

Chapter 7. Assumptions

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Chapter 7. Assumptions

1. General Information on Assumptions

Introduction This topic contains general information on assumptions, including

- assumability restrictions
 - restrictions of the HUD Reform Act of 1989
 - mortgages subject to the 1989 Act
 - mortgages not subject to the 1989 Act, and
 - release from liability.
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**4155.1 7.1.a
Assumability
Restrictions**

All Federal Housing Administration (FHA)-insured mortgages are assumable. However, since 1986, FHA has placed certain restrictions on the assumability of FHA-insured mortgages. Mortgages originated before December 1, 1986 generally contain no restrictions on assumability.

Depending on the date of the loan origination, the lender may require a creditworthiness review of the assumptor. To determine what restrictions to assumability 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 of 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 properties subject to the mortgage without assuming personal liability for the debt, and
- those borrowers who 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 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-sales clause generally is 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 from liability, see [HUD 4155.1 7.1.e](#).

4155.1 7.1.d 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 from 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 From Liability

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

Execution of [HUD 92210.1](#), *Approval of Purchaser and Release of Seller*, or other similar form used by the lender 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

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

- who determines if an assumptor is creditworthy
 - contracts between servicing lenders and DE lenders, and
 - additional requirements for creditworthiness review.
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4155.1 7.2.a Who Determines 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, 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 of the mortgage credit analysis worksheet. 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

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 from the seller in order 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, Continued

4155.1 7.2.c Additional Credit Review Requirements (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	If a creditworthiness review is required, an assumption solely in the name of a corporation, partnership, sole proprietorship, and trust, is <i>not</i> acceptable.

3. LTV Reduction Requirements

Introduction

This topic contains information on Loan to Value (LTV) reduction requirements for assumptions, including

- general LTV reduction requirement information
 - investors assuming mortgages, and
 - owner-occupants assuming property as a secondary residence.
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**4155.1 7.3.a
General LTV
Reduction
Requirement
Information**

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 mortgages *not* subject to the HUD Reform Act of 1989, investors must pay down the outstanding mortgage balance to a 75 percent LTV ratio *if* the owner-occupant requests a release of liability and

- the mortgage was originated by an owner-occupant pursuant to a VA Certifications of Reasonable Value (CRV) issued, or
- the mortgage is one for which a 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 percent LTV limitation.

This requirement continues throughout the life of the mortgage.

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3. LTV Reduction Requirements, Continued

**4155.1 7.3.c
Owner
Occupants
Assuming
Property as a
Secondary
Residence**

Owner occupants must pay down the outstanding mortgage balance to an 85 percent LTV ratio when assuming a property as a secondary residence for which 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 percent 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.
