



Housing and Economic Reform Act (HERA) Frequently Asked Questions

Part I: FHA Single-Family Program Changes August 6, 2008

Loan Limits

Q. 1. What are the new single family FHA loan limits?

- A. The Housing and Economic Reform Act (HERA) increases the loan limit for FHA mortgage insurance for single family, one-unit properties (with increased limits for other single-family properties up to four units) to 115 percent of the local area median home price, as determined by HUD (but no lower than a floor of 65 percent of \$417,000 that is \$271,050) or up to a cap of 150 percent of the GSE limit of \$417,000, or \$625,500. Note that the limits for the new Hope for Homeowners Program differ, see Q. 27, below.

Q. 2. When do the new FHA single family loan limits become effective?

- A. The new FHA loan limits go into effect after the limits in the Economic Stimulus Act expire on December 31, 2008, i.e., January 1, 2009.

Q.3. Since the FHA loan limits are based on the conforming loan limit for Fannie Mae and Freddie Mac (the GSE limit) what happens if the GSE limit changes?

- A. The FHA limit changes. The GSE regulator sets the GSE conforming loan limit annually, based on the agency's home price index. The GSE limit will be adjusted in years when home prices increase, but increases must be offset by prior year decreases.

Q. 4. Will the new FHA loan limits be the same everywhere in the nation?

- A. No. The FHA loan limit will vary based on the local area median home price, as determined by HUD up to a limit of \$625,500. The mortgage amount also cannot exceed 100 percent of the appraised value of the individual property.

Q.5. Do the new FHA loan limits apply to all "forward" single family mortgages (as distinguished from reverse mortgages)?

- A. The new FHA loan limits apply to all "forward" single-family mortgages except for Home Equity Conversion Mortgages (HECMs), also known as reverse mortgages. HECMs and Hope for Homeowners mortgages have different limits, which is discussed below.

Q.6. Does HERA eliminate the existing percentage limitations on financing?

A. Yes. It permits financing of up to 100% of the appraised value of the property.

Q.7. Can the amount of the mortgage be increased above 100% of the appraised value, by the amount of the mortgage insurance premium?

A. No. The maximum amount of mortgage cannot be increased by the amount of the mortgage insurance premium when the principal obligation to be insured equals 100% of the appraised value. The premium can be financed as long as the principal obligation does not exceed 100% of the appraised value.

Risk Based Premiums

Q.8. Does this new law prohibit risk-based premiums?

A. Only temporarily. It prohibits HUD from taking any action to implement or carry out a risk-based premium program for a period of twelve months beginning on October 1, 2008.

Q.9. Do lenders have to stop using risk-based premiums immediately?

A. No. FHA will insure loans using risk-based premiums through September 30, 2008.

Q.10. What action must be taken to ensure that a risk-based premium loan will be insured by FHA?

A. Loans for which case numbers are assigned on or after October 1, 2008 will have the new premiums. Case numbers issued before October 1 will be subject to the current Risk-Based Premium rules that took effect on July 14.

Cash to Close

Q.11. What is the new cash investment requirement?

A. Borrowers must pay, in cash or its equivalent, 3.5% of the appraised value of the property. This means that borrower must provide a 3.5% down payment on purchase money mortgages. Borrowers must come to the closing table with 3.5% cash or equity in a refinance transaction. Borrowers can no longer accept seller-funded down payments (see below)

Q.12. When does this new cash investment requirement take effect?

A. It is unclear at this time. Currently, FHA indicates that while the provision appears to be self implementing as of the date of enactment, under case law, the effective date is dependent on issuance of FHA guidance.

Down Payment Assistance Restrictions

Q.13. Does HERA prohibit seller-funded down payment assistance and if so what is the effective date of the new prohibition?

- A. HERA prohibits seller-paid down payment assistance although it does permit such assistance from family members. The prohibition against seller-funded down payment assistance applies to those loans for which the lender has issued credit approval for the borrower on or after October 1, 2008. This means that if a lender issues credit approval before October 1, 2008, seller funded down payment assistance is permissible.

Q.14. How is credit approval being defined?

- A. Credit approval is defined for loans scored through FHA's Mortgage Scorecard TOTAL as Accept/Approve on or after October 1, 2008. For those loans manually underwritten, credit approval is defined as the date the Direct Endorsement Underwriter approves the loan, as indicated by the DE signature on the Mortgage Credit Analysis Worksheet (MCAW) or Loan Transmittal form.

Q.15. What if we re-score the loan through an AUS/ TOTAL?

- A. For those loans that are re-scored and result in a downgrade to Refer - requiring the lender to manually underwrite the loan - credit approval is defined as the date the Direct Endorsement Underwriter approves the loan, as indicated by the DE signature on the MCAW or LT.

For those loans that are re-scored and remain an Accept/Approve, the date of the last scoring would be the date used to determine the credit approval.

Q.16. How will this change affect systems such as FHA Connection?

- A. Hard system edits will be implemented to facilitate the implementation of this new prohibition.

Q.17. What if the credit was approved prior to October 1, 2008 but the loan closes after October 1, 2008? Is it eligible for insurance?

- A. Yes, so long as the credit was approved before October 1, the loan is insurable.

Q.18. Can municipalities and other government agencies continue to offer down payment assistance after October 1?

- A. Yes, provided that the assistance is in the form of a second lien. There is no CLTV limit,, where a second is provided by a government agency.

Home Equity Conversion Mortgages (HECMs)

Q. 19. What is the HECM Loan Limit?

- A. The HECM loan limit is set at the GSE limit, currently \$417,000. However, FHA is considering to what extent the high cost limits apply and whether the HECM limit will vary by area median housing price.

Q. 20. What are the limits on selling other financial products in conjunction with HECMs?

- A. The new law prohibits mortgagees or any other party from requiring mortgagors to purchase insurance, annuities or other additional products as a requirement for or a condition of eligibility for HECM insurance by the Secretary. This provision does not restrict title insurance, hazard, flood, or other peril insurance or other products that are customary or normal. HERA requires firewalls in companies that originate HECMS and sell annuities and insurance.

Q. 21. When do these “cross-selling” restrictions apply?

- A. FHA says it will be proposing guidance on this.

Q. 22. Can HECMs be used for purchase transactions?

- A. Yes, a borrower can purchase a home and convert the loan to a HECM in the same transaction. A Mortgagee Letter on this topic is expected within 30 days.

Q. 23. What is the maximum origination fee permissible on HECMs under HERA?

- A. Today the maximum origination fee is 2% on the maximum claim amount. HERA applies a tiered approach: 2% of the maximum claim amount of the mortgage, up to a maximum claim amount of \$200,000, plus 1% of any portion of the maximum claim amounts exceeding \$200,000, not to exceed a total origination fee of \$6,000 (adjusted annually in accordance with annual percentage increases in the Consumer Price index in increments of \$500).

Q.24. Is counseling required for HECM mortgagors? Can the originator pay for HECM counseling?

- A. Mortgagors must receive adequate counseling from an independent third party. Lenders involved in the transaction are prohibited from paying for counseling or providing a lump sum contribution to counseling agencies.

Q.25. Who is permitted to receive compensation on originating a HECM?

- A. Only approved mortgagees can receive compensation for a HECM origination. Non-approved mortgagees cannot get paid a fee for a referral. Hope for Homeowners

Q.26 What is the new Hope for Homeowners program?

- A. A new FHA refinance program with an additional \$300 billion in FHA mortgage insurance authority. Under the program, borrowers unable to afford their existing mortgages and who meet other criteria, can refinance into an FHA loan. Existing note holders who volunteer to participate agree to accept short pay-offs by writing down principal to 90% of the appraised value of the property. Loans will be eligible for securitization with Ginnie Mae. The program is voluntary on the part of lienholders.

Q.27 What are the outlines of the new “H for H” program?

A. These are some of the basics according to HERA:

- **Reps and Warrants:** Insurance benefits will not be paid if a mortgage violates the representations and warranties the program’s governing body (Board) will require or if a borrower of the new loan fails to make the first payment on the FHA loan.
- **Eligibility:** Mortgages eligible for refinance must have been originated on or before January 1, 2008. Borrowers must have housing debt-to-income ratios greater than 31 percent (or a higher ratio set by the Board) as of March 1, 2008. Borrowers must certify they did not intentionally default on the original mortgage or other debts or furnish false information (five year jail time for false statements) to obtain the FHA loan. Borrowers are not eligible if convicted of fraud within the last 10 years. Borrowers’ income must be fully documented through their two most recent tax returns and other standards established by the program’s governing Board or HUD. Eligible borrowers may only have one primary residence.
- **New Loan Requirements:** 30-year fixed rate loan not exceeding 90 percent of the property’s appraised value. Principal amount cannot exceed 132 percent of the 2007 Freddie Mac loan limits (i.e., \$550,440). Board shall establish a reasonable limitation on origination fees. Prohibits junior liens for five years.
- **Write-Down:** Participating note holders must agree to a reduction in principal to achieve the 90 percent loan-to-value requirement. Prepayment penalties and fees related to default or delinquency must also be waived.
- **Premiums:** Note holder must pay the three percent upfront premium from the proceeds of the refinance. Borrower pays 1.5 percent premium annually.
- **Shared Appreciation and Equity:** Borrower must share newly created equity with FHA when the property is sold or the loan is refinanced. FHA’s share in the equity is reduced from 100

percent to 50 percent in 10 percent increments over first five years. After five years, the homeowner and government each will share in 50 percent of the equity. Borrowers must also share any future appreciation 50/50 with FHA upon the sale of the property. The program's governing Board will establish standards for sharing future appreciation owed to HUD with subordinate lien holders.

- **Sunset:** The program runs from October 1, 2008 through September 30, 2011.
- **Servicer Liability:** Amends the Truth in Lending Act (TILA) to create a fiduciary duty for mortgage servicers to "maximize the net present value of the pooled mortgages in an investment to all investors and parties having a direct or indirect interest." The duty does not supersede servicing contracts. It also would deem servicers to act in the best interests of all investors if the servicer implements a refinance or modifies a loan through the HOPE for Homeowners plan.

Q.28. How soon can we expect the program to be up and running?

- A. FHA will be working with a Board established under the law to make the program operational and issue guidance by October 1, 2008. MBA conference calls will discuss this program and FHA's ongoing program to refinance borrowers, FHA Secure.

For questions on the new FHA law and regulations please contact: Ken Markison, Associate Vice President and Regulatory Counsel for MBA at (202) 557-2930, kmarkison@mortgagebankers.org or Vicki Vidal, Associate Vice President of Loan Administration at (202)557-2861, vvidal@mortgagebankers.org .