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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

January 29, 2015

MORTGAGEE LETTER 2015-03

To **All Approved Mortgagees**

Subject **Mortgagee Optional Election Assignment for Home Equity Conversion Mortgages (HECMs) with FHA Case Numbers 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 the 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. Assignments made pursuant to this Mortgagee Letter will be accepted beginning June 1, 2015.

The policies set forth herein do not apply to HECMs that are delineated in Attachment I.

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

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Handbooks 4235.1 and 4330.1 Rev 5, Chapter 13 are also affected and superseded in some cases as described below.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

Subsection 255(j) of the National Housing Act provides that a HECM that does not contain a "Safeguard to Prevent Displacement of Homeowner," which defers repayment of the loan obligation until "the homeowner's death, the sale of the home, or the occurrence of other events specified in the regulations of the Secretary," is ineligible for FHA insurance. FHA has, since the inception of the HECM program, interpreted this provision in its regulations as requiring HECMs to be called due and payable upon the death of the last surviving borrower, the sale of the home, and other conditions, including the failure to reside in the property and the failure to pay required property taxes, and hazard and flood insurance.

Recently, a United States District Court, in *Bennett*[1], determined that FHA had erroneously endorsed two reverse mortgages for insurance under the HECM program because the mortgages did not contain language deferring the due and payable status of the mortgages until the death of the borrowers' spouse, the sale of the home, or some other listed event as required by subsection 255(j) and remanded the case to the agency. Subsequently, the same Court remanded a similar case, *Plunkett*[2], to the agency as well.

During the *Bennett* and *Plunkett* remands, FHA reviewed the Court-identified legal error, namely the endorsement for insurance of six HECMs, and determined that, absent fraud or misrepresentation, the Department was legally prohibited from reversing the endorsements of the HECMs for FHA insurance. However, FHA (while recognizing the materiality of the provisions pertaining to perfecting a claim for insurance benefits) has elected to provide an amendment to the contract of insurance at the election of the mortgagee, allowing for an alternative path to claim payment for the mortgagees of the six HECMs at issue in these cases. In the end, it provided two paths, which came to be denominated the Mortgagee Optional Election

[1] *Bennett v. Donovan*, 4 F. Supp. 3d 5 (D.D.C. 2013).
[2] *Plunkett v. Castro*, 2014 U.S. Dist. LEXIS 119805 (D.D.C. Aug. 28, 2014).

Assignment and the Hold Election. The two paths are described in the opinions of the Court in the *Plunkett* matter.

These two paths were offered to the mortgagees holding the mortgages at issue in these cases with respect to those mortgages *only*, not to the plaintiff non-borrowing spouses. FHA left to the discretion of the mortgagee the question of whether or not to proceed to claim payment under the original contract of insurance or whether to elect FHA's offer to amend the contract of insurance and proceed to claim payment through one of these alternative paths. FHA has repeatedly maintained that the mortgagee's contractual rights under the HECM remain undisturbed by any action on the part of FHA and it is entirely within the mortgagee's discretion to determine the path to claim payment. FHA also made clear that it was not committing itself to offering either of these paths to claim payment to mortgagees holding HECMs not at issue in these cases, and that it would have to consider questions of cost, legality, and practicality before determining what, if any, action it would take with respect to other unidentified non-borrowing spouses.

Separately from the *Bennett* and *Plunkett* matters, FHA determined that it was possible to implement prospectively an alternative interpretation of Subsection 255(j). This alternative interpretation, announced in Mortgagee Letter 2014-07, provides for a possibility of a Deferral Period for HECMs with FHA Case Numbers assigned on or after August 4, 2014.

Again, recognizing the legally binding nature of existing private mortgage contracts entered into by the borrowers and mortgagees, FHA did not impose this Deferral Period for any HECMs that were assigned FHA Case Numbers prior to August 4, 2014, because FHA does not have authority to alter existing, legally binding private contracts entered into between private parties.

Additionally, the development of Mortgagee Letter 2014-07, the *Bennett* Determination on Remand and the *Plunkett* Determination on Remand illuminated HUD's duty to protect and ensure the fiscal soundness of the FHA insurance funds. FHA has a statutory obligation to ensure the fiscal soundness of the FHA insurance funds and must take into account the financial and administrative burden of any potential alternative to claim payment that may be afforded to mortgagees holding any eligible HECMs that were assigned FHA Case Numbers prior to August 4, 2014.

The two alternative paths provided in *Bennett* and *Plunkett* – the Hold Election and the Mortgagee Optional Election Assignment – when analyzed in the aggregate are costly. Either option, even if offered alone, poses a significant financial impact to the FHA insurance funds. The Hold Election when applied to the universe of mortgages involving Non-Borrowing Spouses of borrowers imposes a financial risk to the insurance funds that is simply too

great. FHA's obligation to protect the soundness of the insurance funds makes it impossible to offer this option broadly. Thus, even though it also poses a (lesser) financial risk to the funds, the only alternative path to claim payment that FHA will permit mortgagees to elect is the Mortgagee Optional Election Assignment.

FHA is now issuing this Mortgagee Letter to set out this alternative path to claim payment for existing HECMs with FHA Case Numbers assigned prior to August 4, 2014, and to alert mortgagees that no other alternative path to claim payment exists. However, we are excluding from the policies set forth herein the HECM cases that are delineated in Attachment I.

OPERATIVE PROVISIONS

Eligibility for Assignment

No mortgage is eligible for assignment where the last surviving borrower has died and the mortgage is eligible for due and payable status under the terms of the original mortgage as entered into between the mortgagee and borrower unless the mortgagee elects the Mortgagee Optional Election Assignment and all conditions and requirements for the Mortgagee Optional Election Assignment established in this Mortgagee Letter are satisfied.

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 Mortgagee Optional Election (MOE) Assignment.

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

Where a mortgagee does not elect to utilize the Mortgagee Optional Election 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

A mortgagee must notify the Secretary whenever 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.

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.

An "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 an Eligible Surviving 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

An Eligible Surviving 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 Eligible Surviving 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

A mortgagee must make and notify HUD of its election within the later of 90 days following the issuance of this Mortgagee Letter or 30 days following the servicer receiving notice of the last surviving borrower's death or in such additional time as may be authorized by HUD in writing, in its sole discretion. To notify HUD of its election, the mortgagee must upload into HERMIT a statement of its election on company letterhead.

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 30 days of the mortgagee's MOE Assignment election, or such additional time as may be provided by HUD, in its sole discretion.

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.

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.

Any previous extension granted through FHA INFO 14-34 ceases immediately upon a mortgagee's election. 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 90 days from the MOE Assignment election or within 180 days of the publication date of this Mortgagee Letter, whichever is later, unless such time is extended by HUD within its sole discretion.

Only a HECM that comprises a valid first lien security interest in real property under applicable state law may be assigned. A HECM that has been extinguished through foreclosure cannot be assigned.

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 and 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 ensure it retains the legal ability to foreclose the lien for any event of default, upon the cessation of the MOE Assignment Deferral Period, or in the event of any other occurrence that would prevent assignment, such as the death of the Eligible Surviving Non-Borrowing Spouse, was to occur prior to assignment. The Department will consent to a modification if the mortgagee deems it is necessary.

Eligible HECM Loans for MOE Assignment

A mortgagee who has made the MOE Assignment election, may only assign a HECM loan that satisfies, within 90 days after the MOE Assignment election or within 180 days of the publication date of this Mortgagee Letter, whichever is later, the following requirements:

1. There is an Eligible Surviving Non-Borrowing Spouse;

2. The current unpaid principal balance is less than, or equal to, the Maximum Claim Amount and either:

   a. The Eligible Surviving Non-Borrowing Spouse would have had a Principal Limit Factor ("PLF") greater than or equal to the PLF of the HECM borrower spouse (Factor Test), or
   b. The Eligible Surviving Non-Borrowing Spouse's PLF would have resulted in a current principal limit that is greater than or equal to the current unpaid principal balance (Principal Limit Test);

3. The Eligible Surviving Non-Borrowing Spouse agrees to certify annually that he or she continues to satisfy all eligibility requirements;

4. The HECM is not in default or eligible to be called due and payable for any other reason;

5. 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;

6. 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 exercise of rights to gain good and marketable title under the mortgage;

7. 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

8. 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.

A payment may be made to reduce the unpaid principal balance in order to meet the requirements under the Principal Limit Test. Where the above requirements are not met within 90 days after the MOE Assignment election or within 180 days after the publication date of this Mortgagee Letter, whichever is later, the mortgagee must proceed to foreclosure and the ordinary regulatory timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure apply as of the date the HECM is deemed ineligible.

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 90 days following the death of the last surviving borrower or within 180 days of this Mortgagee Letter, whichever occurs later.

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.

In the event 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.

- A default is not cured by entering into a repayment plan; all defaults must be cured in fact within the time period permitted.

- If the default is cured within such time, the MOE Assignment Deferral Period must be reinstated, unless:

    - 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 HUD regulations and requirements in order 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. 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 Calculating the PLF and Principal Limit Tests

The mortgagee must use HUD's website at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm to locate the Principal Limit Factors (PLF) Table, applicable to the date the HECM was originated and the Eligible Surviving Non-Borrowing Spouse's age at the time the HECM was originated to calculate the PLF and Principal Limit Test.

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 current unpaid principal balance is $_____, which is less than the Maximum Claim Amount, which is $_____, and one of the following is met:
   a. _____Factor Test: the Eligible Surviving Non-Borrowing Spouse would have had a Principal Limit Factor of _____, which is greater than or equal to the PLF of the HECM borrower spouse, which was _____, or
   b. _____ Principal Limit Test: the Eligible Surviving Non-Borrowing Spouse would have had a current principal limit of $_____, which is greater than the current unpaid principal balance, which is $_____;
2. 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;
3. 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;
4. There is a valid, legally enforceable first lien with no impediments to securing good, marketable title;
5. [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

6. 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 later 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 180 days of this Mortgagee Letter's publication date or 90 days after the MOE Assignment election, whichever is later. 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. Sufficient supporting documentation that the PLF or Principal Limit Test is satisfied;

4. Evidence of title or other ongoing legal right to remain for any Eligible Surviving Non-Borrowing Spouse;

5. 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;

6. All HERMIT required packages/documentation for an assignment;

7. A signed Mortgagee Certification;

8. A signed Eligible Surviving Non-Borrowing Spouse Certification; and

9. 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 Mortgagee 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 Mortgagee 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 Mortgagee 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 <u>are</u> 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.

Terms are Inseverable

In the event that any portion of this Mortgagee Letter is determined to be unenforceable by a final non-appealable judgment by a court of competent jurisdiction, in any respect and for any reason, no portion of it that pertains to the MOE Assignment, with the exception of the section above entitled "Eligibility for Assignment" of this Mortgagee Letter, will stand.

The terms of the contract of insurance in regards to assignment and claim payment are material and essential terms and as such, the only option available for a mortgagee to perfect its claim for insurance in this event will be to proceed in accordance with its private contractual rights (subject to the timeframes imposed by HUD regulations and the restriction on assignment) or for the mortgagee to forego insurance benefits.

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

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Biniam Gebre
Acting Assistant Secretary for Housing - Federal Housing Commissioner

Attachment

Attachment I

This attachment is a schedule of loans to which the policies set forth above do not apply.

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