

Chapter 7. Assumptions

1. General Information on Assumptions

Introduction This topic contains general information on assumptions, including

- assumability restrictions
 - restrictions under the HUD Reform Act of 1989
 - mortgages subject to the 1989 Act
 - mortgages not subject to the 1989 Act, and
 - processing a release of liability.
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Change Date March 24, 2011

4155.1 7.1.a Assumability Restrictions All FHA-insured mortgages are assumable. Mortgages originated before December 1, 1986 generally contained no restrictions on assumability, while those originated after that date have certain restrictions.

Depending on the date of the loan origination, the lender may require a creditworthiness review of the assumptor. To determine what restrictions have been placed on the mortgage, the lender must review the mortgage's legal documents.

Lenders should note that some mortgages executed from 1986 through 1989 contain language that is not enforced, due to later Congressional action. Mortgages from that period are now freely assumable, despite any restrictions stated in the mortgage.

Reference: For more information on assumability, see HUD 4330.1 Rev-5, *Administration of Insured Home Mortgages*.

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1. General Information on Assumptions, Continued

4155.1 7.1.b Restrictions on Assumptions Under the HUD Reform Act of 1989

Under the HUD Reform Act of 1989, mortgages closed on or after December 15, 1989 require credit qualification of those borrowers wishing to assume the mortgage. The creditworthiness review requirement spans the life of the mortgage. This requirement applies to both those borrowers who

- take title to a property subject to the mortgage without assuming personal liability for the debt, and
- assume and agree to pay the mortgage.

Additionally, the Act stipulates that

- assumptions without credit approval are grounds for acceleration of the mortgage, if permitted by applicable state law and subject to HUD approval, unless the
 - seller retains an ownership interest in the property, or
 - transfer is by devise or descent, and
- private investors are prohibited from assuming insured mortgages that are subject to the restrictions of the 1989 act. This restriction applies whether or not there is a release from liability by the lender of the selling mortgagor.

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1. General Information on Assumptions, Continued

4155.1 7.1.c Assumptions of Mortgages Subject to the 1989 Act

Mortgages subject to the 1989 Act require that the lender automatically prepare the release from liability, thereby releasing the original owner, when he/she sells by assumption to a creditworthy assumptor, who executes an agreement to assume and to pay the debt, thus becoming the substitute borrower.

The due-on-sale clause is generally triggered when an owner is deleted from the title, except when that party's interest is transferred by devise, descent, or other circumstances in which the transfer cannot legally lead to exercise of the due-on-sale, such as a divorce in which the party remaining on title retains occupancy.

Reference: For information on processing a release of liability, see HUD 4155.1 7.1.e.

4155.1 7.1.d Assumptions of Mortgages not Subject to the 1989 Act

Mortgages executed before December 15, 1989 require that the lender honor all former owners' written requests to process a formal release from liability.

Lenders must grant a release of liability if the assumptor

- is creditworthy, and
 - agrees to execute a statement agreeing to assume and pay the mortgage debt.
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1. General Information on Assumptions, Continued

**4155.1 7.1.e
Processing a
Release of
Liability on an
Assumption**

In order to initiate processing of a release of liability, the lender completes Form HUD 92210, *Request for Credit Approval of Substitute Mortgagor*, or other similar form. Execution of this form does not formally release the borrower from personal liability on the mortgage note.

Execution of Form HUD 92210.1, *Approval of Purchaser and Release of Seller*, or other similar form, constitutes a formal release of liability.

Only the lender can execute the release of liability. The lender is required to release all parties from liability when the assuming borrower is found creditworthy.

2. Creditworthiness Review for Assumptions

Introduction This topic contains information on the creditworthiness review for assumptions, including

- determining if an assumptor is creditworthy
 - contracts between servicing lenders and DE lenders, and
 - additional credit review requirements for assumptions.
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Change Date March 24, 2011

**4155.1 7.2.a
Determining if
an Assumptor
is Creditworthy** The lender who is the holder or servicer of the mortgage determines the creditworthiness of the assumptor, in accordance with standard mortgage credit analysis requirements.

The Direct Endorsement (DE) lender may also use an approved authorized agent to process assumptions.

Assumption creditworthiness review processing must be completed within 45 days from the date the lender receives all necessary documents.

Reference: For information on the allowable fees for assumption processing, see HUD 4330.1 Rev-5, *Administration of Insured Home Mortgages*.

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2. Creditworthiness Review for Assumptions for Assumptions, Continued

4155.1 7.2.b Contracts Between Servicing Lenders and DE Lenders

There are a number of servicing lenders that

- *do not* originate mortgages, or
- *are not* approved under the DE program.

In these situations, if the servicer is a supervised or non-supervised financial institution, the servicer may contract with a DE approved lender to underwrite its credit-qualifying assumptions. The DE underwriter must indicate his/her Computerized Homes Underwriting Management System (CHUMS) identification number on the HUD-92900-LT, *Loan Underwriting and Transmittal Summary*. The fee is negotiated between the servicer and DE lender.

Supervised lenders with a HUD-approved authorized agent relationship may have the agent underwrite its credit-qualifying assumptions.

4155.1 7.2.c Additional Credit Review Requirements for Assumptions

The table below lists additional creditworthiness review requirements for assumptors.

Requirement	Description
Credit Review	The lender reviews the assumptor's credit, if the mortgage being assumed is held or serviced by a DE approved lender.
Secondary Financing	Secondary financing or other borrowed funds may be used by the assuming borrowers, provided the repayment terms are <ul style="list-style-type: none"> • clearly defined, and • included in the underwriting analysis.
Seller Contributions	Cash contributions made by the seller to facilitate an assumption are <i>not</i> acceptable. The existing mortgage balance must be reduced by the amount of the contribution. However, the seller may pay the assumptor's normal closing costs, including processing fees and credit report fees, with no reduction to the mortgage.

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2. Creditworthiness Review for Assumptions for Assumptions, Continued

4155.1 7.2.c Additional Credit Review Requirements for Assumptions for Assumptions (continued)

Requirement	Description
Documentation Requirements	For information on the documentation requirements for the creditworthiness review of assumptions, see HUD 4155.2 3.C.
Assumptions by Other Legal Entities	An assumption solely in the name of a corporation, partnership, sole proprietorship or trust is <i>not</i> acceptable if a creditworthiness review is required.

3. LTV Reduction Requirements for Assumptions

Introduction This topic contains information on loan-to-value (LTV) reduction requirements for assumptions, including

- loan-to-value reduction requirements for assumptions
 - investors assuming mortgages, and
 - owner occupant assuming a secondary residence.
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Change Date March 24, 2011

**4155.1 7.3.a
Loan-to-Value
Reduction
Requirements
for
Assumptions** Certain mortgages, depending on when originated, may require a reduction to the outstanding principal balance, when assumed

- by investors, or
 - as secondary residences.
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**4155.1 7.3.b
Investors
Assuming
Mortgages**

When assuming a mortgage *not* subject to the HUD Reform Act of 1989, an investor must pay down the outstanding mortgage balance to a 75% loan-to-value (LTV) ratio *if* the current owner occupant requests a release of liability, and the mortgage

- was originated by an owner occupant pursuant to a Certification of Reasonable Value (CRV) issued by the Veterans Administration (VA), or
- is one for which a Direct Endorsement (DE) underwriter signed an appraisal report on or after February 5, 1988.

Either the original or the current appraised value of the property may be used to determine compliance with the 75% LTV limitation.

This requirement continues throughout the life of the mortgage.

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3. LTV Reduction Requirements for Assumptions for Assumptions, Continued

**4155.1 7.3.c
Owner
Occupant
Assuming a
Secondary
Residence**

When assuming a property as a secondary residence, an owner occupant must pay down the outstanding mortgage balance to an 85% LTV ratio, if a

- VA CRV was issued, or
- DE underwriter signed an appraisal report on or after February 5, 1988, but before January 27, 1991.

Either the original appraised value or the current appraised value of the property may be used to determine compliance with the 85% LTV limit.

Mortgages pursuant to a VA CRV or DE lender appraisal report or master appraisal report issued or signed on or after January 27, 1991, *may not* be assumed as secondary residences, except under hardship provisions as outlined in HUD 4155.1 4.B.3.

Note: This policy does not apply to mortgages exempt from the investor prohibitions.
