



[Docket No. FR-6382-N-01]

Federal Housing Administration (FHA): Home Equity Conversion Mortgage (HECM) HECM for Purchase - Acceptable Monetary Investment Funding Sources and Interested Party Contributions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice serves to inform members of the public and affected program participants of changes to the Federal Housing Administration’s (FHA) Home Equity Conversion Mortgage (HECM) for Purchase program that HUD intends to make in a future update to HUD’s Single Family Housing Policy Handbook. Pursuant to the FHA Commissioner’s (“Commissioner”) regulatory authority, FHA will expand the list of acceptable funding sources used to satisfy the borrower’s monetary investment requirement and will permit additional interested party contributions. This notice also informs the public that FHA will remove existing restrictions that prohibit the borrower from accepting cash from a seller or another person or entity that financially benefits from the HECM for Purchase transaction. This notice seeks public comment on these changes.

DATES: Comment Due Date: **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Mary Jo Sullivan, Acting Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9266, Washington, DC 20410-9000, telephone number 202-402-2378 (this is not a toll-free number); email address sfeedback@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make

an accessible telephone call, please visit:

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background: Statutory Authority, Regulations, and Administrative Guidance

Section 2122(a)(9) of the Housing and Economic Recovery Act of 2008 (HERA) amended 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, one unit of which will serve as the borrower's principal residence. In 2008, based on the authority in section 255, FHA implemented the HECM for Purchase program through Mortgagee Letter (ML) 2008-33, permitting mortgagees to originate HECM for Purchase transactions. ML 2008-33 was superseded by Mortgage Letter 2009-11, which required borrowers to satisfy a monetary investment using cash on hand or cash from the sale or liquidation of the mortgagor's assets, or certain additional funding sources defined in HUD Handbook 4155.1 REV-5, section 2-10.

FHA through ML 2009-11, however, prohibited certain funding sources for the borrower's required monetary investment. Specifically, borrowers were prohibited from satisfying the monetary investment requirement using sweat equity, trade equity, rent credit, or cash or its equivalent, in whole or in part, received from the seller or any other person or entity that financially benefits from the HECM for Purchase transaction, or any third party or entity that is reimbursed, directly or indirectly, by the seller or any other person or entity that financially benefits from the HECM for Purchase transaction. Additionally, ML 2009-11 prohibited seller contributions, also known as seller concessions, in any HECM for Purchase transaction. Seller concessions were defined as 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. These limitations on funding sources and interested

party contributions redirected expenses customarily paid by the seller or other interested parties to the HECM for Purchase borrower.

On January 19, 2017, FHA codified the requirements for the HECM for Purchase program, and other program changes, in the “Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgage Program” Final Rule (82 FR 7094) (“the final rule”) amending 24 CFR part 206. The final rule changed the funding source restrictions from ML 2009-11, to permit interested party contributions to pay fees required to be paid by the seller under state or local law, for fees that are customarily paid by a seller in the locality of the subject property, and for purchase of the Home Warranty policy by the seller (24 CFR 206.44(c)(1)).

FHA also codified three permitted funding sources for the borrower’s required monetary investment: cash on hand, cash from the sale or liquidation of the borrower’s assets, and HECM proceeds. The final rule codified regulatory provisions that grant the Commissioner the authority to permit additional funding sources and interested party contributions through future notice in the Federal Register, 24 CFR 206.44(b)(4) and (c)(2), respectively. Based on the foregoing regulatory authority, FHA is issuing this notice to permit additional funding sources and interested party contributions in HECM for Purchase transactions.

II. This Notice

HECM for Purchase requires Borrowers to contribute substantial liquid assets to meet the negotiated contract sales price for the property plus standard origination fees and charges. By expanding the list of permitted interested party contributions, FHA is more closely aligning its HECM interested party contribution policies with FHA’s forward mortgage programs, while meaningfully increasing the sources of funds available for HECM borrowers to satisfy their capital requirements to originate a HECM for Purchase.

For example, a borrower purchasing a property in the state of Arizona with a HECM for Purchase, where:

- Contract sales price is \$491,974.00;
- Borrower's Closing Costs are \$20,300.00;
- Appraised Value is \$492,000.00; and
- Principal Limit is \$189,902.00 (maximum proceeds available to borrower from the HECM).

Under current policy, the total amount of cash due from the borrower at closing to complete this transaction is \$322,372 (\$491,974 plus \$20,300 minus \$189,902). Under the proposed notice, interested parties could contribute up to 6 percent of the sales price, or \$29,518.44, toward the borrower's monetary requirements, reducing the total amount due from the borrower at closing from \$322,372 to \$292,853.56.

Therefore, pursuant to the Commissioner's authority under 24 CFR 206.44(b)(4) and 206.44(c)(2), HUD is, through this notice, informing the public and program participants of changes to the FHA's HECM program, which HUD intends to make effective in a future update to HUD's Single Family Housing Policy Handbook.

For the HECM for Purchase program, FHA will permit the use of an "interested party contribution," up to six percent of the sales price. "Interested party contribution" will be defined as a payment by an interested party¹ or combination of parties, toward the borrower's origination fees, other closing costs including any items paid outside of closing, prepaid items, and discount points. The six percent limit may be applied towards but may not exceed the cost of: origination fees; other closing costs paid outside of closing, such as a credit report and appraisal; prepaid items; discount points; interested party payment for permanent and temporary interest rate buydowns; and payment of the initial mortgage insurance premium.

¹ "Interested Parties" refer to sellers, real estate agents, builders, developers, Mortgagees, Third-Party Originators, or other parties with an interest in the transaction.

Through this notice, FHA will permit additional funding sources that may be used to satisfy the borrower's monetary investment including premium pricing;² gifts; disaster relief grants; and employer assistance. These permitted sources are in addition to cash on hand, cash from the sale or liquidation of the borrower's assets, and HECM proceeds that are already permitted by regulation.

Premium pricing credits from the mortgagee or third-party originator will be excluded from the six percent interested party contribution limit, provided the mortgagee or third-party originator is not the seller, real estate agent, builder, or developer. Fees required to be paid by a seller under state or local law or customarily paid by a seller in the subject property locality, including real estate agent commissions or fees, and the purchase of the Home Warranty policy by the seller are already permitted under § 206.44(c)(1)³ and will be excluded from the six percent interested party contribution limit. Further, as with FHA's policy for forward-mortgages, FHA will exclude the satisfaction of a Property Assessed Clean Energy ("PACE") lien or obligation against the property by the property seller from the definition of an interested party contribution in the HECM for Purchase program.

This document seeks comment from interested members of the public on this document generally, and on the issues discussed previously in this notice. HUD will carefully consider the public comments received through this solicitation as part of a future policy update.

Julia R. Gordon,
*Assistant Secretary for Housing—
Federal Housing Commissioner.*

[Billing Code 4210-67]

[FR Doc. 2023-23429 Filed: 10/23/2023 8:45 am; Publication Date: 10/24/2023]

² "Premium Pricing" refers to the aggregate credits from a mortgagee or third-party originator at the interest rate chosen.

³ 24 CFR 206.44(c)(1) permits interested party contributions that are defined as fees required to be paid by a seller under state or local law, fees customarily paid by a seller in the subject property locality, or the purchase of the Home Warranty policy by the seller.