



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: January 9, 2015
To: All Approved Mortgagees
Mortgagee Letter 2015-02

Subject Home Equity Conversion Mortgage (HECM) Program: Policy Guidance and Certifications for Eligible and Ineligible Non-Borrowing HECM Spouses and Seasoning Requirements Guidance

Purpose of Mortgagee Letter Mortgagee Letter 2014-07 was issued pursuant to the authority of the Reverse Mortgage Stabilization Act of 2013. In response to comments received and subsequent events, and pursuant to the same authority, we are issuing this Mortgagee Letter amending and, only where it conflicts, superseding Mortgagee Letter 2014-07. The purpose of the Mortgagee Letter (ML) is to:

- Define a new type of Non-Borrowing Spouse, termed “Ineligible Non-Borrowing Spouse,” and provide guidance and model certification language mortgagees must use when there is an Ineligible Non-Borrowing Spouse.
- Provide new model certification language that mortgagees must use at origination and throughout ongoing HECM servicing for instances where there is an Eligible Non-Borrowing Spouse. The certification language replaces language in Mortgagee Letter 2014-07.
- Provide new model Mortgage, Note and Loan Agreement language.
- Provide for a 30 day cure to reinstate a Deferral Period.
- Provide clarification and additional documentation for the “Seasoning Requirements for Existing Non-HECM Liens” Section of Mortgagee Letter 2014-21.

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Effective Date The Eligible and Ineligible Non-Borrowing Spouse requirements contained in this Mortgagee Letter may be implemented for all HECM case numbers assigned on or after January 12, 2015, and must be implemented for all HECM case numbers assigned on or after March 9, 2015.

The clarification and additional loan documentation guidance for Seasoning Requirements is effective for case numbers assigned on or after December 15, 2014.

Affected Topics The Following Sections of HUD’s regulations and Mortgagee Letters are amended and where they conflict are superseded in accordance with this Mortgagee Letter:

Regulations
24 CFR § 206.3 Definitions.
24 CFR § 206.27 Mortgage provisions.
24 CFR § 206.211 Annual determination of principal residence.
Mortgagee Letters
Mortgagee Letter: 2014-07 Home Equity Conversion Mortgage (HECM) Program: Non-Borrowing Spouse
Mortgagee Letter 2014-21 Revised Changes to the Home Equity Conversion Mortgage (HECM) Program Requirements

Definitions “Borrower” means the original borrower under a mortgage. The term does not include successors or assigns of a borrower.

“Ineligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who does not meet the Qualifying Attributes requirements defined in ML 2014-07 for a Deferral Period.

“Eligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who meets the Qualifying Attributes requirements defined in ML 2014-07 for a Deferral Period.

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Mortgagee Letter 2015-02, Continued

Required Determination At application, the mortgagee must identify any current Non-Borrowing Spouse and must determine if the Non-Borrowing Spouse is currently eligible or ineligible for a Deferral Period. This determination is a factual determination and cannot be changed or waived by any election. A Non-Borrowing Spouse that meets the Qualifying Attributes requirements at application for a Deferral Period is an Eligible Non-Borrowing Spouse and may not elect to be ineligible. Similarly, a Non-Borrowing Spouse that is ineligible at application because he or she does not satisfy the Qualifying Attributes requirements for a Deferral Period may not elect to be eligible. An Eligible Non-Borrowing Spouse may become an Ineligible Non-Borrowing Spouse should any of the Qualifying Attributes cease to be met during the loan term. A Non-Borrowing Spouse's failure to meet and continue to meet the Qualifying Attributes cannot be cured; therefore, once a Non-Borrowing Spouse is determined to be ineligible, he or she cannot later become eligible for a Deferral Period.

At closing, the mortgagee must obtain the appropriate certification from each borrower identified as married as well as from each Non-Borrowing Spouse.

HUD's Homeownership Centers (HOCs) are unable to endorse any HECM where the case binder does not contain the relevant, signed certifications.

Principal Limit When determining the Principal Limit, mortgagees may not use the age of any Ineligible Non-Borrowing Spouse. At origination, mortgagees must base the Principal Limit on the age of the youngest borrower or Eligible Non-Borrowing Spouse.

In addition, where a HECM borrower has identified an Ineligible Non-Borrowing Spouse, the mortgagee must also disclose the amount of mortgage proceeds that would have been available under the HECM if he/she were an Eligible Non-Borrowing Spouse.

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**Ineligible
Non-
Borrowing
Spouse
Certifications
Required at
Closing**

Borrower Certification: Ineligible Non-Borrowing Spouse

At closing, the mortgagee must obtain the following certification from each borrower identified as married to an Ineligible Non-Borrowing Spouse:

I hereby certify that I am currently, legally married, that the information I have provided with respect to my spouse, _____, is true and correct, and my spouse is not eligible and cannot become eligible for a Deferral Period for the following reason:

____ My Spouse does not occupy the property securing the HECM as his or her Principal Residence. My Spouse's current Principal Residence is _____.

I understand that because my spouse is ineligible, the Deferral Period referenced in my HECM will not defer a due and payable status to prevent the displacement of _____, my current spouse or any other person I may marry in the future. I acknowledge that were my spouse eligible, the maximum equity available to me to access under the HECM loan would be \$_____. [I understand that because a Deferral Period will not apply I am able to access, \$_____, which represents more equity than I otherwise would have been able to draw under the HECM.]* I acknowledge that it is solely due to the ineligibility of my spouse that the access to this equity is being made available to me. I further understand that my lender is relying on my certification to the factual ineligibility of my spouse in making this mortgage in the amount identified in the loan agreement. I further acknowledge that this information is material to the origination of this loan and the insurance of this mortgage by the Department of Housing and Urban Development-Federal Housing Administration.

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 or administrative liability.

*Mortgagees should insert this text in cases where the Ineligible Non Borrowing Spouse is younger than the borrower.

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Mortgagee Letter 2015-02, Continued

Ineligible Non-Borrowing Spouse Certifications Required at Closing
(continued)

Ineligible Non-Borrowing Spouse Certification:

At closing, the mortgagee must obtain the following certification from each Ineligible Non-Borrowing Spouse of a HECM borrower:

I hereby certify that I am currently, legally married to _____, a HECM borrower, and the information provided about me is true and correct. I understand that the Deferral Period contained in my spouse's HECM will not defer a due and payable status to prevent my displacement from the property following the death of the last surviving borrower because I am not eligible and cannot become eligible for a Deferral Period for the following reason:

____ I do not occupy the property securing the HECM as my Principal Residence. My Principal Residence is _____

I understand that because I am ineligible, the Deferral Period referenced in my spouse's HECM loan documents is inapplicable and will not defer a due and payable status to prevent my displacement. I acknowledge that were I eligible the maximum equity available to my spouse to access under the HECM loan would be \$ _____. [I understand that because I am ineligible for the Deferral Period my spouse is able to access, \$ _____, which represents more equity than my spouse otherwise would have been able to draw under [his/her] HECM.]* I acknowledge that it is solely due to my ineligibility that access to this equity is being made available to my spouse. I further understand that my spouse's lender is relying on my certification to my factual ineligibility in making this mortgage in the amount identified in the loan agreement. I further acknowledge that this information is material to the origination of this loan and the insurance of this mortgage by the Department of Housing and Urban Development-Federal Housing Administration. I consent to my spouse gaining access to this equity because I acknowledge and I certify that I am not eligible and cannot become eligible for a Deferral Period.

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*Mortgagees should insert this text in cases where the Ineligible Non-Borrowing Spouse is younger than the borrower.

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Mortgagee Letter 2015-02, Continued

**Currently
Eligible Non-
Borrowing
Spouse
Certifications
Required at
Closing**

Borrower Certification: Eligible Non-Borrowing Spouse

At closing, the mortgagee must obtain the following certification from each borrower identified as married to a currently Eligible Non-Borrowing Spouse:

I hereby certify that I am currently, legally married and the information I have provided with respect to my spouse, _____, is true and correct.

I understand that my HECM loan contains a provision to defer a due and payable status of my HECM that may prevent the displacement of _____, my current spouse, if and only if, certain conditions are and continue to be met. I understand that this deferral will not be available to any other person I may marry in the future. I further understand that this safeguard will only remain available to _____, my current spouse, if:

1. _____ remains my spouse for the remainder of my life;
2. I have truthfully disclosed the name and age of my current spouse to the mortgagee;
3. _____ continues to occupy the property securing my HECM as [his/her] principal residence;
4. _____ is able to establish legal ownership or some other ongoing legal right to remain (e.g., executed lease, court order, etc.) in the property securing the HECM after the death of the last surviving borrower;
5. All other obligations of the HECM borrower continue to be satisfied after the death of the last surviving borrower; and
6. All other terms and conditions of the HECM continue to be satisfied after my death.

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Mortgagee Letter 2015-02, Continued

**Currently
Eligible Non-
Borrowing
Spouse
Certifications
Required at
Closing**

Eligible Non-Borrowing Spouse Certification:

At closing, the mortgagee must obtain the following certification from each currently Eligible Non-Borrowing Spouse of a HECM borrower:

I hereby certify that I am currently, legally married to _____, a HECM borrower, and the information provided about me is true and correct.

I understand that my spouse's HECM contains a deferral of a due and payable status to prevent my displacement from the property following the death of the last surviving borrower under my spouse's HECM but only if:

1. I remain(ed) the legal spouse of the HECM borrower, identified above, for the remainder of [his/her] life;
2. The HECM borrower, identified above, and I truthfully disclosed my name and age to the mortgagee;
3. I continue to occupy the property securing my spouse's HECM as my principal residence;
4. I am able to establish legal ownership or some other ongoing legal right to remain (e.g., executed lease, court order, etc.) in the property securing the HECM after the death of the last surviving borrower under my spouse's HECM;
5. All other obligations of the HECM borrower continue to be satisfied after the death of the last surviving borrower; and
6. All other terms and conditions of the HECM continue to be satisfied after the death of the last surviving borrower.

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 or administrative liability.

**Case Binder
Documentation
Requirements**

Mortgagees must include all certifications executed at closing in case binders submitted for FHA insurance endorsement.

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Mortgagee Letter 2015-02, Continued

Ongoing Requirements for Borrower and Non-Borrowing Spouse Certifications

Mortgagees must maintain copies of the following relevant certifications in their servicing files.

Annual Borrower Certification:

Borrowers that identify themselves as being married with a currently Eligible Non-Borrowing Spouse must submit the Borrower Certification: Eligible Non-Borrowing Spouse on an annual basis.

Death of Last Surviving Borrower Certification:

Upon the death of the last surviving borrower, the mortgagee must obtain the Eligible Non-Borrowing Spouse certification from any Eligible Non-Borrowing Spouse within 30 days of receiving notice of the last surviving borrower's death and then no less than annually thereafter for the duration of the Deferral Period.

Eligible Non-Borrowing Spouse is No Longer Eligible Certification:

If an Eligible Non-Borrowing Spouse, identified at closing, ceases to be married to his/her HECM borrower spouse for any reason other than death or fails to reside in the property as his/her Principal Residence, the Deferral Period that would prevent the displacement of such Non-Borrowing Spouse will no longer be in effect. The borrower must submit the following certification within 60 days of the date the Non-Borrowing Spouse becomes ineligible.

I hereby certify that at the time of loan closing I was legally married and that the information I provided with respect to my [then] spouse, _____, was true and correct. While at the time of loan closing my [then] spouse was eligible for a Deferral Period, my [then] spouse has since become ineligible for a Deferral Period for the following reasons:

1. _____ My [then] spouse no longer resides in the property as [his or her] principal residence because _____.

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Ongoing Requirements for Borrower and Non-Borrowing Spouse Certifications
(continued)

2. ____ My then spouse and I are were legally divorced on _____ and as such are no longer legally married.
3. ____ My then spouse passed away on _____.
4. ____ Other: _____.

I understand that because my [then] spouse is now ineligible, the Deferral Period contained in my HECM loan will no longer defer a due and payable status to prevent the displacement of _____, my [then] spouse nor any other person I may marry in the future.”

The mortgagee is also required to obtain supporting documentation validating the reason, such as a divorce decree or death certificate, for the case files.

Changes to Annual Determination of Principal Residence

The mortgagee must annually determine whether the property remains the Principal Residence of at least one borrower and must require the borrower to annually certify to his or her continued residence in the property.

Where an Eligible Non-Borrowing Spouse was identified at closing, the mortgagee must obtain an additional certification from the HECM borrower confirming that his/her Eligible Non-Borrowing Spouse remains his/her spouse and his/her Eligible Non-Borrowing Spouse continues to reside in the property as his/her Principal Residence.

If a HECM borrower with an Eligible Non-Borrowing Spouse has died, the mortgagee is required to obtain this annual Principal Residence certification from the Eligible Non-Borrowing Spouse of such borrower.

Reinstatement of Deferral Period

If a Deferral Period ceases or becomes unavailable because a Non-Borrowing Spouse no longer satisfies the Qualifying Attributes for a Deferral Period and has become an Ineligible Non-Borrowing Spouse, a mortgagee may not provide an opportunity to cure the default.

In the event a Deferral Period ceases because the HECM has become eligible to be called due and payable and is in default for a reason other than death, the mortgagee must provide an Eligible Non-Borrowing Spouse with 30 days to cure the default.

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**Reinstatement
of Deferral
Period**
(continued)

- If the default is cured within such time, the Deferral Period must be reinstated, unless:
 - The mortgagee has reinstated the Deferral Period within the past two years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable;
 - Reinstatement of the Deferral Period will preclude foreclosure if the mortgage becomes due and payable at a later date; or
 - Reinstatement of the 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.

- Even after a foreclosure proceeding is begun, the mortgagee shall permit an Eligible Non-Borrowing Spouse to cure the condition which resulted in the Deferral Period ceasing, and to reinstate the mortgage and Deferral Period, and the mortgage insurance shall continue in effect. The mortgagee may require the Eligible 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. The mortgagee may refuse to reinstate the mortgage and Deferral Period if:
 - The mortgagee has accepted a reinstatement of either the Deferral Period or mortgage within the past two years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable;
 - Reinstatement of either the Deferral Period or mortgage will preclude foreclosure if the mortgage becomes due and payable at a later date; or
 - Reinstatement of either the Deferral Period or mortgage will adversely affect the priority of the mortgage lien.

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Mortgagee Letter 2015-02, Continued

Changes to Model Note, Mortgage and Loan Agreement

Mortgagees must add the following to the HECM model Note, Mortgage and Loan Agreement documents:

Add to the definition section of the Loan Agreements:

- “Borrower” is defined above. The term does not include the Borrower’s successors or assigns.

Add to the definition section of the Model Notes:

- “Borrower” means each person signing at the end of this Note. The term does not include his or her successors or assigns.

Add to the first paragraph of the Model Mortgages:

- The term “Borrower” does not include the Borrower’s successors or assigns.

Add to the definition section of the Loan Agreements, add after section 9 of Model Mortgages, and add to definition section of Model Notes:

- “Eligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who meets the Qualifying Attributes requirements defined in ML 2014-07 for a Deferral Period.
- “Ineligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who does not meet the Qualifying Attributes requirements defined in ML 2014-07 for a Deferral Period.

Add to section 4.2 of the Adjustable Rate Loan Agreement and add to section 3.2 of the Fixed Rate Loan Agreement:

- The Deferral Period is not available to any Ineligible Non-Borrowing Spouse. The Deferral Period will terminate or become unavailable to an Eligible Non-Borrowing Spouse at the time he or she becomes ineligible.

Replace the last sentence to section 10(A)(ii) of the Model Mortgages, section 7(A)(ii) of the Adjustable Rate Model Note, and add section 6(A)(ii) of the Fixed Rate Model Note:

- This section is inapplicable or null and void if a Non-Borrowing Spouse is or becomes ineligible, at any time. Further, during a Deferral Period, should any of the conditions for deferral listed in this section cease to be met such a deferral shall immediately cease and the Note will become immediately due and payable in accordance with the provisions of *[insert appropriate section]* of this Note.

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Mortgagee Letter 2015-02, Continued

**Changes to
Model Note,
Mortgage and
Loan
Agreement
(continued)**

Add to all HECM documents:

- Except as set forth in [*insert appropriate section number for Deferral of Due and Payable Status section*] [*for Adjustable Rate Loan Agreement also include “, and Article 5 and Section 4.3 for the Secretary,”*] only for an Eligible Non-Borrowing Spouse in this [*insert name of agreement*], this [*insert name of agreement*] does not and is not intended to confer any rights or remedies upon any person other than the parties. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender.

Add to the Model Mortgages:

- **Deferral Period Reinstatement.** If a Deferral Period ceases or becomes unavailable because a Non-Borrowing Spouse no longer satisfies the Qualifying Attributes as defined in ML 2014-07 for a Deferral Period and has become an Ineligible Non-Borrowing Spouse, neither the Deferral Period nor the Security Instrument may be reinstated. In the event a Deferral Period ceases because an obligation of the Note, the Loan Agreement or this Security Instrument has not been met or the Note has become eligible to be called due and payable and is in default for a reason other than death, an Eligible Non-Borrowing Spouse may have a Deferral Period and this Security Instrument reinstated provided that the condition which resulted in the Deferral Period ceasing is corrected within thirty (30) days. A Lender may require the Eligible Non-Borrowing Spouse to pay for foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding, such costs may not be added to the Principal Balance. Upon reinstatement by an Eligible Non-Borrowing Spouse, the Deferral Period and this Security Instrument and the obligations that it secures shall remain in effect as if the Deferral Period had not ceased and the Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) the Lender has accepted a reinstatement of either the Deferral Period or this Security Instrument within the past two (2) years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable; (ii) reinstatement of either the Deferral Period or this Security Instrument will preclude foreclosure in the future, or (iii) reinstatement of either the Deferral Period or Security Instrument will adversely affect the priority of the Security Instrument.

Mortgagee Letter 2015-02, Continued

**Changes to
Model Note,
Mortgage and
Loan
Agreement**
(continued)

Mortgagees must revise the model documents to ensure compliance with other Federal, State, and local laws, and may do so without HUD approval.

**Additional
Documentation
for and
Clarification
of Seasoning
Requirements
for Existing
Non-HECM
Liens**

Mortgagees must comply with the documentation requirements set forth in Mortgagee Letter 2014-21 to document cash to the borrower. To document the age of the lien, mortgagees may use the HUD-1 or other documents such as a title report or credit reports or documents related to the transaction that contain the required information.

This Mortgagee Letter clarifies that the seasoning requirement is satisfied if the lien has been in place for more than 12 months. For liens in place for 12 months or less, mortgagee must verify that cash to the borrower was less than \$500, whether at closing or through cumulative draws.

All documents used to verify compliance with seasoning requirements must be included in the case binder.

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Mortgagee Letter 2015-02, Continued

Information Collection Requirements Paperwork reduction information collection requirements contained 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. §§ 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 Biniam Gebre
Acting Assistant Secretary for Housing –
Federal Housing Commissioner
