with existing regulatory requirements at 24 CFR 206.32(a), HECM mortgagors may not obtain a bridge loan (also known as “gap financing”) or engage in other interim financing methods to meet the monetary investment requirement or payment of closing costs needed to complete the purchase transaction. This restriction includes subordinate liens, personal loans, cash

withdrawals from credit cards, seller financing and any other lending commitment that cannot be satisfied at closing.

Gap Financing Example

A prospective HECM mortgagor completes the required reverse mortgage counseling and receives an estimate stating the required monetary investment could be \$25,000. The prospective HECM mortgagor has \$20,000 in liquid assets but is short the remaining \$5,000. The prospective HECM mortgagor cannot take \$5,000 from a credit card or obtain interim financing in order to deposit the money into his/her banking account in anticipation of being required to bring this amount to closing. However, the prospective HECM mortgagor may withdraw the \$5,000 from an insurance policy or retirement plan.

MORTGAGE INSURANCE PREMIUMS

In accordance with regulatory requirements at 24 CFR 206.105 and 206.111, lenders are required to remit an initial mortgage insurance premium of 2 % of the maximum claim amount within 15 days of closing.

REFINANCING AND EXISTING UPFRONT MORTGAGE INSURANCE PREMIUM (MIP)

The HECM refinance authority is only applicable when the property that serves as collateral for FHA-insurance remains the same. Therefore, existing HECM mortgagors who participate in a HECM for Purchase transaction are ineligible for a reduction of the upfront MIP and lenders must enter the transaction into FHA Connection as a new HECM.

SUSPENSIONS AND DEBARMENTS

Lenders must examine HUD's Limited Denial of Participation List (LDP) and the General Services Administration's (GSA) Excluded Parties List System to determine if the name of any party to the transaction including, but not limited to, the seller, real estate agent, or builder, appears on either list. The reverse mortgage will not be eligible for mortgage insurance if the name of any party to the transaction appears on either list.

ENHANCED COUNSELING

HUD-approved housing counseling agencies that have been approved to provide reverse mortgage counseling must counsel those who anticipate using the HECM for Purchase option on all topics covered in this mortgagee letter and other HUD requirements and issuances.

RIGHT OF RESCISSION

In most cases the right of rescission will not be applicable to HECM for purchase transactions. However, there may be instances when the loan would be rescindable. For example, if the mortgagor intends to finance a balloon payment due under a land sale contract, the three day right of rescission would be applicable. FHA does not have purview over right of rescission

requirements found in Regulation Z, 12 CFR Part 226. FHA strongly encourages lenders to seek an outside counsel's opinion to assure compliance with all applicable Federal or State laws.

CLOSING GUIDANCE

Lenders are required to ensure the property, when used as collateral for the HECM, meets the following property requirements:

- Will serve as the principal residence of the HECM mortgagor.
- In the case of newly built home, construction is complete and a certificate of occupancy or its equivalent has been issued.
- Any construction loan financing for the property, which will serve as the collateral for the HECM loan, is satisfied and the HECM liens will be in first and second lien positions and, at the time of closing, no other liens against the property exist.

Lenders originating HECM for purchase transactions are responsible for determining whether a particular HECM loan is open or closed-end credit. In accordance with 24 CFR 206.43, lenders must comply with the regulatory disclosure requirements.

DATA ENTRY REQUIREMENTS

Several changes have been made to FHA Connection to accommodate HECM for Purchase mortgages. To ensure a HECM purchase transaction is successfully entered into FHA Connection, lenders must follow the instructions below.

Case Number Assignment Screen

System Field

- Type of Case

Lender Entry

Select "HECM Purchase" from the drop-down list

Appraisal Logging Screen

System Field

- Contract Price
- Date of Contract
- Was prior sale/transfer of this property within the past 3 years?
- Date of Prior Sale/Transfer
- Price of Prior Sale/Transfer

Lender Entry

Enter numeric value from sales contract

Enter date of sale from sales contract

Select correct choice from drop-down list

If within 3 years, enter date of prior sale

If within 3 years, enter price of prior sale

HECM Insurance Application Screen

System Field

- Borrower Investment

Lender Entry

Enter numeric value

The completion of these data fields, in addition to the normal entries, is required for endorsement of the mortgage.

REQUIRED DOCUMENTS FOR ENDORSEMENT

A new HECM pre-endorsement listing of required documents will be provided in a separate instruction.

INFORMATION COLLECTION REQUIREMENTS

The information collection requirements contained in this mortgagee letter were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Approval of the HECM Program is covered by OMB control number 2502-0524. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

If you have any questions regarding this mortgagee letter, please call 1-800-CALL-FHA. Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

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

Attachment