



*"We Make Mortgages Happen"*

Date: March 28, 2011  
From: Ashton Ewing/Kim Roddy  
To: Managers, Loan Officers, Processors and Underwriters  
Re: Bulletin 2011-04 - FHA Community Property Debt\*

This policy applies to Community Property Debt in Community Property States. Below are two scenarios discussed with FHA's Underwriting Division:

**Prenuptial Agreement Executed Prior to the Marriage** – The prenuptial agreement clearly states all debts before and after the marriage is to be held separately and not subject to community property law. A copy of the fully-executed agreement is required, as well as an attorney's opinion letter stating the borrower cannot be held liable for the spouse's liabilities. The spouse's credit report is still required unless there are NO joint accounts on the borrower's credit report. If there are any open joint accounts, then the spouse's credit is required. All joint accounts will be treated as the borrower's responsibility regardless of which spouse is considered the primary debtor.

**Divorce Filed but not Final** - A copy of a fully-executed legal, binding document (executed by a judge) must be provided along with an attorney's opinion letter. The letter from the attorney must state, the borrower cannot be held liable for the spouse's liabilities. All joint debt is responsibility of the borrower until the divorce is finalized. The spouse's credit is required regardless of account statuses.

In both cases, joint debt must be counted. The debt that may not be counted would be debt ONLY in name of the future ex-spouse, and meets the above criteria. HUD is putting the full and sole responsibility onto the lender to verify and document that state law would not allow the borrower to be sought after for repayment of the debt by retrieving all of the above information.

*\*Source: FHA Underwriting Division*

*Guidelines subject to change without notice.*