

June 30, 2009

MORTGAGEE LETTER 2009-21

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

SUBJECT: Home Equity Conversion Mortgage Refinancing of Existing Loans

This Mortgagee Letter informs Mortgagees and Housing Counseling Agencies that provide Home Equity Conversion Mortgage (HECM) counseling, of a technical correction that is applicable to the Federal Housing Administration (FHA) HECM Program. This Mortgagee Letter also reiterates and clarifies policy guidance that mortgagees must use when refinancing existing HECM mortgages.

TECHNICAL CORRECTIONS

On September 4, 2008, the Department of Housing and Urban Development (HUD) published a final rule in the Federal Register at 73 FR 51596 for the purpose of making a technical correction to the HECM regulations found in 24 Code of Federal Regulations (CFR) Part 206.

The technical correction extends FHA's refinance insurance authority and the benefit of a reduced initial mortgage insurance premium (MIP) to HECM loans that have been assigned to the Department in accordance with 24 CFR 206.107(a)(1) or 206.121(b). This amendment was necessitated because the previous wording of 24 CFR 206.53 limited FHA's refinance authority to "presently insured HECMs" thereby excluding assigned loans from being eligible for refinancing. Therefore, FHA will insure all loans that were originated for the purpose of refinancing an assigned loan that is not in a due and payable status for reasons that cannot be corrected, such as death of the last mortgagor or conveyance of title by all mortgagors, but closed on or after October 6, 2008, the date of the Final Rule. The provisions of this mortgagee letter supersede refinance guidance found in Mortgagee Letter 2004-18.

REFINANCING EXISTING LOANS

Background

Section 201 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569, approved December 27, 2000) (AHEOA) made several statutory changes to the HECM Program. The provisions of Section 201 of AHEOA include:

- 1) authorization for refinancing existing HECM loans;
- 2) a cost reduction on refinance transactions by collecting a lower initial mortgage insurance premium;
- 3) a requirement for mortgagees to provide mortgagors with an anti-churning disclosure which informs the mortgagor of the total cost of the refinancing transaction and the new principal limit; and,

- 4) the conditions under which FHA will waive the HECM counseling requirement.

On March 25, 2004, HUD published an interim rule in the Federal Register at 69 FR 15586 amending Title 24 CFR Part 206 to implement its refinance insurance authority and mandate an “anti-churning disclosure” requirement as a consumer protection measure.

Initial Mortgage Insurance Premium

FHA will collect a reduced initial MIP in the amount of 2 percent of the increase in the maximum claim amount (i.e., the difference between the maximum claim amount for the HECM refinance and the maximum claim amount for the existing HECM being refinanced).

The reduced initial MIP only applies when the property that serves as collateral for FHA insurance remains the same. Therefore, HECM mortgagors who terminate their HECM and purchase a new property using a HECM for Purchase transaction are not eligible for a reduction in the initial MIP on the new property.

Anti-Churning Disclosure Requirement

It was brought to our attention that, in some instances, the terminology in the Anti-Churning Disclosure and Exhibit attached to ML 2004-18 caused confusion when calculating the cost of the HECM refinance. The *Anti-Churning Disclosure Requirement* section of this ML and the attached Exhibit define terms to eliminate any confusion.

The official HUD form HUD-92901 “Home Equity Conversion Mortgage (HECM) Anti-Churning Disclosure” is attached to this mortgagee letter. The Anti-Churning Disclosure form must be signed by the mortgagor and be included in the FHA case binder. This form ensures that the mortgagor is not being induced to refinance his/her existing HECM without benefit to the mortgagor and/or solely for the benefit of the mortgagee.

To ensure that the HECM refinance will benefit the mortgagor, the mortgagee shall provide the mortgagor its best estimate of:

- 1) the total cost of the refinancing to the mortgagor; and
- 2) the increase in the mortgagor’s principal limit as measured by the estimated initial principal limit on the HECM refinance *less* the current principal limit on the existing HECM. The “current principal limit” is the remaining loan amount the mortgagor could withdraw from the existing HECM.

In addition, to ensure the mortgagor is provided with information to assist in understanding the amount of new funding that will be available after deducting closing costs and other fees associated with refinancing the existing HECM, the mortgagee shall provide a best estimate of funds available to the mortgagor minus any closing costs and other fees.

The mortgagee is responsible for determining whether a particular HECM loan is an open-end or closed-end line of credit, and whether the RESPA or TILA and Regulation Z disclosure requirements are applicable to the transaction. Requirements follow:

- For HECM loans that are closed-end lines of credit, mortgagees must issue the Anti-Churning Disclosure form concurrently with the Good Faith Estimate (GFE) form which is required to be provided under the Real Estate Settlement Procedures Act (RESPA), and HUD's RESPA regulations at 24 C.F.R. 3500.7.
- For HECM loans that are open-end lines of credit, mortgagees must issue the Anti-Churning Disclosure concurrently with such other disclosure forms that can be provided in lieu of the GFE under HUD's RESPA regulations at 24 C.F.R. 3500.7(h), i.e., disclosures required under the Truth in Lending Act (TILA) and Regulation Z.

Housing Counseling Requirements

The HECM Program requires all HECM mortgagors to receive counseling from an independent third party entity. For HECM refinance transactions, mortgagors can waive and opt out of the HECM counseling requirement only if all three of the following conditions are met:

- 1) The mortgagor has received the required HECM Anti-Churning Disclosure form;
- 2) The increase in the mortgagor's principal limit exceeds the total cost of the HECM refinance by an amount equal to five (5) times the cost of the transaction (Block #1 on Anti-Churning Disclosure Form); and
- 3) The time between the closing on the existing HECM and the application for refinancing does not exceed five years.

In all cases where the mortgagor opts out of HECM counseling, the mortgagee must include an estimate of the increase in the mortgagor's principal limit in the FHA case binder to document this condition for the waiver has been met. Further clarification is included in Exhibit 1, attached, which illustrates how to calculate the total cost of HECM refinance. The exhibit also illustrates how to determine whether the counseling requirement may be waived.

Information Provided to Mortgagees Originating HECM Refinance Loans

The originating mortgagee of a HECM refinance must contact the current HECM Servicer and obtain the following information.

- Maximum claim amount for the existing HECM.
- The current principal limit of the existing HECM.
- The payoff amount for the existing HECM.

HECM Servicer Contact Information

- For non-assigned loans, FHA Connection will provide the originating mortgagee with the name of the servicing mortgagee at the Case Number Assignment screen. Additional contact information for servicing mortgagees is available in FHA Connection under the Approval List screen or at HUD's website <http://www.hud.gov/offices/hsg/sfh/hecm/hecmservlist.pdf>.
- For assigned loans, the name of C&L Service Corp./Morris-Griffin Corp. (CLS-MGC), which is overseen by the National Servicing Center-Tulsa, will be displayed at the case number assignment screen. The toll free number for CLS-MGC is (866) 377-8667.

The originating mortgagee will input this information into the Home Equity Conversion Mortgage Calculation Software V1.2 and will use the information to complete the Anti-Churning Disclosure Form.

Payoff of Existing HECM Loan

Servicing mortgagees are required to reconcile and terminate the existing HECM by ensuring all outstanding advances are properly recorded prior to its payoff. Once the outstanding balance of the existing HECM is paid in full, the servicing mortgagee must ensure both the first and second mortgages are released.

For non-assigned loans, the servicing mortgagee will be responsible for:

- 1) ensuring all outstanding advances are properly recorded prior to paying off the existing HECM;
- 2) terminating the existing HECM from the Insurance Accounting Collection System (IACS);
- 3) ensuring the first mortgage is released; and
- 4) notifying CLS-MGC so that the second mortgage is released from record. This is only possible by providing documentation that the first mortgage has been paid in full or a copy of the lien release that was sent for recording.

For assigned loans, CLS-MGC will be responsible for:

- 1) ensuring all outstanding advances are properly recorded prior to paying off the existing HECM;
- 2) terminating the existing HECM from the Single Family Mortgage Asset Recovery Technology (SMART) system; and
- 3) ensuring both the first and second mortgages will be released within seven (7) business days after the receipt and processing of the full payoff amount for the loan.

Data Entry Requirements

Case Number Assignment Screen

The Case Number Assignment Screen in FHA Connection has been modified to accept HECM refinance information. Mortgagees must enter information into the refinance data entry fields as follows:

<u>System Field</u>	<u>Mortgagee Entry</u>
Type of Case	Select 'HECM Refinance'
If Refinance: Was prior loan FHA Insured?	Select 'Yes'
All Refinances: Select Streamline Refinance type:	Select 'Not Streamlined'
Prior FHA and prior REO cases: Enter case Number of previous case:	Enter prior HECM case number

Note: FHA Connection will reject prior HECM case numbers if the loan status is “terminated” or “due and payable.”

INFORMATION COLLECTION REQUIREMENTS

The information collection requirements referred to in this Mortgagee Letter have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The OMB number issued for this requirement is OMB 2502-0524.

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-
Federal Housing Commissioner

Attachments

- * [Form HUD-92901](#)
- * [Exhibit 1](#)