DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 206

[Docket No. FR–5353–P–01]

RIN 2502–AI79

Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgage Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to codify several significant changes to FHA's Home Equity Conversion Mortgage program that were previously issued under the authority granted to HUD in the Housing and Economic Recovery Act of 2008 and the Reverse Mortgage Stabilization Act of 2013, and to make additional regulatory changes. The Home Equity Conversion Mortgage program is FHA's reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the Home Equity Conversion Mortgage program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. FHA's mission is to serve underserved markets, which must be balanced with HUD's inherent, as well as, statutory obligation under the National Housing Act to protect the FHA insurance funds. The impacts of the recent financial crisis, including a decline in property values, shrinking retirement accounts, and changing borrower demographics placed seniors with Home Equity Conversion Mortgages at an increased risk of losing their homes due to their inability to make tax and insurance payments. During this time, the FHA HECM program was the only reverse mortgage program available for seniors. The above referenced economic and market factors, combined with certain program features, resulted in increased risk to the Mutual Mortgage Insurance Fund (MMIF). This rulemaking strengthens the FHA HECM program and codifies changes made under the Reverse Mortgage Stabilization Act of 2013 that reduce risk to the MMIF and increase the sustainability of this important program for seniors.

DATES: *Comment Due Date:* July 18, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Karin Hill, Senior Policy Advisor, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9282, Washington, DC 20410–8000; telephone number 202–402–3084 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Regulatory Action

Since the 2008 housing and economic recession, the Home Equity Conversion Mortgage (HECM) portfolio has experienced major borrower demographic and behavioral changes that have caused additional risk to the Mutual Mortgage Insurance Fund (MMIF). Some of the changes include shifting from a predominately adjustable interest rate mortgage with borrowers receiving payments over time using the line of credit, modified term, or modified tenure payment options to a fixed interest rate mortgage with borrowers drawing large amounts of HECM proceeds at the time of closing; younger borrowers with higher amounts of property indebtedness; and increasing property charge defaults. While program changes made prior to and during 2013, such as consolidating the HECM Standard and HECM Saver products, did improve the stability of the HECM program, the HECM portfolio has continued to experience volatility, with an estimated economic value of negative $1.2 billion as reported in FHA's Fiscal Year (FY) 2014 report to Congress. The HECM Portfolio received favorable actuarial results in 2015 reflecting the positive impact of program changes and an improving housing market. However it is critical to remain vigilant in monitoring program performance and policy to ensure the soundness of the MMIF.

Recognizing the need to stabilize the HECM program and ensure it remains a sustainable program, Congress passed, and the President signed into law, the Reverse Mortgage Stabilization Act of 2013 (RMSA). The RMSA gave FHA the tools to make, through mortgagee letter,[1] changes to the HECM program that are necessary to improve the fiscal safety and soundness of the program. Under this authority, FHA implemented a number of changes to the HECM program, including the Financial Assessment and Property Charge Funding Requirements; deferring the due and payable status for Eligible Non-Borrowing Spouses; limiting disbursements during the first 12

[1] Mortgagee letters issued under the authority granted to HUD in RMSA will be identified throughout this rule as RMSA mortgagee letters.

months of the HECM; and eliminating future draws on fixed interest rate HECMs. Through this rulemaking, FHA proposes to codify these policies, with amendments as discussed in the preamble. In addition, FHA proposes a number of new policies, which are discussed below and in the preamble. Many of these proposed changes will contribute to the stability of the HECM program and decrease risk to the MMIF, and others will provide needed updates to a program which began as a ''demonstration program'' and which has not been substantially updated in over 20 years.

So that all regulatory requirements are codified in the HECM regulations, FHA also proposes to codify HECM program changes made by mortgagee letter [2] under the Housing and Economic Recovery Act of 2008 (HERA), which implemented the HECM for Purchase program and established new origination fee limits, and to amend the initial and monthly mortgage insurance premium (MIP) limits to correspond with statutory changes.

B. Summary of Major Provisions of the Regulatory Action in Question

In this rule, FHA proposes to codify existing policy which has been implemented by mortgagee letters under various statutory authorities; implement statutory changes; issue new origination and servicing policies; and clarify existing regulatory language. The main policy provisions are discussed below.

Implementing Statutory Changes and Codifying Existing Policies Implemented Under Statutory Authority

Financial Assessment and Property Charge Funding Requirements. As implemented through RMSA Mortgagee Letter 2014–21, mortgagees are required to perform a Financial Assessment of the prospective borrower prior to loan approval, which considers the prospective borrower's credit history, cash flow and residual income, extenuating circumstances, and compensating factors. Based on the results of the Financial Assessment, the mortgagee may require a Life Expectancy Set Aside (LESA) for the payment of certain property charges. For fixed interest rate HECMs, if a LESA is required, it may only be a Fully-Funded LESA. For adjustable interest rate HECMs, if a LESA is required, the mortgagee may require either a Partially- or Fully-Funded LESA. Proceeds from a Partially-Funded LESA will be disbursed to the borrower semi-annually to be used to assist in the payment of property charges; for Fully-Funded LESA, mortgagees disburse funds directly to the tax authority or insurance company for the payment of certain property charges when they are due. If the mortgagee does not require a Fully-Funded LESA, a borrower with an adjustable or fixed interest rate HECM, may elect to have a Fully-Funded LESA.

Deferring the Due and Payable Status for Eligible Non-Borrowing Spouses. RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02, established a Deferral Period, during which the due and payable status of a HECM is deferred after the death of the last surviving borrower for an Eligible Non-Borrowing Spouse, provided eligibility and all other FHA requirements are, and continue to be, satisfied. In addition, the new policy required the principal limit to be based on the age of the youngest borrower or Eligible Non-Borrowing Spouse, instead of only the youngest borrower. The new policy also provided for a 30-day period for the Eligible Non-Borrowing Spouse to cure a default and to reinstate a Deferral Period.

Limiting Disbursements during the First 12 Months of the HECM. Through RMSA Mortgagee Letter 2014–21, FHA limited initial disbursements for HECMs. For fixed and adjustable interest rate HECMs, the funds advanced to the borrower at closing and during the First 12-Month Disbursement Period could not exceed the greater of 60 percent of the principal limit; or Mandatory Obligations plus an additional 10 percent of the principal limit.

While FHA does not intend to change the current limit at this time, this rule provides flexibility for this limit to be changed in the future to respond to market changes or other factors. Specifically, this rule revises the percentages such that the 60 percent will never be less than 50 percent, and the additional percentage will never be less than 10 percent.

Eliminating Future Draws on Fixed Interest Rate HECMs. Ginnie Mae issued an All Participants Memorandum, APM 14–04, announcing that fixed interest rate HECM loans with future draws would be ineligible for securitization on or after June 1, 2014. As a result of APM 14–04, in RMSA Mortgagee Letter 2014–11, FHA limited the insurability of fixed interest rate mortgages under the HECM program to mortgages with the Single Lump Sum payment option, which does not allow for future draws after closing.

HECM for Purchase Program. HECM for Purchase program requirements are currently in HERA Mortgagee Letter 2009–11. This rule intends to codify the HECM for Purchase program requirements, with a few important changes. First, this rule would require prospective borrowers of HECM for Purchase transactions to complete the required HECM counseling prior to signing a sales contract and/or making an earnest money deposit, unless otherwise provided by the Commissioner, instead of allowing them to complete the counseling before or after the initial application is submitted to the mortgagee. In addition, amendments to the prohibition on interested party contributions are proposed in this rule. FHA proposes to permit the seller to pay fees required to be paid by the seller under state or local law and to purchase the Home Warranty policy, and to allow the Commissioner to define the types and parameters of other allowable interested party contributions through **Federal Register** notice for comment.

Allowable Loan Origination Fees and Charges. FHA implemented the loan origination fee limits imposed by HERA through HERA Mortgagee Letter 2008–34. In this rule, FHA proposes to clarify that such loan origination fee limits include expenses incurred in originating, processing and closing the HECM.

Amount of MIP. FHA proposes changes to the allowable initial and monthly MIP charges to reflect that HECMs are now obligations of the MMIF instead of the General Insurance Fund, and to reflect statutory amendments to the National Housing Act providing FHA with a wider range of acceptable MIP charges. FHA is not changing actual MIP charges, which may be set outside of the rulemaking process by mortgagee letter or other similar administrative issuance.

New Origination and Servicing Policies

Disclosure of Available HECM Program Options. This rule proposes to require mortgagees to inform potential HECM borrowers of all of the HECM products, features and options that FHA insures, in a manner acceptable to the Commissioner, irrespective of the particular HECM products offered by the mortgagee.

Capping Lifetime Interest Rate Adjustments for Adjustable Interest Rate Products. For annual adjustable interest rate HECMs, this rule proposes to cap periodic interest rate increases and decreases at one percentage point and cap lifetime interest rate increases and decreases at five percentage points. For monthly adjustable interest rate HECMs, this rule proposes to cap lifetime

[2] Mortgagee letters issued under the authority granted to HUD in HERA will be identified throughout this rule as HERA mortgagee letters.

increases or decreases to the interest rate at five percentage points.

Interest Rate Lock-In. This rule proposes to amend the definition of ''expected average mortgage interest rate,'' to provide that the mortgagee, with the agreement of the borrower, may lock-in the expected average mortgage interest rate prior to the date of loan closing or establish the expected average mortgage interest rate on the date of loan closing.

Super Liens. This rule proposes to require, as a condition for a HECM to be eligible for loan assignment, that the HECM mortgage be in lien status prior to homeowners association and condo association liens.

Appraisal Requirements. This rule proposes to require the mortgagee to have the property appraised no later than 30 days after receipt of the request by an applicable party in connection with a pending property sale; the property must be appraised within 30 days of a foreclosure sale.

Limiting Reimbursement of Property Charge Advances. This rule proposes to limit insurance claim reimbursement to a mortgagee to two years of payments for: (a) Taxes, ground rents, water rates, and utility charges that can result in liens prior to the mortgage; (b) special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage; and (c) hazard insurance premiums on the mortgaged property not in excess of a reasonable rate. The rule also provides flexibility to allow the Commissioner to approve an extension of the two-year limit.

Including Utilities as Property Charges. FHA proposes to amend the definition of ''property charges'' to include utilities as a borrower responsibility, when failure to pay such utilities would result in a lien and would potentially trigger a due and payable event.

Acquisition and Sale of Property. This rule proposes to replace the requirement that the property be sold for at least 95 percent of the appraised value with a more flexible provision which allows the Commissioner to lower this amount as necessary to adapt to market conditions and other factors. This rule also proposes to require that the closing costs from the sale be no more than 11 percent of the sales price.

Cash for Keys. This rule proposes to incentivize parties with legal authority to dispose of a property that serves as the security for a HECM to complete a deed in lieu of foreclosure more quickly.

C. Costs and Benefits

This proposed rule will codify program changes that have reduced risks to both FHA and to borrowers: Implementation of limits on fixed-rate full draw loans (full draw loans expose FHA to high risk of insurance loss, and such loans are often not sustainable solutions for borrowers since they do not provide the borrower with future access to HECM proceeds); a Financial Assessment to enable mortgagees to determine if the HECM enables borrowers to comply with the mortgage requirements and that the HECM is a sustainable solution for borrowers; protection to Eligible Non-Borrowing Spouses from foreclosure after the death of the last borrower, and removed incentives for borrowers to obtain higher principal limits by using only the age of the older spouse through quit-claiming the younger spouse from the title; and a Property Charge Set Aside which will reduce the incidence of borrower defaults due to non-compliance with the mortgage obligation for the borrower to make timely payment of property taxes, hazard insurance, and other charges. The new changes to the HECM program will reduce foreclosures arising from these defaults, which will benefit FHA, borrowers, and communities where properties are located; give FHA more flexibility to accept short sales on properties where market conditions warrant; provide homeowners with the ability to purchase a more suitable home without incurring the costs of two loan closings and offer greater interest rate protection to borrowers who choose an adjustable interest rate HECM through new annual and life of loan rate adjustment caps. Together, these changes may initially reduce HECM origination volume, although the potential demand for HECM is expected to remain high.

The social benefits that may be realized by this rule also include reducing resolution costs and borrower distress in cases where loans are no longer sustainable; improved sustainability of the MMIF, which would enhance the choice and wellbeing of future borrowers; and increased protections for borrowers, including those afforded non-borrowing spouses, those resulting from transfer of more interest rate risk from borrowers to lenders (who are likely better able to manage this risk), and those from improving the ultimate sustainability of HECM loans related to financial assessment changes.

The policies discussed in this rule may reduce FHA HECM insurance endorsements by $1.9 billion per year, representing transfers from potential HECM borrowers to other debtors; reduce FHA MMIF credit subsidy (equivalent to increasing the economic value to FHA) for the HECM portfolio by $42 million per year, representing transfers from mortgagees to FHA; reduce foreclosures due to tax and insurance default by up to 6,000 cases (totaling about $1.5 billion in loan amount) per year, along with reduction in ancillary costs of foreclosures to neighborhoods and local governments; reduce loan origination costs for 2,000 ''HECM for Purchase'' borrowers, saving them $12 million per year representing transfers from mortgagees to borrowers; and increase margins on adjustable interest rate HECMs paid by all borrowers, resulting in transfers from borrowers to mortgagees of between $21.7 and $27.2 million per year, but which will eventually be offset by approximately equal transfers from mortgagees to those borrowers whose loans are seasoned in rising rate environments.

Other costs from the rule would include reduced borrowers' choice and the well-being of those borrowers who may not meet the eligibility requirements, or who no longer have access to as much upfront cash. The table below and the bullet points that follow display the benefits, costs, and transfers of this proposed rule.

Benefits	Costs	Transfers
4,400 fewer foreclosures per year from tax and insurance default. • $1.1 billion aggregate unpaid principal balance	Reduce FHA HECM insurance endorsements by $1.9 billion per year, thereby reducing choices for potential HECM borrowers to access home equity.	Increase margins on HECM ARMs paid by all borrowers, resulting in transfers from borrowers to mortgagees of between $21.7 and $27.2 million per year. • These transfers will eventually be offset by approximately equal transfers from mortgagees to those borrowers whose loans are seasoned in rising rate environments.

Benefits	Costs	Transfers
• Reduction in ancillary costs of foreclosures to neighborhoods, borrowers, and local governments		
Reduced loan origination costs for 2,000 "HECM for Purchase" borrowers per year.	No additional costs	No additional transfers.
• Total benefit of $12 million per year		
• Frees resources for other purposes		

Other benefits include the following:

• Improving the financial condition of the FHA MMIF due to:
  ○ Fewer foreclosures;
  ○ Persistently lower insured loan balances over time, due to limits on initial disbursement; and
  ○ More flexibility for FHA to accept short sales on properties where market conditions warrant.

• Improving public perception of HECM regarding overall program viability and public benefits derived from program
  ○ Reduces risks to both FHA and to borrowers associated with fixed-rate full draw loans (full draw loans expose FHA to high risk of insurance loss, and such loans are often not suitable for borrowers);
  ○ Helps borrowers and their housing counselors determine if a HECM is a sustainable option for them through the use of a Financial Assessment;
  ○ Provides protection to Eligible Non-Borrowing Spouses from foreclosure, and removes incentives for borrowers to obtain higher principal limits than they would otherwise be eligible for by using only the age of the older spouse; and
  ○ Reduces the incidence of borrower defaults due to non-compliance with the mortgage obligation.

• Providing greater interest rate protection to borrowers who choose an ARM through new annual and life-of-loan rate adjustment caps

II. Background

The HECM program, authorized by section 255 of the National Housing Act (NHA) (12 U.S.C. 1715z–20), is FHA's reverse mortgage insurance program. Subsection 255(c) of the NHA gives FHA the authority to establish the terms and conditions under which it will insure HECMs. The regulations for this program are codified in 24 CFR part 206. The HECM program enables FHA-approved mortgagees to extend insured mortgage financing to eligible borrowers, 62 years of age or older, who want to convert the equity in their homes into liquid assets. The withdrawal of equity may take a variety of forms, as authorized by the NHA and selected by the borrower. The home, which serves as security for the mortgage, must be, and continue to be, the borrower's principal residence during the life of the borrower. For adjustable interest rate HECMs, equity payments to the borrower may be in the form of monthly disbursements for life or a fixed term of years, disbursements from a line of credit advance or a combination of monthly disbursements and a line of credit. For fixed interest rate HECMs, equity payments to the borrower must be in the form of a single lump sum disbursement at closing.

The maximum amount of equity in the home that is available to a borrower under a HECM loan is the ''principal limit'' that is calculated for that loan. The borrower retains ownership of the property and may sell the home at any time keeping any residual sale proceeds in excess of the outstanding loan balance. Until the mortgage is repaid, and regardless of whether or not additional disbursements under the mortgage are permissible, interest on the mortgage, mortgage insurance premiums, and servicing charges, where applicable, continue to accrue.

The Housing and Economic Recovery Act of 2008 (Public Law 110–289, approved July 30, 2008) (HERA) impacted the HECM program in a number of important ways, including providing for the HECM for Purchase program, establishing new origination fee limits, and transferring obligations arising under the HECM program to the Mutual Mortgage Insurance Fund (MMIF).

First, HERA provides HECM borrowers with the opportunity to purchase a new principal residence with HECM loan proceeds, known as the HECM for Purchase program. Specifically, section 2122(a)(9) of HERA amended section 255 of the NHA to authorize FHA to insure HECMs used for the purchase of 1- to 4-family dwelling units. In HERA Mortgagee Letter 2008–33,[3] issued on October 20, 2008, FHA provided that these new HECM for Purchase transactions must satisfy existing HECM requirements and the provisions announced in the HERA mortgagee letter. Following the publication of this HERA mortgagee letter, the reverse mortgage industry sought additional guidance and clarification concerning the HECM for Purchase program. On March 27, 2009, FHA issued HERA Mortgagee Letter 2009–11, which contained additional guidance and therefore superseded HERA Mortgagee Letter 2008–33. It is FHA's intent to codify the HECM for Purchase program requirements throughout FHA's part 206 regulations, except as otherwise discussed in this preamble.[4]

On October 31, 2008, FHA issued HERA Mortgagee Letter 2008–34, which, consistent with HERA, established new limits on the origination fee that may be charged for HECMs. Specifically, the loan origination fee limit is the greater of $2,500; or two percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000, plus one percent of any portion of the maximum claim amount that is greater than $200,000, but not to exceed $6,000.

Section 2118(b)(2) of HERA transferred obligations arising under the HECM program, for loans endorsed on or after October 1, 2008, from the FHA General Insurance Fund to the MMIF. By statute, the Secretary has a fiduciary duty to protect the MMIF.[5] In addition, subsection 202(a)(6) of the NHA provides that if, pursuant to an independent actuarial study of the MMIF required under subsection 202(a)(4), the Secretary determines that the MMIF is not meeting the operational goals established under subsection 202(a)(7) or there is a substantial probability that the MMIF will not maintain its established target subsidy rate, the Secretary may either make programmatic adjustments under this title as necessary to reduce the risk to

[3] Mortgagee letters issued under the authority granted to HUD in HERA will be identified throughout this rule as HERA mortgagee letters.

[4] The following sections of HERA Mortgagee Letter 2009–11 are guidance in their entirety and will not be codified in this rule: Ineligible Property Types, Verification of Funding Sources, Gap Financing, Suspensions and Debarments, Enhanced Counseling, Right of Rescission, Closing Guidance, Data Entry Requirements, and Required Documents for Endorsement. Other guidance provisions in this HERA mortgagee letter are identified elsewhere in this preamble.

[5] See subsection 202(a)(3) of the NHA.

the MMIF, or make appropriate premium adjustments.

FHA's FY 2012 report to Congress on the financial status of the MMIF, issued November 16, 2012, reported substantial stress in the HECM program and projected the economic value of the HECM portfolio to be negative $2.8 billion.[6] The losses to the MMIF apparent in the FY 2012 report to Congress provided the impetus for the passage of the Reverse Mortgage Stabilization Act of 2013, and the resulting administrative actions by FHA, which are discussed below in this preamble. Subsequent reports to Congress on the status of the MMIF have continued to show substantial stress due to the HECM portfolio, necessitating the additional programmatic changes proposed in this rule. For example, although the FY 2013 report to Congress showed a strengthened capital position of the HECM portfolio, that was the result of a combination of a mandatory appropriation of $1.7 billion and a transfer of more than $4 billion from the Forward loan portfolio to the HECM portfolio.[7] FHA's FY 2014 report to Congress showed that the estimated economic value of the HECM portfolio changed from a positive $6.5 billion to a negative $1.2 billion.[8] These projected deficits were the result of many factors, including the impact of the recession, the housing crisis, borrowers living longer than anticipated, and the shift from borrowers selecting adjustable interest rate HECMs with disbursements taken over time to fixed interest rate transactions with larger disbursements at closing. The favorable actuarial results the HECM Portfolio received in 2015 reflect the positive impact of program changes made in response to 2012 through 2014 performance and an improving housing market.

In order to mitigate the projected negative impact of future HECM books of business on the MMIF and to ensure the continued availability of the program as a sustainable solution for the senior borrower, immediate action was imperative. Congress passed the Reverse Mortgage Stabilization Act of 2013 (RMSA), which was signed into law on August 9, 2013 (Pub. L. 113–29), giving HUD the tools to make immediate and necessary changes to the HECM program. Specifically, RMSA amends subsection 255(h) of the NHA to authorize the Secretary to ''establish, by notice or mortgagee letter, any additional or alternative requirements that the Secretary, in the Secretary's discretion, determines are necessary to improve the fiscal safety and soundness of the HECM program.'' Using the authority granted to HUD by RMSA, FHA made several critical changes to the HECM program through mortgagee letters,[9] and FHA proposes to codify, and in some cases modify, those program changes in this rule.

FHA's first action under RMSA was the issuance of RMSA Mortgagee Letter 2013–27 [10] on September 3, 2013, titled ''Changes to the Home Equity Conversion Mortgage Program Requirements.'' The RMSA mortgagee letter implemented several changes to the HECM program, which included initial disbursement limits, the Single Lump Sum payment option,[11] a Financial Assessment of HECM borrowers that assesses their capacity and willingness to meet his/her documented financial obligations and the ability to comply with the obligations of the HECM and policy guidelines regarding the payment of property charges, and a LESA. FHA subsequently issued RMSA Mortgagee Letter 2013–33 [12] on September 25, 2013, to elaborate on these policy changes and make certain clarifying changes.

FHA solicited public comment on RMSA Mortgagee Letter 2013–27 through a notice published on September 12, 2013, in the **Federal Register** at 78 FR 56576 titled ''Changes to the Home Equity Conversion Mortgage Program Requirements: Financial Assessment—Solicitation of Comment.'' The public comment period for the September 12, 2013, notice closed on October 15, 2013, and FHA received 13 public comments.[13] Comments were received from nonprofit, nongovernmental and advocacy organizations serving seniors, a trade organization for financial institutions involved in the origination and securitization of reverse mortgages, a reverse mortgage firm, and other interested parties. In general, the comments applauded FHA's efforts and supported the establishment of some type of Financial Assessment to determine whether or not a prospective HECM borrower will be able to meet the financial obligations of the mortgage and whether the HECM is a sustainable option for the senior. However, many commenters expressed concern that the new Financial Assessment requirements were unnecessarily onerous to accomplishing FHA's goals.

In response to these public comments, and in further reliance on the authority of the RMSA, FHA issued RMSA Mortgagee Letter 2014–21, titled ''Revised Changes to the Home Equity Conversion Mortgage (HECM) Program Requirements,'' on November 10, 2014. This RMSA mortgagee letter consolidated and revised policy requirements issued under RMSA Mortgagee Letters 2013–27 and 2013–33, and superseded those mortgagee letters in their entirety. Of significance, this mortgagee letter revised FHA's HECM credit standing and Financial Assessment requirements, as well as the Property Charge Funding Requirements, and set policy for unused LESA funds during a Deferral Period [14] and upon termination of the loan. This RMSA mortgagee letter also revised requirements announced in RMSA Mortgagee Letter 2014–11, discussed below, to clarify that a borrower with a fixed interest rate HECM may be reimbursed for the cost of materials, under certain conditions, when repairs must be completed after loan closing.

On April 25, 2014, FHA established additional and alternative program requirements concerning due and payable status for HECMs with Case Numbers assigned on or after August 4, 2014, where there is a Non-Borrowing Spouse at the time of loan closing, through the issuance of RMSA Mortgagee Letter 2014–07. Subsection 255(j) of the NHA provides that a HECM that does not contain a ''Safeguard to Prevent Displacement of Homeowner,'' which defers repayment of the loan obligation until ''the homeowner's death, the sale of the home, or the occurrence of other events specified in regulations of the Secretary,'' is ineligible for FHA insurance. FHA has, since the inception of the HECM program, interpreted this provision in its regulations as requiring HECMs be called due and payable upon the death of the last surviving borrower, the sale of the home, and other conditions,

[6] See *http://portal.hud.gov/hudportal/documents/huddoc?id=F12MMIFundRepCong111612.pdf*.

[7] See *http://portal.hud.gov/hudportal/documents/huddoc?id=FY2013RepCongFinStMMIFund.pdf*.

[8] See *http://portal.hud.gov/hudportal/documents/huddoc?id=FY2014FHAAnnRep11_17_14.pdf*.

[9] Mortgagee letters issued under the authority granted to HUD in RMSA will be identified throughout this rule as RMSA mortgagee letters.

[10] RMSA Mortgagee Letter 2013–27 was superseded in its entirety by RMSA Mortgagee Letter 2014–21.

[11] FHA initially referred to this payment option as the ''Single Disbursement Lump Sum'' payment option, but for simplicity, FHA is renaming this payment option the ''Single Lump Sum'' payment option.

[12] RMSA Mortgagee Letter 2013–33 was superseded in its entirety by RMSA Mortgagee Letter 2014–21.

[13] Comment 0011 was a duplicate of Comment 0012 and has not been counted in this number. Comment 0015 was received on October 22, 2013, but FHA accepted submission of that comment.

[14] The Deferral Period is discussed later in the preamble in relation to RMSA Mortgagee Letter 2014–07.

including the failure to reside in the property and the failure to pay required taxes. FHA continues to believe that its original interpretation gives full force and effect to the intent of the statute. Nevertheless, an alternative interpretation of subsection 255(j) of the NHA, which would extend the mortgage insurance eligibility requirements concerning the safeguard to the borrower and any Eligible Non-Borrowing Spouse of the borrower at the time of origination, has been advanced. RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02,[15] implemented, prospectively only, this alternative interpretation of subsection 255(j) of the NHA in order to ensure the viability of the HECM program and the MMIF.

In general, RMSA Mortgagee Letter 2014–07 established a Deferral Period, during which the due and payable status resulting from the death of the last surviving borrower of a HECM is deferred based on the continued satisfaction of the established requirements for a Non-Borrowing Spouse and all other FHA requirements. This RMSA mortgagee letter also required that the mortgagee base the principal limit on the age of the youngest borrower or Non-Borrowing Spouse, instead of only the youngest borrower.

FHA solicited public comment on RMSA Mortgagee Letter 2014–07 through a notice published on May 2, 2014, in the **Federal Register** at 79 FR 25147 titled ''Home Equity Conversion Mortgage (HECM) Program: Non-Borrowing Spouse—Solicitation of Comment.'' The public comment period on the May 2, 2014, notice closed on June 2, 2014, and FHA received 10 public comments. Comments were received from a HECM servicer, a national reverse mortgage association, and other interested parties. In general, many comments applauded and supported FHA's efforts to provide protections to Non-Borrowing Spouses and ensure the viability of the HECM program. However, commenters sought clarification on many issues.

In response to the public comments, FHA issued RMSA Mortgagee Letter 2015–02 to amend, and where conflicts were present, to supersede, RMSA Mortgagee Letter 2014–07. In general, RMSA Mortgagee Letter 2015–02 defined two categories of Non-Borrowing Spouses: Ineligible Non-Borrowing Spouse and Eligible Non-Borrowing Spouse. The Ineligible Non-Borrowing Spouse is a Non-Borrowing Spouse who is ineligible to receive the benefit of the Deferral Period, and as a result, whose age will not be used to determine the principal limit. The Eligible Non-Borrowing Spouse is a Non-Borrowing Spouse, who, at the time of origination, is eligible to receive the benefit of the Deferral Period, and as a result, whose age, if younger than the age of the borrower(s), will be used to determine the principal limit. The RMSA mortgagee letter also provided for a 30-day period to cure a default and reinstate a Deferral Period if an Eligible Non-Borrowing Spouse fails to meet a required obligation of the Mortgage and provided clarification for the ''Seasoning Requirements for Existing Non-HECM Liens'' section of RMSA Mortgagee Letter 2014–21, discussed above.

On June 18, 2014, FHA issued RMSA Mortgagee Letter 2014–11, titled ''Home Equity Conversion Mortgage (HECM) Program: Limit on Insurability of Fixed Interest Rate Products under the HECM Program.'' Prior to FHA's issuance of this RMSA mortgagee letter, Ginnie Mae issued an All Participants Memorandum, APM 14–04, announcing that fixed interest rate HECM loans with future draws would be ineligible for securitization on or after June 1, 2014.[16] As a result of APM 14–04, FHA found it necessary to limit the insurability of fixed interest rate mortgages under the HECM program to mortgages with the Single Lump Sum payment option, and to disallow the use of the Single Lump Sum payment option for adjustable interest rate HECMs, which FHA did through the issuance of RMSA Mortgagee Letter 2014–11.

FHA solicited public comment on RMSA Mortgagee Letter 2014–11 through a notice published on July 10, 2014, in the **Federal Register** at 79 FR 39408 titled ''Home Equity Conversion Mortgage (HECM) Program: Limit on Insurability of Fixed Interest Rate Products Under the HECM Program—Solicitation of Comment.'' The public comment period for the July 10, 2014, notice closed on August 11, 2014, and FHA received 2 public comments. In response to public comments, and as mentioned above, RMSA Mortgagee Letter 2014–21 revised requirements announced in RMSA Mortgagee Letter 2014–11.

The mortgagee letters discussed above, which were issued under HERA and RMSA, contain both program changes implemented through requirements that, except for the authority granted by HERA or RMSA, would have been issued in the format of regulations rather than another form of notice, and material that is typically characterized as guidance. It is FHA's intent to codify only the regulatory content of Mortgagee Letters 2008–34, 2009–11, 2014–07, 2014–11, 2014–21, and 2015–02. These mortgagee letters will remain in effect for HECMs to which they are applicable and which have FHA Case Numbers assigned prior to the effective date of a final rule.

III. This Proposed Rule

The regulatory changes proposed by this rule are summarized below. For ease of review, section III.A. of this preamble pertains to changes made to 24 CFR part 30 and section III.B. of this preamble pertains to changes made to 24 CFR part 206. Section III.B. is organized into three sections. Section III.B.1. discusses changes which are proposed to be applied across the board to FHA's part 206 regulations. Section III.B.2. includes the remaining substantive HECM program amendments proposed by this rule, in order of appearance in the codified regulations, and identifies whether the amendment simply codifies a program change already implemented by mortgagee letter; codifies and further amends a program change already implemented by mortgagee letter, taking into account changed circumstances and public comments received on various **Federal Register** notices issued for comment; or is a new program change. Finally, the technical amendments are discussed in section III.B.3. of this preamble.

A. Civil Money Penalties: Certain Prohibited Conduct—24 CFR Part 30

Currently, HUD's regulation at 24 CFR 30.35, which sets HUD's policy regarding taking civil money penalty action against mortgagees or lenders, does not include references to the requirements of FHA's HECM program in 24 CFR part 206. In this rule, FHA proposes new amendments which would expand two provisions to include specific reference to the HECM regulations. First, in § 30.35(a)(8), this rule proposes to allow the Mortgagee Review Board to initiate a civil money penalty action against a mortgagee or lender who knowingly and materially fails to timely submit documents that are complete and accurate in connection with a claim for insurance benefits in accordance with § 206.127. Second, in § 30.35(a)(10), this rule proposes to allow the Mortgagee Review Board to initiate a civil money penalty action against a mortgagee or lender who

[15] RMSA Mortgagee Letter 2015–02 is discussed later in this preamble.

[16] See *http://www.ginniemae.gov/doing_business_with_ginniemae/issuer_resources/Pages/mbsguideapmslibdisppage.aspx?ParamID=27.*

knowingly and materially fails to service FHA mortgages in accordance with the requirements of 24 CFR part 206.

B. Home Equity Conversion Mortgage Insurance—24 CFR Part 206

1. Global Changes to Part 206

Throughout the regulations, the term ''Secretary'' will be changed to ''Commissioner'' because ''Commissioner,'' rather than ''Secretary'' is the term used to refer to the official who heads FHA and in most cases, ''FHA'' will replace ''HUD'' to provide more specificity. In addition, in most cases, the term ''mortgagor'' will be changed to ''borrower'' which will be defined in § 206.3 to mean a mortgagor who is an original borrower under the Loan Agreement and Note, not including a borrower's successors and assigns. In most cases, the term ''payment'' will be changed to ''disbursement''. These changes are designed to help bring consistency to the terminology used regarding the HECM program and eliminate confusion about the meaning of certain terms.

2. Substantive Changes to Regulations

Subpart A—General

Definitions (§ 206.3)

Borrower. In order to distinguish borrowers from mortgagors, this rule proposes to add a definition of ''borrower'' to mean a mortgagor who is an original borrower under the HECM Loan Agreement and Note, not including a borrower's successors and assigns. Each borrower shall be on title, shall also be a mortgagor, and shall sign all applicable HECM loan documents.

Borrower's Advance. The definition of ''Borrower's Advance'' originated in RMSA Mortgagee Letter 2014–11, and was subsequently updated in RMSA Mortgagee Letter 2014–21. Taken together, those RMSA mortgagee letters provided that ''Borrower's Advance'' means funds advanced to the borrower at the closing of a fixed interest rate HECM which may not exceed the greater of 60 percent of the principal limit; or Mandatory Obligations plus an additional 10 percent of the principal limit. In this rule, FHA proposes to codify a definition of ''Borrower's Advance'' that does not include the actual calculation, which can more appropriately be found in the section regarding the calculation of payments, § 206.25, such that the ''Borrower's Advance'' would be the funds advanced to the borrower at the closing of a fixed interest rate HECM. In this rule, FHA proposes to make changes to the calculation of the Borrower's Advance to allow the Commissioner flexibility in setting these amounts, but such changes are discussed later in this preamble in relation to § 206.25.

CMT Index. This proposed rule eliminates the definition of *One-month Constant Maturity Treasury (CMT) Index* and instead adds a more general definition of *CMT Index,* since FHA's regulations also permit the use of the one-year CMT Index.

Commissioner. This proposed rule adds a definition of ''Commissioner'' to mean the Federal Housing Commissioner or the Commissioner's authorized representative, and as a result of this addition, eliminates the now unnecessary definition of ''Secretary''.

Contract of insurance. FHA proposes to define ''contract of insurance'' instead of citing to 24 CFR 203.251(j), and proposes to amend the definition to specifically be applicable to FHA's part 206 regulations such that ''contract of insurance'' means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference regulations in subpart C of this part and the applicable provisions of the NHA.

Deferral Period. The term ''Deferral Period'' was introduced and defined in RMSA Mortgagee Letter 2014–07, and subsequently updated in RMSA Mortgagee Letter 2015–02. Taken together, those RMSA mortgagee letters provide that ''Deferral Period'' means the period of time following the death of the last surviving borrower during which the due and payable status of a HECM is deferred for an Eligible Non-Borrowing Spouse provided that the Qualifying Attributes and all other FHA requirements continue to be satisfied. FHA proposes to codify this definition.

Eligible Non-Borrowing Spouse. The term ''Eligible Non-Borrowing Spouse'' was introduced in RMSA Mortgagee Letter 2015–02. ''Eligible Non-Borrowing Spouse'' means a Non-Borrowing Spouse who meets all Qualifying Attributes for a Deferral Period. FHA proposes to codify this definition.

Estate planning service firm. This rule proposes to update the definition of ''estate planning service firm'' in § 206.3 to conform to changes made to § 206.41 which specify counseling requirements for Eligible and Ineligible Non-Borrowing Spouses. In addition, because participating agencies are approved under subpart B of 24 CFR part 214, not § 206.41, this rule proposes to change references regarding the approval of participating agencies in § 206.41 to more accurately reflect the requirements of subpart B of 24 CFR part 214.

Expected average mortgage interest rate. ''Expected average mortgage interest rate'' is currently defined at § 206.3 to mean the interest rate used to calculate the principal limit and the future disbursements to the borrower. RMSA Mortgagee Letter 2014–11 amended the definition of ''expected average mortgage interest rate'' for fixed interest rate HECMs to provide that the expected average mortgage interest rate is the same as the fixed mortgage (Note) interest rate and is set simultaneously with the fixed interest rate. This rule proposes to codify that amendment, and to also further amend the definition of ''expected average mortgage interest rate'' due to an inadvertent past error. On July 20, 2007, at 72 FR 40048, FHA published a final rule adding additional indices to adjust interest rates for FHA-insured single family mortgage loans, including HECM loans. The July 20, 2007, final rule inadvertently amended the definition in the HECM regulations of ''expected average mortgage interest rate'' to mean that the expected average mortgage interest rate is ''[e]stablished based on the date the initial loan is signed by the mortgagor.'' However, industry practice has been that the mortgagee may lock-in the expected average mortgage interest rate for HECMs at the time the initial loan application is signed by the borrower or prior to the date of closing. Locking in the expected average mortgage interest rate provides HECM borrowers with the comfort of knowing that the expected average mortgage interest rate cannot increase during the interest rate lock-in period and subsequently reduce the principal limit. FHA therefore proposes to amend the definition of ''expected average mortgage interest rate,'' to provide that the mortgagee, with the agreement of the borrower, may lock in the expected average mortgage interest rate prior to the date of loan closing or establish the expected average mortgage interest rate on the date of loan closing. In accordance with changes proposed to § 206.21(b), if the expected average mortgage interest rate is locked in prior to closing, the margin on an adjustable interest rate loan is also locked in at the same time and is the difference between the expected average mortgage interest rate and the value of the appropriate index at the time of rate lock-in.

First 12-Month Disbursement Period. This proposed rule codifies the definition of ''First 12-Month Disbursement Period'' from RMSA Mortgagee Letter 2014–21 to mean the period beginning on the day of loan closing and ending on the day before the loan closing anniversary date. When the day before the anniversary date of loan closing falls on a Federally-observed holiday, Saturday, or Sunday, the end period will be on the next business day after the Federally-observed holiday, Saturday, or Sunday.

HECM. This proposed rule adds a definition of ''HECM'' to mean a Home Equity Conversion Mortgage.

HECM counselor. The current definition of ''Home Equity Conversion Mortgage (HECM) counselor'' in § 206.3 defines a HECM counselor as an ''individual who provides statutorily required counseling to clients who may be eligible for or interested in obtaining an FHA-insured HECM . . .'' However, it has recently come to FHA's attention that *interested* parties may be providing counseling, and their financial relationship with prospective or current HECM borrowers or Non-Borrowing Spouses may impact their provision of counseling services. In § 206.3, FHA proposes to change the term ''Home Equity Conversion Mortgage (HECM) counselor'' to ''HECM counselor'', for simplicity, and to amend the definition to state, consistent with subsection 255(d)(2)(B) of the NHA, that a HECM counselor must be an independent third-party that is currently active on FHA's HECM Counselor Roster and that is not, either directly or indirectly, associated with or compensated by, a party involved in originating, servicing, or funding the HECM, or the sale of annuities, investments, long-term care insurance or any other type of financial or insurance product.

Ineligible Non-Borrowing Spouse. The term ''Ineligible Non-Borrowing Spouse'' was introduced in RMSA Mortgagee Letter 2015–02 to mean a Non-Borrowing Spouse who does not meet all Qualifying Attributes for a Deferral Period. FHA proposes to codify this definition.

Initial Disbursement Limit. The phrase ''Initial Disbursement Limit'' is defined in RMSA Mortgagee Letter 2014–21 to mean the maximum disbursement to a borrower of an adjustable interest rate HECM allowed at loan closing and during the First 12-Month Disbursement Period, which is the greater of 60 percent of the principal limit; or the sum of Mandatory Obligations and 10 percent of the principal limit. In this rule, FHA proposes to codify a definition of ''Initial Disbursement Limit'' that does not include the actual calculation, which can more appropriately be found in the section regarding the calculation of payments, § 206.25, such that the ''Initial Disbursement Limit'' would be the maximum amount of funds that can be advanced to the borrower of an adjustable interest rate HECM at loan closing and during the First 12-Month Disbursement Period. FHA proposes to make changes to the calculation of the Initial Disbursement Limit to allow the Commissioner flexibility in setting the limit, but such changes are discussed later in the preamble in relation to § 206.25.

Loan documents. FHA currently defines ''mortgage'' to include the credit instrument, or Note, secured by the lien, and the loan agreement. In this rulemaking, FHA takes the opportunity to add a specific definition for ''loan documents'' which would include the credit instrument, or Note, secured by the lien, and the loan agreement because these documents are not actually the mortgage.

Mandatory Obligations. The term ''Mandatory Obligations'' was defined in RMSA Mortgagee Letter 2014–21 as the fees and charges incurred in connection with the origination of the HECM that are requirements for loan approval or disbursements for a Repair Set Aside. In this rule, FHA proposes to clarify that Mandatory Obligations are fees and charges incurred in connection with the origination of the HECM that are requirements for loan approval and which will be paid either at closing or during the First 12-Month Disbursement Period in accordance with § 206.25. In § 206.25, as discussed later in this preamble, FHA proposes to codify the lists of Mandatory Obligations from RMSA Mortgagee Letter 2014–21, but also proposes to amend the lists to give the Commissioner the flexibility to include, as Mandatory Obligations, other charges or fees established through notice.[17]

Maximum claim amount. The ''maximum claim amount'' is currently defined in § 206.3 as the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the maximum dollar amount for an area established by the Secretary for a one-family residence under subsection 203(b)(2) of the NHA, as adjusted where applicable under section 214 of the NHA, as of the date of loan closing. In this rule, FHA proposes to instead reference subsections 255(g) and (m) of the NHA because section 255 of the NHA contains the statutory requirements of the HECM program. FHA also proposes to include, as an option for determining the maximum claim amount, the sales price of the property being purchased for the sole purpose of being the principal residence, such that the ''maximum claim amount'' means the lesser of the appraised value of the property, the sales price of the property, or the national mortgage limit, which is consistent with the maximum claim amount calculation in HERA Mortgagee Letter 2009–11.

MIP. FHA proposes to amend the definition of ''MIP'' in § 206.3 to replace the cross-cite to 24 CFR 203.251(k) with the actual definition, such that ''MIP'' means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

Mortgage. In an effort to provide greater clarity, FHA proposes to remove the last sentence in the definition of ''mortgage'' in § 206.3. The loan documents which are not actually the mortgage will be more appropriately defined under a new definition of ''loan documents'' and FHA will eliminate the unnecessary and partially inaccurate reference to the parties to the loan agreement.

Mortgagee. FHA proposes to amend the definition of ''mortgagee'' in § 206.3 to replace the reference to subsection 255(b)(2) of the NHA with the actual definition, such that ''mortgagee'' means the original lender under a mortgage and its successors and assigns, as are approved by the Commissioner.

Mortgagor. In order to distinguish HECM mortgagors from HECM borrowers, FHA proposes to clarify the definition of a HECM ''mortgagor'' in § 206.3 to mean each original HECM mortgagor under a HECM and his heirs, executors, administrators and assigns. HECM mortgagors also include non-borrowing owners who are on title to the property and, consequently, must sign the HECM Mortgage but do not sign the HECM Note or Loan Agreement, and therefore are not borrowers. A Non-Borrowing Spouse may or may not be a mortgagor; for example, in a community property state, a Non-Borrowing Spouse will always be a mortgagor.

Non-Borrowing Spouse. The term ''Non-Borrowing Spouse'' was introduced in RMSA Mortgagee Letter 2014–07 and means the spouse, as defined by the law of the state in which the spouse and borrower reside or the state of celebration, of the HECM borrower at the time of closing and who is also not a borrower. FHA proposes to codify this definition.

Participating agency. FHA proposes to use the term ''participating agency'' in § 206.302 and in the definition of ''estate planning service firm'' in

[17] The term ''notice'' includes mortgagee letters and other forms of written notice, unless otherwise specified.

§ 206.3, and therefore proposes to provide a definition for the term in § 206.3. The definition would mirror the definition in the Housing Counseling regulations at § 214.3, such that ''participating agency'' means all housing counseling and intermediary organizations participating in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved multi-state organizations (MSOs), and state housing finance agencies.

Principal limit. FHA proposes to update the definition of ''principal limit'' to reflect the changes made in RMSA Mortgagee Letters 2014–07 and 2015–02 regarding Non-Borrowing Spouses, and in RMSA Mortgagee Letter 2014–11 regarding the changes made to the fixed interest rate product, as well as new changes discussed below. ''Principal limit'' would be amended to mean the maximum amount calculated by taking into account the age of the youngest borrower or Eligible Non-Borrowing Spouse, the expected average mortgage interest rate, and the maximum claim amount. Because individual principal limit factors are published, FHA proposes to eliminate the sentence stating that a person who is over the age of 95 will be treated as though he is 95 for the purposes of calculating the principal limit. However, in order to eliminate this sentence in § 206.3 and not impact the formula for the calculation of tenure payments in § 206.25(f), FHA proposes to make clear in § 206.25(f) that in calculating tenure payments for a borrower over the age of 95, the age of 95 will be used. In addition, the current regulatory definition states that the principal limit increases each month at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of one-half percent per annum. FHA proposes to amend this calculation such that the principal limit increases each month at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of the annual mortgage insurance rate, so that a regulatory change is not necessary if the Commissioner changes the annual MIP, which the Commissioner may do through notice under existing authority. As stated in RMSA Mortgagee Letter 2014–11, for adjustable interest rate HECMs, the increase in principal limit may be made available to the borrower each month, except that there may be restrictions on draws during the First-12 Month Disbursement Period; for fixed interest rate HECMs, although the principal limit will continue to increase at the rate established by the Commissioner, the funds will not be available for the borrower to draw against after loan closing.

Principal residence. The definition of ''principal residence'' was amended in RMSA Mortgagee Letter 2014–07 to account for changes made regarding Non-Borrowing Spouses, and is being further amended in this proposed rule to account for additional changes made in RMSA Mortgagee Letter 2015–02 which introduced the concepts of Eligible and Ineligible Non-Borrowing Spouses. ''Principal residence'' will be amended to mean the dwelling where the borrower and, if applicable, Non-Borrowing Spouse, maintains his permanent place of abode, and typically spends the majority of the calendar year. Content from § 206.39 that addresses a borrower who is in a health care institution, as clarified in RMSA Mortgagee Letter 2014–07, has been moved to the definition of ''principal residence'' in § 206.3. The definition of ''principal residence'' will also cover a Non-Borrowing Spouse who is temporarily in a health care institution provided certain conditions are met. In addition, during a Deferral Period, the property shall continue to be considered the principal residence of any Eligible Non-Borrowing Spouse who is temporarily in a health care institution, provided certain conditions are met.

Property charges. The term ''property charges'' was defined in RMSA Mortgagee Letter 2014–21, and FHA proposes to codify that definition with only slight revisions, to mean the obligations of the borrower that are, unless otherwise specified, defined as property taxes, hazard insurance premiums, any applicable flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowners association fees, any other special assessments that may be levied by municipalities or state law, and utilities. While RMSA Mortgagee Letter 2014–21 did not include utilities in the definition of ''property charges,'' FHA proposes to include utilities as a borrower responsibility. FHA has experienced situations where borrowers have not paid utilities, and as a result, large liens for utilities are placed on the property. When FHA pays the insurance claim on the property, FHA reimburses the mortgagee for the utility lien amount. Failure to pay utilities that result in a lien against the property would potentially trigger a due and payable event. By expressly including these utilities as borrower responsibilities, FHA is limiting reimbursement of such expenses.

Qualifying Attributes. The term ''Qualifying Attributes'' was introduced in RMSA Mortgagee Letter 2014–07. FHA proposes to amend the definition of ''Qualifying Attributes'' to fit with additional program changes introduced in RMSA Mortgagee Letter 2015–02, to mean the requirements which must be met by a Non-Borrowing Spouse in order to be an Eligible Non-Borrowing Spouse.

Preemption (§ 206.8)

In this rule, FHA proposes to add counseling charges as an example of loan advances to be included in the amount secured by the mortgage, and FHA also proposes to condense some previously listed examples that meet the definition of ''property charges'', as newly defined in § 206.3.

Subpart B—Eligibility; Endorsement

Disclosure of Available HECM Program Options (§ 206.13)

Section 206.17 allows mortgagees to provide all payment plan options and fixed and adjustable interest rate mortgages to HECM borrowers. Section 206.43(a) requires mortgagees to disclose the costs of obtaining the mortgage, and provide a Good Faith Estimate and other applicable Truth in Lending disclosures to the borrower so the borrower has knowledge of which charges are, and which charges are not, required to obtain the mortgage.

For several years, the fees and charges associated with reverse mortgages have been structured to allow the borrower to benefit in a manner of their choosing by selecting from various HECM products. However, the volume of adjustable interest rate HECMs declined to approximately 30 percent of the total HECMs endorsed for insurance during 2010–2012. On June 28, 2012, the Consumer Financial Protection Bureau (CFPB) published its ''Reverse Mortgages Report to Congress'',[18] which revealed the practice of many mortgagees failing to inform borrowers of the availability and benefits of adjustable interest rate mortgages.

In response to these concerns, this rule proposes to add § 206.13, which would require that mortgagees inform potential HECM borrowers of all of the HECM products, features and options that FHA insures, in a manner acceptable to the Commissioner, irrespective of the particular HECM products offered by the mortgagee,

[18] See *http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf.*

including (1) fixed interest rate mortgages with the Single Lump Sum payment option; (2) adjustable interest rate mortgages with tenure, term, and line of credit disbursement options, or a combination of these disbursement options; (3) any other disbursement options that FHA will insure; and (4) initial mortgage insurance premium options, and how those affect the availability of other mortgage and disbursement options. This regulatory change is designed to provide a balanced approach in educating and equipping borrowers with the information needed to determine which options will best meet their short- and long-term goals, as well as their financial capacity.

Insurance (§ 206.15)

It has come to FHA's attention that the last sentence in § 206.15, which currently states, ''The mortgagee shall execute for the Secretary the loan agreement included in the term 'mortgage' as defined in § 206.3,'' may result in confusion regarding FHA's role in the loan agreement. The loan agreement has been, and continues to be, an agreement between the borrower and the mortgagee. FHA is taking the opportunity provided by this rulemaking to eliminate any potential confusion caused by the language in § 206.15 regarding the execution of the loan agreement by removing the last sentence in this section.

In addition, because the Lender Insurance program is currently unavailable for the HECM program, FHA proposes to remove reference to the Lender Insurance program in § 206.15 at this time.

Eligible Mortgages: General (§ 206.17)

In RMSA Mortgagee Letter 2013–27,[19] FHA introduced the Single Lump Sum payment option as a payment option for fixed and adjustable interest rate HECMs. In RMSA Mortgagee Letter 2014–11, however, FHA limited fixed interest rate HECMs to the Single Lump Sum payment option, and prohibited adjustable interest rate HECMs from using the Single Lump Sum payment option. These changes require FHA to amend § 206.17 to bring it into alignment with the current HECM program requirements. Because the payment options are now dependent upon the type of interest rate, FHA proposes to merge the content of current paragraphs (a) and (b) into one paragraph (b), while reserving paragraph (a). The new paragraph (b) would further specify that fixed interest rate HECMs must use the Single Lump Sum payment option, and that adjustable interest rate HECMs must provide for the term, tenure, line of credit, modified term or modified tenure payment options.

Payment Options (§ 206.19)

Current § 206.19 describes term, tenure and line of credit payment options. FHA proposes to amend this section by also including descriptions of the Single Lump Sum, modified term and modified tenure payment options. As mentioned above, the Single Lump Sum payment option was first introduced in RMSA Mortgagee Letter 2013–27, and then subsequently discussed and limited to fixed interest rate HECMs in RMSA Mortgagee Letter 2014–11. FHA proposes to codify the description and requirements of the Single Lump Sum payment option in § 206.19. Sections 206.17 and 206.25 currently provide for modified term or modified tenure payment options, but § 206.19 did not previously describe the modified term or modified tenure payment options by themselves; they were listed as a subparagraph of paragraph (d), which discusses principal limit set asides. When a portion of the principal limit is set aside to be drawn down as a line of credit, such ''set aside'' is more appropriately characterized as a payment option (modified term or modified tenure payment option) than as a principal limit set aside, so FHA proposes to update § 206.19 accordingly in this rulemaking.

FHA also proposes to amend current paragraph (d) (proposed paragraph (f)) to reflect changes made to FHA's principal limit set aside policies. The LESA was first introduced in RMSA Mortgagee Letter 2013–27, but, after considering public comments, the LESA was substantially revised through RMSA Mortgagee Letter 2014–21. The LESA is discussed in more detail later in this preamble, as FHA proposes to codify its requirements in § 206.205, but FHA proposes to also amend § 206.19 to reflect that when required by FHA's regulations in § 206.205, or selected by the borrower in accordance with § 206.205, the mortgagee shall set aside a portion of the principal limit in a LESA to be used to pay certain property taxes, including special assessments levied by municipalities or state law, and flood and hazard insurance premiums. In addition, when the borrower has an adjustable interest rate HECM and is not required to have a LESA, the borrower may elect to have the mortgagee pay property charges.

In this section, FHA also proposes to codify requirements announced in RMSA Mortgagee Letters 2014–11 and 2014–21 regarding the limitation on disbursements during the First 12-Month Disbursement Period. Under these RMSA mortgagee letters, disbursements may not be made during the First 12-Month Disbursement Period in excess of the Initial Disbursement Limit or the Borrower's Advance, as applicable. In this rule, however, FHA is requesting public comment regarding exceptions to this limitation. While FHA's intent of limiting draws during the first 12 months of the HECM was to ensure that funds remained available to borrowers over time and were available when borrowers needed them, FHA recognizes that there may be some limited circumstances, such as medical emergencies or death of a loved one, which may necessitate allowing draws beyond the established limits.

FHA specifically requests public comment on the following questions:

(1) What types of medical emergencies or other circumstances may result in exceptions to the draw limits during the First 12-Month Disbursement Period, such as hospice care, illness requiring extensive therapy (*e.g.,* chemotherapy, dialysis, physical therapy), terminal medical conditions, serious illness, and catastrophic accidents resulting in incapacitation of the borrower or death of a spouse?

(2) What kind of documentation should be required to support the anticipated or actual financial impact of such exigent circumstances?

Finally, in new § 206.19(h), which incorporates the contents of current paragraph (f), FHA proposes to clarify the policy announced in RMSA Mortgagee Letter 2014–21 regarding partial repayment for term, tenure, line of credit, modified term and modified tenure payment options in paragraph (h)(2). RMSA Mortgagee Letter 2014–21 states that if a borrower makes a partial repayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee must increase the available principal limit by the amount applied toward the outstanding loan balance, up to an amount not to exceed the Initial Disbursement Limit or the principal limit, as applicable. FHA proposes to clarify that any partial repayment shall be applied in accordance with the terms contained in the Note. Similarly, in § 206.19(h)(3), FHA proposes to clarify that for the Single Lump Sum payment option, if the borrower makes a partial repayment of the outstanding loan

[19] Mortgagee Letter 2013–27 was later superseded by Mortgagee Letter 2014–21, but the applicable policy change which this rule proposes to codify was announced in Mortgagee Letter 2014–11, prior to the publication of Mortgagee Letter 2014–21.

balance any time after loan closing and before the contract of insurance is terminated, the mortgagee shall apply the funds in accordance with the terms contained in the Note, but that any resulting increase in the principal limit shall not be available for the borrower to draw against.

Interest Rate (§ 206.21)

Section 206.21 provides requirements related to fixed and adjustable interest rate HECMs, including disclosure requirements. As discussed earlier in this preamble in the discussion of the definition of ''expected average mortgage interest rate'' in § 206.3, FHA proposes to amend paragraph § 206.21(b), which applies to adjustable interest rate HECMs, to make conforming changes consistent with the proposed changes to that definition, which would allow for the interest rate to be locked-in prior to closing. If the interest rate was locked-in prior to closing, then amended § 206.21(b) would provide that the margin used to determine interest rate adjustments is the difference between the expected average mortgage interest rate and the value of the appropriate index at the time of rate lock-in.

Current regulations at § 206.21(b) provide that for annual adjustable interest rate HECMs, periodic interest rate increases and decreases are capped at two percentage points and there is a five or six percentage point cap over the life of the loan, depending on whether the loan is a one- or three-year adjustable rate mortgage (five percentage point cap) or a five-, seven-, or ten-year adjustable rate mortgage (six percentage point cap). These caps, although modeled after § 203.49, vary from the levels set in § 203.49. FHA proposes to remove reference to three-, five-, seven-, and ten-year adjustable interest rate HECMs because FHA only offers to insure one-year annual adjustable interest rate HECMs and monthly adjustable interest rate HECMs.

FHA also proposes to amend the cap level on one-year annual adjustable rate HECMs to more closely align with those of forward mortgages and to provide enhanced interest rate protection for borrowers. As such, FHA proposes that for the annual adjustable interest rate mortgages, periodic interest rate increases and decreases are capped at one percentage point and there is a five percentage point cap over the life of the loan.

Section 206.21(b)(2) permits mortgagees who offer an annual adjustable interest rate mortgage the opportunity to offer a monthly adjustable interest rate mortgage using the Constant Maturity Treasury (CMT) or London Interbank Offer Rate (LIBOR) interest rate index without defining the rate of change that can occur during a 12-month cycle or over the life to the loan. A similar limit on lifetime interest rate adjustments for monthly adjustable interest rate HECMs would reduce risk to the borrower and the MMIF by reducing potential principal balance growth, and providing access to additional funds for the borrower. Therefore, this proposal revises § 206.21(b)(2) to provide that adjustments to the mortgage interest rate over the entire term of the monthly adjustable interest rate HECM may not result in a change in either direction from the initial contract interest rate of more than five percentage points.

In addition, in § 206.21(b), FHA references regulations in § 203.49. Specifically in § 206.21(b)(2), FHA references an ''index as provided in § 203.49(a), (b), and (f)(1).'' To provide greater clarity, FHA proposes to restate these requirements in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations.

Finally, in § 206.21(c), which pertains to pre-loan disclosures as related to interest rates, FHA proposes to make very minor changes to further clarify FHA's regulation and to update its reference to Truth in Lending disclosures, which are now codified at 12 CFR part 1026.

Shared Appreciation (§ 206.23)

FHA seeks public comment on the utility of FHA's shared appreciation regulation. Specifically, FHA requests comment on the following questions: Do mortgagees have an interest in offering this program or if there is little or no interest, should HUD remove it from the regulations?

Calculation of Disbursements (§ 206.25)

Sections 206.25, titled ''Calculation of payments'', and 206.29, titled ''Initial disbursement of mortgage proceeds'' of FHA's current regulations contain similar content and FHA would like to take the opportunity provided by this rulemaking to streamline these sections by moving content of § 206.29 into § 206.25(d) as applicable, and removing § 206.29. Specifically, FHA proposes to add a new paragraph (d) which provides that mortgage proceeds may not be disbursed until closing or after the expiration of the 3-day rescission period under 12 CFR part 1026, if applicable. Items that were previously listed as exceptions to the prohibition on disbursements are now covered as Mandatory Obligations. The remaining paragraphs in § 206.25 will be renumbered.

FHA also proposes to make other changes to § 206.25, including codifying program changes implemented through RMSA mortgagee letters and making related programmatic changes, as discussed below in this preamble.

FHA implemented changes to the maximum initial disbursement available to borrowers in RMSA Mortgagee Letter 2014–21. The Initial Disbursement Limit is applicable to all adjustable interest rate HECMs and is the maximum disbursement allowed to a borrower at loan closing and during the First 12-Month Disbursement Period. In RMSA Mortgagee Letter 2014–21, the Initial Disbursement Limit was set at the greater of 60 percent of the principal limit; or the sum of Mandatory Obligations and 10 percent of the principal limit. In this rule, FHA proposes to revise this formula to allow the Commissioner flexibility in setting these limits, such that the Initial Disbursement Limit shall not exceed the lesser of: (1) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or (2) the principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside. While FHA does not intend to change the current amounts at this time, which are set at 60 percent and 10 percent, respectively, this change is necessary for FHA to have the flexibility to raise or lower these amounts to meet the operational goals of the MMIF and respond to future market changes or other factors as necessary.

In addition, while it is FHA's current policy that the amount drawn at any point in time and over time may not exceed the available principal limit, FHA's new language makes clear that the Initial Disbursement Limit may never exceed the amount of the principal limit remaining after the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside are subtracted; the funds in these set asides are not available to the borrower. If the greater of the percentage of the principal limit established by the Commissioner or Mandatory Obligations plus a percentage of the principal limit established by the Commissioner exceeds the amount of the principal limit available to the borrower, the borrower may only receive the amount of the principal limit available.

FHA also proposes to clarify that if the borrower draws or will draw an additional percentage beyond Mandatory Obligations in accordance with the Initial Disbursement Limit calculation in § 206.25(a)(1), the borrower must notify the mortgagee at closing of the exact amount of the additional percentage of the principal limit that the borrower will draw or that the borrower wants to have available for future draws during the First 12-Month Disbursement Period, and that such election cannot be increased or decreased after closing. The amount drawn impacts the initial MIP amount, so it is particularly important for borrowers and mortgagees to know if the amount the borrower elects to withdraw during the First 12-Month Disbursement Period will exceed the lesser MIP threshold.

The Borrower's Advance is applicable to all fixed interest rate HECMs and is calculated using the same formula as the Initial Disbursement Limit. In this rule, FHA proposes to make the same changes to the calculation of the Borrower's Advance, such that the Borrower's Advance shall not exceed the lesser of: (1) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or (2) the principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside. While FHA does not intend to change the current amounts at this time, which are set at 60 percent and 10 percent, respectively, this change is necessary for FHA to have the flexibility to raise or lower these amounts to meet the operational goals of the MMIF and to respond to future market changes or other factors as necessary.

In addition, while it is FHA's current policy that the amount drawn at any point in time and over time may not exceed the available principal limit, FHA's new language makes clear that the Borrower's Advance may never exceed the amount of the principal limit remaining after the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside are subtracted; the funds in these set asides are not available to the borrower. If the greater of the percentage of the principal limit established by the Commissioner or Mandatory Obligations plus a percentage of the principal limit established by the Commissioner exceeds the amount of the principal limit available to the borrower, the borrower may only receive the amount of the principal limit available.

FHA also proposes to clarify that if the borrower draws or will draw an additional percentage beyond Mandatory Obligations in accordance with the Borrower's Advance calculation in § 206.25(a)(2), the borrower must notify the mortgagee at closing of the exact amount of the additional percentage of the principal limit that the borrower will draw at closing, and that such election cannot be increased or decreased after closing. The amount drawn impacts the initial MIP amount, so it is particularly important for borrowers and mortgagees to know if the amount the borrower elects to withdraw at closing will exceed the lesser MIP threshold.

Mandatory Obligations for traditional, refinance and purchase transactions were listed in RMSA Mortgagee Letter 2014–21. In this rule, FHA proposes to codify those lists in § 206.25(b) and § 206.25(c), but also proposes to add flood certifications to the lists, which was inadvertently excluded from the lists in RMSA Mortgagee Letter 2014–21.

FHA proposes to make conforming changes to the term, tenure and line of credit paragraphs, and proposes to codify changes made to these payment options in RMSA Mortgagee Letters 2014–07 and 2014–21, including the requirement that the sum of disbursements made during the First 12-Month Disbursement Period may not exceed the Initial Disbursement Limit or Borrower's Advance, as applicable. Consistent with changes proposed to § 206.19(h) regarding disbursement limits, FHA also proposes to amend § 206.25 to provide the Commissioner with flexibility to allow disbursements during the First 12-Month Disbursement Period to exceed the Initial Disbursement Limit. Further, FHA clarifies that at the end of the First 12-Month Disbursement Period, the borrower may request a payment plan change or merely a recalculation of the current payment plan.

In § 206.25, FHA also proposes to add a new paragraph (h) to describe the Single Lump Sum payment option and codify the requirements for this payment option, as set out in RMSA Mortgagee Letter 2014–21. Although the name has slightly changed from the "Single Lump Sum Disbursement" payment option to the "Single Lump Sum" payment option, the requirements set out in the RMSA mortgagee letter are unchanged.

Finally, FHA proposes to slightly amend current paragraph (e) titled "Payment of MIP and interest," which will be renamed paragraph (i), to provide greater clarity around the timing of when the MIP is due.

Change in Payment Option (§ 206.26)

Section 206.26 allows the borrower to request a change in payment option, provided certain conditions are met. Changes implemented by RMSA Mortgagee Letters 2014–11 and 2014–21 impacted the conditions under which a payment plan change is permitted, and FHA proposes to codify those changes in § 206.26.

RMSA Mortgagee Letter 2014–11 instituted limits on the fixed interest rate product, such that fixed interest rate HECMs are only eligible for the Single Lump Sum payment option. Multiple draws are not permitted under this option, and therefore borrowers with fixed interest rate HECMs may not request a change in payment option. Adjustable interest rate HECMs, on the other hand, are eligible for payment option changes. However, during the First 12-Month Disbursement Period, payment option changes which would cause disbursements to exceed the Initial Disbursement Limit are not permissible. At the end of the First 12-Month Disbursement Period, borrowers may request a recalculation of their current payment option, or may change to any other permissible payment option.

Together, RMSA Mortgagee Letters 2014–11 and 2014–21 also provide that for adjustable interest rate HECMs, when repairs are completed without using all of the Repair Set Aside, the mortgagee must transfer the remaining funds available in the Repair Set Aside to a line of credit. In this rule, FHA proposes to include the option to transfer the remaining funds to a modified term or modified tenure payment option in order to provide borrowers with more options when they have an existing term or tenure payment option and there are funds left in the Repair Set Aside that the mortgagee needs to transfer to them. For fixed interest rate HECMs, on the other hand, unused funds in the Repair Set Aside may not be provided to the borrower, except that the borrower may be able to be reimbursed for repair materials purchased by the borrower (but not for labor provided by the borrower).

Mortgage Provisions (§ 206.27)

RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter

2015–02, requires the mortgage to include provisions deferring the due and payable status that occurs as a result of the death of the last surviving borrower, for an Eligible Non-Borrowing Spouse, and prohibiting the continuation of payments under the reverse mortgage during a Deferral Period. FHA proposes to codify these requirements in § 206.27(b).

Section 206.27(b)(2) currently requires the borrower to maintain hazard insurance on the property in an amount acceptable to the Secretary and the mortgagee. FHA proposes to add more specificity to this provision to remove the potential risk of litigation related to hazard insurance coverage. Specifically, FHA proposes to require the borrower to insure all improvements on the property that serves as collateral for the HECM whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including but not limited to fire and flood, for which the mortgagee requires insurance. FHA also proposes to provide that such insurance shall be maintained in the amount, and for the period of time, that are necessary to protect the mortgagee's investment. Whether or not the mortgagee imposes a flood insurance requirement, FHA proposes to require the borrower to, at a minimum, insure all improvements on the property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Commissioner. If the mortgagee imposes insurance requirements, all insurance would be required to be carried with companies acceptable to the mortgagee, and the insurance policies and any renewals would be required to be held by the mortgagee and include loss payable clauses in favor of and in a form acceptable to the mortgagee.

Section 206.27(b)(6) currently requires the borrower to pay taxes, hazard insurance premiums, ground rents and assessments in a timely manner. As a result of changes made to property charge payment requirements in RMSA Mortgagee Letter 2014–21, FHA proposes to amend this paragraph to require that the borrower provide for the payment of property charges in accordance with § 206.205. This will cover circumstances in which property charges are paid from a LESA, where a borrower elects to have the mortgagee pay the property charges, or where a borrower pays property charges. A discussion of the property charge payment requirements can be found later in the preamble.

Section 206.27(c) lists the conditions which cause the HECM to become due and payable, which include when the borrower dies and the property is not the principal residence of at least one surviving borrower. As mentioned above, RMSA Mortgagee Letters 2014–07 and 2015–02 provide for a deferral of the due and payable status upon the death of the last surviving borrower where there is an Eligible Non-Borrowing Spouse. Therefore, it is necessary to amend § 206.27(c) to provide an exception that defers the due and payable status if the requirements of the Deferral Period are met.

Another condition which may result in the HECM becoming due and payable is when the borrower does not pay property charges as required by the mortgage and § 206.205. This specific situation has always been captured under the current provision in § 206.27(c)(2)(iii), which provides that the outstanding loan balance is due and payable upon HUD-approval when an obligation of the borrower under the mortgage is not performed. Due to an increase in property charge defaults, however, FHA proposes to specifically and clearly articulate that the borrower's non-payment of property charges in accordance with § 206.205 is a condition which can cause the HECM to become due and payable with the approval of the Commissioner.

Finally, § 206.27(d) discusses second mortgages. This section requires that unless otherwise provided, a second mortgage must be given to HUD before a Mortgage Insurance Certificate is issued. Where the Commissioner elects to not require a second mortgage prior to the issuance of a Mortgage Insurance Certificate, it is important that FHA is still able to protect its security interest; therefore, FHA proposes to allow the Commissioner to require a second mortgage at a later date when not required prior to issuance of the Mortgage Insurance Certificate. RMSA Mortgagee Letter 2014–11 changed the structure of the fixed interest rate product to allow only a single disbursement and eliminated the need for fixed interest rate HECMs to have a second mortgage. FHA does not need to codify this policy because it is covered under the language ''unless otherwise provided'' in the current regulation.

Allowable Charges and Fees (§ 206.31)

Current section 206.31(a)(1) permits loan origination fees and allows the Secretary to establish fee limits. However, in 2008, HERA established limits on the loan origination fee that may be charged for HECMs, such that the loan origination fee limit is the greater of $2,500 or two percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000, plus one percent of any portion of the maximum claim amount that is greater than $200,000; and the total amount of the loan origination fee may not exceed $6,000. FHA implemented these limits through HERA Mortgagee Letter 2008–34 and in this rule, FHA proposes to codify these limits in § 206.31(a)(1). FHA also proposes to clarify that such loan origination fee includes expenses incurred in originating, processing and closing the HECM.

Current section 206.31(a)(1) also prohibits borrowers from paying any origination fees in addition to those that are permitted to be paid to the mortgagee (which includes amounts paid by a mortgagee to a mortgage broker or sponsored third-party originator). This paragraph permits a mortgage broker's fee to be included as part of the origination fee if the mortgage broker was engaged independently by the borrower and there is no financial interest between the mortgage broker and the mortgagee. This provision has caused significant confusion, and to address that confusion, FHA proposes to amend § 206.31(a)(1) to clarify that the prohibition is on additional fees paid by a borrower beyond the loan origination fee limit, and does not prohibit the provision of compensation to a sponsored third-party originator by a mortgagee.

No Outstanding Unpaid Obligations (§ 206.32)

FHA proposes to amend this section to make conforming changes that correspond with the introduction of Mandatory Obligations in RMSA Mortgagee Letter 2014–21. Pursuant to RMSA Mortgagee Letter 2014–21, initial Repair Set Asides to pay for repairs where the need for repairs was discovered prior to or at closing are considered Mandatory Obligations and are included in the initial disbursement. Therefore, they should not be included as an exception in this section.

Age of Borrower (§ 206.33)

Section 206.33 requires the youngest borrower to be at least 62 year of age at the time the mortgagee submits the application for insurance. FHA finds that it is unnecessary for the youngest borrower to be 62 at the loan application stage, and instead proposes to require that the youngest borrower be at least 62 years of age at the time of loan closing which will insure compliance with the statutory requirement that the borrower be 62 at endorsement.

Limitation on Number of Mortgages (§ 206.34)

Permitting multiple HECMs at one time is contrary to the intent of the program to insure the property which serves as the borrower's primary residence. FHA is taking the opportunity afforded by this rule to clarify policy in this regard. The proposed rule adds a new § 206.34, which states that once a borrower has obtained an insured HECM, the borrower may not close on another HECM unless the existing insured mortgage is satisfied at, or prior to, closing, except for cases of divorce where an ex-spouse, who had previously jointly obtained a HECM with their ex-spouse, has relinquished title as evidenced by a recorded deed.

FHA believes that the final divorce decree and the recorded quit claim, or its equivalent, are considered the only legal acknowledgement of transfer, but FHA is seeking feedback on the following question: What additional forms of documentation should be considered to confirm that an ex-spouse has been removed from the existing loan and has no financial obligation?

In addition, FHA intends the prohibition on closing another HECM unless the existing insured mortgage is satisfied to mean, in the case of a deed in lieu on an existing HECM where a borrower seeks to obtain a new HECM, the deed in lieu must be fully executed and recorded before a borrower is eligible for a new HECM. New § 206.34 also proposes to codify material in HERA Mortgagee Letter 2009–11 to state that current HECM borrowers that plan to sell their existing residence and use the HECM for Purchase program to obtain a new principal residence must pay off the existing FHA-insured mortgage before the HECM for Purchase mortgage can be insured. The material on rental properties in HERA Mortgagee Letter 2009–11 does not rise to the level of regulation, and as such, will not be codified.

Title of Property Which is Security for HECM (§ 206.35)

Currently, § 206.35 requires a HECM borrower or borrowers to hold full title to the property which is the security for the mortgage, as ''borrower'' is newly defined in § 206.3. It had come to FHA's attention that Non-Borrowing Spouses or other non-borrowing owners were, at times, quit claiming their interest in the property prior to closing, and then being put back onto the title of the property. FHA believes that the new Deferral Period policy for Eligible Non-Borrowing Spouses has reduced the need for this practice, but nonetheless finds it important to amend the full-title requirement to provide that Non-Borrowing Spouses and non-borrowing owners may stay on title to the property serving as the security interest for the HECM, making them mortgagors. This proposed change would eliminate the burden on Non-Borrowing Spouses or other heirs who remain on title of having to establish legal ownership of the property upon the death of the borrowing spouse.

Seasoning Requirements for Existing Non-HECM Liens (§ 206.36)

RMSA Mortgagee Letter 2014–21, as amended by RMSA Mortgagee Letter 2015–02, created seasoning requirements for existing non-HECM liens. The RMSA mortgagee letters provide that mortgagees can only permit the payoff of existing non-HECM liens using HECM proceeds if the liens have been in place for longer than 12 months or have resulted in less than $500 cash to the borrower, and that mortgagees must review and provide the necessary documentation illustrating that the seasoning requirements have been met. FHA does not intend to change its current policy, whereby mortgagees can only permit the payoff of existing non-HECM liens using HECM proceeds if the liens have been in place for longer than 12 months or have resulted in cash to the borrower in an amount of $500 or less. However, FHA recognizes the importance of being able to adjust this seasoning requirement in the future if necessitated by the market or borrower characteristics. Therefore, FHA proposes to allow the Commissioner to impose seasoning requirements through notice, but provides that any such requirements imposed by future notice may not be more stringent than the policy currently in place. Further, although the specific documentation processes were outlined in the RMSA mortgagee letters, those processes are more suitable for guidance and will not be codified in § 206.36.

Credit Standing (§ 206.37)

In the past, there have been an increasing number of tax and hazard insurance defaults by borrowers. Section 206.37 currently provides that each borrower must have a general credit standing that is satisfactory, but provides no further requirements. Therefore, in RMSA Mortgagee Letter 2013–27, FHA established a requirement for a Financial Assessment of a potential borrower's financial capacity and willingness to comply with mortgage provisions. As mentioned earlier in this preamble, after considering public comments, FHA published revised Financial Assessment and Property Charge Funding Requirements in RMSA Mortgagee Letter 2014–21, which superseded RMSA Mortgagee Letter 2013–27.

In this rule, FHA proposes to codify the Financial Assessment requirements announced in RMSA Mortgagee Letter 2014–21 in § 206.37.[20] Mortgagees will be required to perform a Financial Assessment of the prospective borrower prior to loan approval, which will consider the prospective borrower's credit history, cash flow and residual income, extenuating circumstances, and compensating factors. Financial Assessments must be conducted in a uniform manner that does not discriminate because of race, color, religion, sex, national origin, familial status, disability, marital status, actual or perceived sexual orientation, gender identity, source of income of the prospective borrower, or location of the property, and which complies with all applicable laws and regulations.

Some of the Financial Assessment material in RMSA Mortgagee Letter 2014–21 is better suited as guidance and will therefore not be codified in § 206.37. For example, the provision permitting mortgagees to obtain a credit report prior to the completion of HECM counseling does not rise to the level of regulation and should be treated as guidance. In addition, the examples of extenuating circumstances and compensating factors are more suitable for guidance.

Principal Residence (§ 206.39)

As mentioned earlier, some of the content from § 206.39, as clarified by RMSA Mortgagee Letter 2014–07, is being moved to the actual definition of ''principal residence'' in § 206.3. In § 206.39(a), FHA proposes to codify changes implemented in RMSA Mortgagee Letter 2015–02 to state that the property must be the principal residence of each Eligible Non-Borrowing Spouse at closing and must remain the principal residence to maintain eligibility for the Deferral Period.

In new § 206.39(b), FHA proposes to codify program changes made in HERA Mortgagee Letter 2009–11 which require borrowers in the HECM for Purchase program to occupy the property within 60 days from the date of closing, and also to update the HECM for Purchase requirements to impose this 60-day requirement on Eligible Non-Borrowing Spouses, bringing this provision into

[20] Property Charge Funding Requirements can be found in § 206.205.

alignment with the Non-Borrowing Spouse policy announced in RMSA Mortgagee Letters 2014–07 and 2015–02.

Disclosure, Verification and Certifications (§ 206.40)

Section 206.40 currently provides for the disclosure and verification of Social Security and Employer Identification Numbers for the borrower. As a result of changes made to the HECM program regarding Non-Borrowing Spouses in RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02, FHA proposes to amend § 206.40 to codify the requirements that an Eligible Non-Borrowing Spouse must comply with the same disclosure and verification of Social Security and Employer Identification Numbers required of the borrower, and that all borrowers and Non-Borrowing Spouses must provide all necessary certifications to HUD and the mortgagee.

In addition, FHA proposes to add a new paragraph (c) to address circumstances in which FHA has been unable to find and communicate with borrowers concerning their HECMs. In this new paragraph, FHA proposes to allow the Commissioner to require a borrower to designate an agent or other party to act on his behalf when FHA is unable to make contact or communicate with the borrower. Even when not required, FHA would allow the borrower to voluntarily designate an agent or other person to act on his behalf.

Counseling (§ 206.41)

FHA currently requires prospective borrowers and Non-Borrowing Spouses to receive counseling. FHA is taking the opportunity provided by this rulemaking to amend § 206.41 to include the specific requirements that apply when there are Eligible or Ineligible Non-Borrowing Spouses, consistent with the program changes implemented by RMSA Mortgagee Letters 2014–07 and 2015–02. In addition, FHA proposes to provide the Commissioner with the flexibility to require HECM counselors, through notice, to discuss any other requirements with prospective borrowers and Non-Borrowing Spouses. Finally, consistent with current requirements, and as articulated in RMSA Mortgagee Letter 2014–07, FHA proposes to amend § 206.41(c) to codify the requirements that HECM counselors provide each borrower with a certificate saying that the borrower and Non-Borrowing Spouse, if applicable, have received counseling. Instead of requiring each borrower to provide the mortgagee with a copy of the certificate, this rule proposes to instead require the HECM counselor to upload the certificate into the appropriate electronic database.

FHA also proposes to require prospective borrowers of HECM for Purchase transactions to complete the required HECM counseling prior to signing a sales contract and/or making an earnest money deposit, unless otherwise provided by the Commissioner, instead of allowing them to complete the counseling before or after the initial application is submitted to the mortgagee. FHA believes it is beneficial for the borrower to understand the requirements of the HECM for Purchase program prior to committing to purchase a home using a HECM.

Monetary Investment for HECM for Purchase Program (§ 206.44)

HERA Mortgagee Letter 2009–11 requires that HECM for Purchase borrowers provide a monetary investment that will be applied to satisfy the difference between the principal limit and the sale price for the property, plus any HECM loan-related fees that are not financed into the loan, minus the amount of the earnest deposit. The HERA mortgagee letter also provides that HECM borrowers may choose to provide a larger investment amount in order to retain a portion of the available HECM proceeds for future draws, and specifies permissible funding sources. FHA proposes to codify these requirements in a new § 206.44, except as discussed below.

In the ''Monetary Investment'' section, the provision that states that HECM borrowers may choose to provide a larger investment amount in order to retain a portion of the HECM proceeds does not rise to the level of regulation and therefore will not be codified.

In the ''Funding Sources'' section, material regarding the disallowed funding sources, which was, at the time of issuance of the HERA mortgagee letter, taken directly from a HUD Handbook, was guidance and is no longer FHA's policy. In addition, the prohibition on seller contributions, which will more accurately be referred to as interested party contributions [21] throughout this rule, will remain in effect for FHA Case Numbers assigned prior to the effective date of the final rule, but will be amended in this rule for FHA Case Numbers assigned on or after the effective date of the final rule. The current prohibition on interested party contributions is unique and redirects expenses customarily paid by the seller or other interested parties to the buyer in HECM for Purchase transactions. In this rule, FHA proposes to permit limited interested party contributions, and to allow the Commissioner flexibility to define the types and parameters of other allowable interested party contributions in the future through **Federal Register** notice for public comment. FHA proposes to specifically allow the seller to pay fees required to be paid by the seller under state or local law and to purchase the Home Warranty policy. These changes would remove barriers to HECM for Purchase transactions which exist in state or local jurisdictions which require certain seller-paid costs.

Eligible Properties (§ 206.45)

Currently, § 206.45(a) provides that a mortgage must be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor. This section was written to implement subsection 255(b)(4) of the NHA. However, Public Law 111–22, signed into law on May 20, 2009, amended subsection 255(b)(4) of the NHA to replace the language regarding a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor with ''a lease that has a term that ends no earlier than the minimum number of years, as specified by the Secretary, beyond the actuarial life expectancy of the mortgagor or comortgagor, whichever is the later date.'' FHA is taking the opportunity provided by this rulemaking to update its regulation at § 206.45(a) to require that, to be eligible for insurance, a mortgage must be on real estate held in fee simple; or on a leasehold that is under a lease with a duration lasting until the later of: (1) 99 years, if such lease is renewable; or (2) the actuarial life expectancy of the youngest mortgagor plus a number of years specified by the Commissioner,[22] which shall not be more than 99 years.

[21] Interested party contributions encompasses the use of loan discount points, interest rate buy-downs, closing cost down payment assistance, builder incentives, and gifts of personal property given by the seller or any other party involved in the transaction, which were set out separately in HERA Mortgagee Letter 2009–11.

[22] While section 255(b)(4) of the NHA specifically provides that the ''Secretary'' shall specify the minimum number of years for a lease term, FHA proposes to use the term ''Commissioner'' to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner.

In addition, paragraphs (c) and (e) reference requirements in §§ 203.16a, 203.40, 203.41, and 234.66. To provide greater clarity, FHA proposes to restate requirements, as applicable to the HECM program, in FHA's part 206 regulations instead of cross-referencing to other parts of FHA's regulations. Therefore, FHA proposes to amend paragraph (c) by restating the flood insurance requirements, and to move and restate the property location requirements from current paragraph (c) to a new paragraph (f). FHA also proposes to restate the permissible restrictions on conveyance in paragraph (e).

In § 206.45(g), FHA proposes to codify and amend requirements announced in HERA Mortgagee Letter 2009–11. HERA Mortgagee Letter 2009–11 defined a ''HECM for Purchase'' as a real estate purchase where title to the property is transferred to the HECM borrower and, at the time of closing, the HECM first and second liens will be the only liens against the property. HERA Mortgagee Letter 2009–11 also provided that only properties where construction is completed are eligible for insurance under the HECM for Purchase program. While it has always been FHA's intent that these properties be habitable, in this rule, FHA proposes to include habitability, as evidenced by a Certificate of Occupancy or similar document, as a criterion for insurance eligibility. FHA will not codify the provision which states that loan proceeds may be used to satisfy outstanding payment obligations associated with a land contract, contract for deed, or similar purchase arrangements that will ensure the property meets FHA's title requirements, as this is interpretive guidance.

Property Standards; Repair Work (§ 206.47)

RMSA Mortgagee Letter 2014–11 provided that no unused Repair Set Aside funds for fixed interest rate HECMs could be made available to the borrower under any circumstance. After issuing RMSA Mortgagee Letter 2014–11, FHA published a notice in the **Federal Register** on July 10, 2014, at 79 FR 39408, soliciting comment on the RMSA mortgagee letter. FHA received two public comments, and one of those comments requested clarification on the aforementioned prohibition. In response to this comment, FHA clarified its policy in RMSA Mortgagee Letter 2014–21 to provide that borrowers with either fixed or adjustable interest rate HECMs could not be reimbursed for labor, but could be reimbursed for the cost of materials, under certain conditions, when repairs are being completed after loan closing. FHA proposes to codify its policy which allows borrowers to be reimbursed from the Repair Set Aside for the actual cost of repair materials by specifying that paragraph (c) applies to the reimbursement of contractors and creating a new paragraph (d) for the reimbursement of borrowers.

In paragraphs (c) and (d), FHA proposes amendments related to the inspection requirements. Currently, paragraph (c), which is the only paragraph in this section that discusses inspections, requires the post-repair inspection(s) of the property to be completed by an inspector approved by HUD. However, FHA published a proposed rule on February 6, 2013, at 78 FR 8448, which, in part, proposed to remove its Inspector Roster regulations. Therefore, to allow for consistency between inspection requirements for the HECM program and any future changes to FHA's forward mortgage program related to inspectors, FHA proposes to broaden the language used in § 206.47 to provide that the inspector or other qualified individual must be acceptable to the Commissioner.

FHA also proposes to codify HECM for Purchase program requirements announced in HERA Mortgagee Letter 2009–11 in a new paragraph (e) to state that in HECM for Purchase transactions, where major property deficiencies threaten the health and safety of the homeowner or jeopardize the soundness and security of the property, all repairs must be completed by the seller prior to closing. Appraisers are required to complete the appraisal report as ''Subject To'' the completion of the repairs. Additional content in the ''Repair and Property Set Asides Section'' of HERA Mortgagee Letter 2009–11 listing examples of major property deficiencies will not be codified, as it is guidance material. In addition, FHA will not codify the material regarding HECM borrowers continuing to have the option to elect to have the mortgagee set aside funds for the payment of property charges because borrowers are now subject to the Financial Assessment Property Charge Funding Requirements implemented by RMSA Mortgagee Letter 2014–21, which may or may not allow them to elect to have the mortgagee set aside funds for the payment of property charges.

Eligibility of Mortgages Involving a Dwelling Unit in a Condominium (§ 206.51)

The current regulation at § 206.51 requires that where the mortgage involves a dwelling unit in a condominium, the project in which the condominium is located must be committed to a plan of condominium ownership by deed or other instrument acceptable to the Secretary, but the regulation also provides a limited exception for some loans on single units in unapproved condominium projects. This ''spot approval'' exception was removed from the FHA condominium policy under HERA, and therefore, this rule proposes to eliminate this exception from § 206.51.

Eligible Sale of Property—HECM for Purchase (§ 206.52)

HERA Mortgagee Letter 2009–11 requires that mortgagees providing HECM financing for HECM for Purchase transactions comply with the FHA regulation at 24 CFR 203.37a. To provide greater clarity, FHA proposes to restate these requirements in FHA's part 206 regulations, as applicable to the HECM for Purchase program, instead of cross-referencing to other parts of FHA's regulations. These requirements encompass requirements set out in HERA Mortgagee Letter 2009–11 regarding a mortgagee's responsibility to prohibit property flipping practices for properties which are the subject of HECM for Purchase transactions. The content regarding the importance of prospective borrowers being aware of coercive actions against them is guidance and will not be codified.

Refinancings (§ 206.53)

This proposed rule updates FHA's regulation at § 206.105 which governs the MIP paid in connection with HECM loans. These proposed changes reflect statutory amendments to the NHA that provide FHA with additional flexibility in establishing the initial MIP for FHA-insured mortgages up to 3 percent of the amount of the original insured principal obligation of the mortgage and are discussed later in the preamble. The proposed rule makes a conforming change to § 206.53(c), which describes the initial MIP limit for the refinancing of HECM mortgage loans.

In addition, FHA proposes to move the content of current § 206.53(c) into a new subparagraph (c)(1), and also proposes to revise the wording of new § 206.53(c)(1), for clarity. These proposed changes do not alter the substantive aspect of the subject regulation. Consistent with subsection 203(c)(2)(A) of the NHA, the revision to § 206.53(c) clarifies that the initial MIP may not exceed the difference between: Three percent of the maximum claim amount for the new HECM loan, and the amount of the initial MIP already charged and paid by the borrower for the existing HECM loan being refinanced.

In new § 206.53(c)(2), FHA proposes to codify HECM for Purchase program requirements implemented by HERA Mortgagee Letter 2009–11 which provide that existing HECM borrowers who participate in a HECM for Purchase transaction are ineligible for a refinance transaction because the HECM refinance authority is only applicable when the property that serves as collateral for FHA-insurance remains the same. As a result of this addition, FHA proposes to eliminate the first sentence of § 206.53(a), which states that this section implements subsection 255(k) of the NHA. While that statement remains true, the HECM for Purchase program authority rests in subsection 255(m) of the NHA, and to avoid any potential confusion, FHA simply prefers to eliminate the specific reference to subsection 255(k) of the NHA.

Deferral of Due and Payable Status (§§ 206.55, 206.57, 206.59, 206.61)

RMSA Mortgagee Letter 2014–07, as amended by RMSA Mortgagee Letter 2015–02, implemented an alternative interpretation of subsection 255(j) of the NHA to provide viable options for Non-Borrowing Spouses to remain in the homes they had previously shared with their borrower spouses after the death of their spouses. In general, if the last surviving borrower predeceases an Eligible Non-Borrowing Spouse, and if the Deferral Period requirements are satisfied, the due and payable status will be deferred for as long as the Eligible Non-Borrowing Spouse continues to meet the Qualifying Attributes, the Deferral Period requirements, all applicable terms and conditions of the mortgage and loan documents and all other applicable FHA requirements. In addition, except for limited circumstances, mortgagees are required to provide Eligible Non-Borrowing Spouses with 30 days to cure defaults that occur during the Deferral Period and reinstate the Deferral Period.

In this rule, FHA proposes to codify the Deferral Period requirements set out in RMSA Mortgagee Letters 2014–07 and 2015–02 in new sections 206.55, 206.57, 206.59, and 206.61, with minor changes as discussed below.

The policy currently in effect as a result of RMSA Mortgagee Letters 2014–07 and 2015–02 provides for three Qualifying Attributes: (1) The Non-Borrowing Spouse must have been the spouse of a HECM borrower at the time of loan closing and remained the spouse of such HECM borrower for the duration of the HECM borrower's lifetime; (2) the Non-Borrowing Spouse must have been properly disclosed to the mortgagee at origination and specifically named as an Eligible Non-Borrowing Spouse in the HECM mortgage and loan documents; and (3) the Non-Borrowing Spouse must have occupied, and must continue to occupy, the property securing the HECM as his or her principal residence. In this rule, FHA proposes to give the Commissioner flexibility to set other Qualifying Attributes criteria as necessary through the publication of a **Federal Register** notice for comment. The Qualifying Attributes criteria is found in § 206.55(c).

RMSA Mortgagee Letter 2015–02 stated that an ''Eligible Non-Borrowing Spouse may become an Ineligible Non-Borrowing Spouse should any of the Qualifying Attributes cease to be met during the loan term.'' FHA takes the opportunity provided by this rulemaking to replace ''may become'' with ''shall become'' to make clear in § 206.55(c)(3) that if the Qualifying Attributes cease to be met, the previously Eligible Non-Borrowing Spouse will become an Ineligible Non-Borrowing Spouse.

FHA also takes the opportunity provided by this rulemaking to clarify that ''ongoing legal right to remain'' means a legal right to remain for life. This clarified requirement is found in § 206.55(d)(1). Further, FHA proposes to clarify in § 206.55(f) that nothing in § 206.55 may be construed as interrupting or interfering with the right of the borrower's estate or heir(s) to dispose of the property if they are otherwise legally entitled to do so.

FHA also proposes to clarify in § 206.59(d) that mortgagees must notify the Eligible Non-Borrowing Spouse within 30 days of the Deferral Period ending, unless the Deferral Period is reinstated. Also, this rule proposes to require the mortgagee to obtain documentation validating the reason for the cessation or reinstatement of the Deferral Period.

RMSA Mortgagee Letter 2014–07 specifically states that the proceeds of a HECM will not be disbursed to the borrower, borrower's estate, or the Non-Borrowing Spouse once the HECM is in a deferred due and payable status. FHA proposes to amend this statement in § 206.61(a) to broaden it and to clarify that during a Deferral Period, HECM proceeds may not be disbursed to any party, except as otherwise determined by the Commissioner through notice.

RMSA Mortgagee Letter 2014–07 also states that funds may be disbursed from a Repair Set Aside during a Deferral Period for the purpose of paying for repairs identified prior to origination as necessary to the insurance of the HECM, but that such repairs may only be paid for using the Repair Set Aside if the repairs are satisfactorily completed during the time period established in the Rider. However, FHA recognizes that there are situations in which, for a variety of reasons, repairs may not be completed within the originally established timeframe. Therefore, FHA proposes to provide flexibility to involved parties by allowing the Commissioner to extend the time period in which repairs must be completed in § 206.61(b).

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge of Insured Mortgages (§ 206.101)

FHA's current regulation at § 206.101 refers to §§ 203.430 through 203.435. To provide greater clarity, in § 206.101, FHA proposes to restate these requirements, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations.

Insurance Funds (§ 206.102)

Currently, § 206.102 provides that mortgages insured under part 206 shall be obligations of the General Insurance Fund. However, Section 2118(b)(2) of HERA transferred obligations arising under the HECM program, for loans endorsed on or after October 1, 2008, from the FHA General Insurance Fund to the MMIF. This proposed rule updates the regulations accordingly.

Payment of MIP (§ 206.103)

FHA proposes to provide in § 206.103 that the payment of MIP shall be made to the Commissioner by the mortgagee in cash until the HECM is paid in full, foreclosed or a deed in lieu of foreclosure is recorded, or the property is otherwise sold, instead of until the contract of insurance is terminated.

Amount of MIP (§ 206.105)

This proposed rule updates § 206.105 which governs the MIP paid in connection with HECM loans. Currently, § 206.105(a) provides for an initial MIP of two percent of the maximum claim amount; § 206.105(b) provides for a monthly MIP that accrues daily on the outstanding loan balance at a rate equivalent to 0.5 percent per annum and is added to the outstanding loan balance when paid to the Secretary.

As previously noted, HERA transferred obligations arising under the HECM program from the FHA General Insurance Fund to the MMIF. Each FHA-insured mortgage which is an obligation of the MMIF is subject to the premium structure at subsection 203(c)(2)(A) of the NHA. As amended by HERA, subsection 203(c)(2)(A) states, in part, that ''the Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount not exceeding 3 percent of the amount of the original insured principal obligation of the mortgage.''

In addition, NHA subsection 203(c)(2)(B) addresses annual mortgage insurance premiums. On August 12, 2010, the President signed into law Public Law 111–229,[23] which amended NHA subsection 203(c)(2)(B) to provide the Secretary with additional flexibility regarding the annual mortgage insurance premiums. Subsection 203(c)(2)(B) provides the Secretary with the discretion to decide to establish and collect annual mortgage insurance premiums in an amount not exceeding 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of appraised value of the property.

Public Law 111–229 also provides the Secretary with the discretion to adjust the initial MIP and annual MIP through notice published in the **Federal Register** or mortgagee letter which establishes the effective date for any premium adjustment therein.

With respect to the HECM program, for purposes of establishing the initial MIP, the original insured principal obligation of the mortgage is the maximum claim amount; therefore, consistent with the amendments to subsection 203(c)(2)(A) of the NHA, this proposed rule revises § 206.105(a) to specify that the Commissioner [24] may charge an initial MIP of up to three percent of the maximum claim amount. This rule also proposes to revise § 206.105(b), consistent with the amendments to subsection 203(c)(2)(B) of the NHA, to provide that the Commissioner [25] may establish and collect an annual MIP, which will accrue from the closing date, in an amount not to exceed 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of the appraised value of the property. FHA proposes to clarify that the MIP may be added to the loan balance when paid to the Commissioner. Moreover, the proposed rule adds a new paragraph (d) in § 206.105 stating the Commissioner's authority to adjust the amount of the initial and monthly MIP through notice.[26]

In addition, FHA proposes to codify provisions from RMSA Mortgagee Letter 2014–21 regarding the calculation of the initial MIP in a new paragraph (c) to § 206.105. Under existing authority, and as discussed above, the initial MIP may be adjusted by FHA through notice. Therefore, FHA proposes to codify the general framework for calculating the initial MIP, as described in RMSA Mortgagee Letter 2014–21, but not the specific initial MIP amounts, and will instead update the specific initial MIP amounts by notice, as necessary. FHA also proposes to make clear that any amount of funds set aside in a Servicing Fee Set Aside will not affect the initial MIP amount, even for those funds scheduled for payment during the First-12 Month Disbursement Period.

Mortgagee Election of Assignment or Shared Premium Option (§ 206.107)

FHA proposes to make conforming amendments to § 206.107(a) to account for the Deferral Period, which was introduced in RMSA Mortgagee Letter 2014–07. Specifically, in paragraph (a)(1), FHA proposes to clarify that the mortgagee may assign the HECM to the Commissioner if the outstanding loan balance is equal to or greater than 98 percent of the maximum claim amount, regardless of deferral status, or the borrower has requested a payment which exceeds the difference between the maximum claim amount and the outstanding loan balance and certain conditions, as specified in this section, are met. In subparagraph (a)(1)(iii), FHA proposes to expand upon one of these conditions, such that the HECM is either not due and payable under § 206.27(c)(1), or its due and payable status under § 206.27(c)(1) has been deferred pursuant to a Deferral Period.

FHA is also slightly revising the wording of § 206.107(a)(1)(iv) to clarify that the mortgagee shall have the option of assigning the mortgage to the Commissioner only if an event described in § 206.27(c)(2) has not occurred or the Commissioner has been notified of such occurrence but has denied approval for the mortgage to be due and payable.

Finally, to provide greater clarity, in § 206.107, FHA proposes to replace the cross-references to requirements in FHA's part 203 regulations with the actual requirements, as applicable to the HECM program, or cross-references to other sections within part 206.

FHA seeks public comment on the utility of FHA's shared premium option. Specifically, FHA requests comment on the following questions: Do mortgagees anticipate selecting the shared premium option in the future, and if not, what is the reasoning for not selecting the shared premium option?

Amount of Mortgagee Share of Premium (§ 206.109)

In current § 206.109, the amount of the mortgagee share of premium is determined based upon the age of the youngest borrower. To be consistent with the changes FHA made to the calculation of the principal limit in RMSA Mortgagee Letters 2014–07 and 2015–02, which bases the age factor on the age of the youngest borrower or Eligible Non-Borrowing Spouse, FHA proposes to amend § 206.109 to base the mortgagee share of premium on the age of the youngest borrower or Eligible Non-Borrowing Spouse.

Late Charge and Interest (§ 206.113)

In § 206.113(a), FHA currently requires the payment of a late charge when initial and monthly MIP are remitted to the Commissioner 10 days after the payment date in § 206.111(b). In § 206.113(b), FHA currently requires the mortgagee to pay interest on initial and monthly MIP remitted to the Commissioner more than 30 days after closing, and interest on monthly MIP remitted to the Commissioner more than 30 days after the payment date prescribed in § 206.111(b). However, FHA now has a web-based loan servicing system which was not in existence when this section was initially promulgated. This system, currently called HERMIT, reduces the amount of time needed to remit MIP. Therefore, it is no longer necessary to have such long time periods. In paragraph (a) of

[23] The title of this public law is ''To increase the flexibility of the Secretary of Housing and Urban Development with respect to the amount of premiums charged for FHA single family housing mortgage insurance and other purposes.''

[24] While subsection 203(c)(2)(A) specifically provides that the ''Secretary'' shall establish and collect an initial MIP not to exceed three percent of the maximum claim amount, FHA proposes to use the term ''Commissioner'' to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner.

[25] While subsection 203(c)(2)(B) specifically provides the ''Secretary'' with discretion to decide whether to establish and collect annual MIP in an amount not exceeding 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of appraised value of the property, FHA proposes to use the term ''Commissioner'' to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner.

[26] While Public Law 111–229 provides the ''Secretary'' with the discretion to adjust the initial MIP and annual MIP through notice published in the **Federal Register** or mortgagee letter, FHA proposes to use the term ''Commissioner'' to more accurately reflect HUD's delegations of authority from the Secretary to the Commissioner and ''notice'' to more concisely convey the method of notification.

§ 206.113, FHA proposes to reduce the time period to 5 days for late charges. In paragraph (b) of § 206.113, FHA proposes to require the mortgagee to pay interest on initial MIP remitted to the Commissioner more than 20 days after closing, and interest on monthly MIP remitted to the Commissioner more than 5 days after the date in § 206.111(b).

In paragraph (c) of this section, FHA proposes to clarify that any interest, in addition to late charge, owed may not be added to the outstanding loan balance and must be paid by the mortgagee.

Insurance of Mortgage (§ 206.115)

FHA proposes to add a new § 206.115 to capture the content of § 203.255. As mentioned throughout this preamble, to provide greater clarity, FHA proposes to restate content from part 203 in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to part 203 of FHA's regulations. Because the Lender Insurance program is currently unavailable for the HECM program, the Lender Insurance requirements of § 203.255 will not be included in this section.

In this section, FHA also proposes to add content originally from § 203.257 regarding creation of the mortgage insurance contract in paragraph (f).

Refunds (§ 206.116)

FHA's current regulation provides that no amount of the initial MIP shall be refundable. However, FHA recognizes that there are certain circumstances in which a refund would be warranted. Therefore, FHA proposes to provide for exemptions as authorized by the Commissioner.

Commissioner Authorized To Make Payments (§ 206.121)

Paragraph (c) of § 206.121 addresses second mortgages. Subsection 255(i)(2)(C) of the NHA permits FHA to require a subordinate mortgage from the borrower at any time in order to secure repayments of any funds advanced, or to be advanced to, the borrower. Throughout part 206, including § 206.121(c), FHA proposes to amend its regulations to permit the Commissioner, through notice, to require or not require a subordinate mortgage, which will align FHA's policy with the flexibility provided by the NHA. This flexibility will allow FHA to make a strategic decision about the necessity of subordinate mortgages, given various market factors and market changes.

The Commissioner has already stated, through RMSA Mortgagee Letter 2014–11, which limited the fixed interest rate product to the Single Lump Sum payment option, that the HECM Second Security Instrument and HECM Second Note were no longer required for fixed interest rate HECMs because there is no longer a risk of the Commissioner having to pay future advances to the borrower. At this time, the Commissioner is not changing the fixed interest rate HECM subordinate mortgage policy announced in RMSA Mortgagee Letter 2014–11. However, instead of codifying this change, FHA chooses to maintain the flexibility provided by subsection 255(i)(2)(C) of the NHA which allows the Commissioner to require a subordinate mortgage from the borrower of fixed or adjustable interest rate HECMs.

Claim Procedures in General (§ 206.123)

FHA proposes to make changes to this section that correspond with changes made to the definitions in § 206.3. In § 206.3, FHA proposes to add a new definition of borrower and amend the definition of mortgagor, such that a *mortgagor* means each original mortgagor under a mortgage and his heirs, executors, administrators and assigns; a *borrower* means a mortgagor who is an original borrower under the Loan Agreement and Note, but not including a borrower's successors and assigns. With these changes, it is no longer necessary for § 206.123(b) to provide for an expanded definition of mortgagor. Therefore, FHA proposes to amend newly renumbered paragraph (a)(2)(iii) such that it applies to borrowers and other permissible parties, which would include mortgagors as newly defined in § 206.3, and to remove and reserve paragraph (b).

Acquisition and Sale of the Property (§ 206.125)

The regulation at § 206.125(a) sets out the initial requirements of the mortgagee when the mortgage becomes due and payable. Paragraph (a)(1) currently requires the mortgagee to notify the Commissioner whenever the mortgage is due and payable under § 206.27(c)(1) or (c)(2). FHA proposes to provide more specificity to the timing of the required notification. FHA also proposes to make amendments to this paragraph in conformity with program changes made in RMSA Mortgagee Letters 2014–07 and 2015–02 regarding the Deferral Period. Together, these changes would require the mortgagee to notify the Commissioner within 60 days of the mortgage becoming due and payable when the conditions stated in the mortgage, as required by § 206.27(c)(1), have occurred or when the Deferral Period ends; the mortgagee is also required to notify the Commissioner within 30 days of one of the conditions stated in the mortgage, as required by § 206.27(c)(2), occurring.

FHA seeks public comment on the following questions: What is an appropriate timeframe, and how should such a timeframe be calculated, when title to the property insuring the HECM has been conveyed, since the mortgagee will not necessarily know that title has been conveyed or the date conveyance has occurred?

The current paragraph (a)(2) requires the mortgagee to provide notification to the borrower of the due and payable status, unless the mortgage is due and payable as a result of the borrower's death. FHA proposes to make conforming amendments to this paragraph as a result of program changes made in RMSA Mortgagee Letters 2014–07 and 2015–02 implementing a Deferral Period for Eligible Non-Borrowing Spouses, such that the mortgagee would be required to notify the borrower, Eligible Non-Borrowing Spouse, borrower's estate and borrower's heir(s), as applicable, within 30 days of the later of notifying the Commissioner of the due and payable status or receiving approval, if needed; the applicable party would have 30 days to engage in one of the permissible actions outlined in paragraph (a)(2) as discussed immediately below.

FHA proposes to make new changes to the permissible actions outlined in paragraph (a)(2), as well as conforming changes to bring the regulation in line with policy changes announced in RMSA Mortgagee Letter 2015–02. First, FHA proposes to amend paragraph (a)(2)(i) to include mortgagee advances as a required item for payment. Second, in paragraph (a)(2)(ii), which currently provides that the property may be sold for at least 95 percent of the appraised value, FHA proposes to provide more flexibility to the Commissioner to alter this percentage. The 95 percent requirement has proven at times to be too high, leading to unwanted foreclosures that possibly could have been avoided through sale of the property. This has been particularly true in recent years. The downturn in the housing market has resulted in declining values and an oversupply of housing stock. The market downturn highlights the need for flexibility in establishing the minimum percentage of the appraised value that FHA will accept after sale of the property securing the mortgage loan. To address this concern, this rule proposes to replace the 95 percent requirement with flexibility for the Commissioner to establish such amount, which shall not exceed 95 percent of the appraised value. FHA also proposes to make changes in this paragraph which will limit the amount of money FHA is paying through the claims process for closing costs. In conducting its oversight of the claims process, FHA is aware that some mortgagees are including excessive closing costs in their insurance claims. To stop this from occurring in the future, FHA proposes to more closely align HECM's policy regarding net proceeds requirements with those requirements for pre-foreclosure and Real Estate-Owned (REO) property policies, by requiring that the closing costs from the sale not exceed 11 percent of the sales price. In paragraph (a)(2)(iv), FHA proposes to codify the cure provision announced in RMSA Mortgagee Letter 2015–02, and in paragraph (a)(2)(vi), FHA proposes to allow for other actions as permitted by the Commissioner through notice.

FHA proposes to add paragraph (a)(4) to codify program changes announced in RMSA Mortgagee Letters 2014–07 and 2015–02 such that an Eligible Non-Borrowing Spouse could correct the condition which resulted in the Deferral Period ending and have the mortgage reinstated in accordance with § 206.57(d).

FHA proposes to amend paragraph (b) to correct an inadvertent drafting error resulting from an interim rule published on August 16, 1995. Prior to the effective date of this interim rule, § 206.125(b) provided that when a HECM became due and payable (typically upon the borrower's death), the property could be appraised at the borrower's request and at the borrower's expense. Section 206.125(b) also required the property to be appraised no later than 15 days before a foreclosure sale. Since FHA required the mortgagee to bid the appraised value for HECM foreclosures, an appraisal was needed before the foreclosure. The reason the borrower, or more likely, the borrower's estate might also want an appraisal is to help the estate decide whether to exercise its option to sell the property for the lesser of the outstanding loan balance or appraised value, per § 206.125(c). This short sale option is in FHA's interest, as it avoids foreclosure, holding, and sales expenses. However, to avoid such expenses, the estate would need to be provided with the appraised value much earlier than 15 days before the foreclosure sale. Therefore, FHA published an interim rule on August 16, 1995, at 60 FR 42754, stating in the preamble that it was requiring the mortgagee to appraise the property within 30 days of the borrower's death ''instead'' of 15 days before the foreclosure sale. However, the actual text of the rule provided for both the 30-day appraisal and 15-day appraisal, thereby inadvertently requiring two appraisals. This proposed change would correct multi-appraisal ordering that is costly to the mortgagee and to FHA by amending paragraph (b) to instead require the mortgagee to have the property appraised no later than 30 days after receipt of the request by an applicable party in connection with a potential property sale, and when a foreclosure sale is occurring, the appraisal must be performed within 30 days of the foreclosure sale.

In paragraph (c), FHA provides greater clarity around which parties are permitted to sell the property. FHA proposes to clarify that when the HECM is not due and payable, the borrower or an authorized representative of the borrower may sell the property for at least the lesser of the outstanding loan balance or appraised value; when the HECM is due and payable, the borrower or other party with legal right to dispose of the property may sell the property for a discounted percentage of appraised value in accordance with § 206.125(a)(2)(ii).

To provide more clarity around the timing requirements for mortgagees to initiate foreclosure, FHA proposes to amend paragraph (d)(1) of this section to base the six month timeframe within which a mortgagee must commence foreclosure off of the due date, as newly defined in proposed § 206.129(d)(1). Further, in paragraph (d)(2) of this section, in order to clarify existing policy, FHA proposes to add ''city or municipality'' after State, such that if the laws of the State, city or municipality in which the mortgaged property is located or Federal bankruptcy law does not permit foreclosure within the aforementioned timeframe, the mortgagee must initiate foreclosure within six months after the expiration of the time during which such foreclosure is prohibited by such laws. FHA also proposes to amend paragraph (d)(4) to allow the mortgagee to bid at a foreclosure sale an amount at least equal to the sum of the outstanding loan balance and incurred expenses, when that amount is less than the appraised value.

FHA proposes to amend paragraph (f) to clarify that a party with legal right to dispose of the property may provide the mortgagee with a deed in lieu of foreclosure. This rule also proposes to require that a deed in lieu of foreclosure, whether provided by the borrower or other party with legal right to dispose of the property, must be provided within 9 months of the due date. FHA did not previously impose a time period for this requirement, but limiting this to 9 months is important because such a timeframe will allow the borrower or other party with legal right to dispose of the property 6 months to attempt to sell the property and an additional 3 months to obtain a title search and get the deed signed, provided that title is clear. In this section, FHA also proposes to create a Cash for Keys initiative to incentivize borrowers to deed the property within 6 months of the due date.

Section 206.125(g) requires a mortgagee to make diligent efforts to sell the property within six months from the date the mortgagee acquired the property. FHA recognizes that there may be circumstances in which it is appropriate to provide more time, and therefore has reserved the ability to allow for additional time within which the mortgagee must sell the property.

Application for Insurance Benefits (§ 206.127)

When the mortgagee acquires title, FHA's current regulation at § 206.127 requires mortgagees to apply for the payment of insurance benefits within 15 days after the sale of the property by the mortgagee. If the property is not sold within six months from the date the mortgagee acquired title, the mortgagee must apply for another appraisal within a specified time period and apply for insurance benefits within 15 days of receipt of the new appraisal. When a party other than the mortgagee acquires title, FHA's current regulation at § 206.127 requires that the mortgagee apply for payment of the insurance benefits within 15 days after the other party acquires title. It has come to FHA's attention that mortgagees have experienced challenges in meeting these short time periods. Therefore, in this rule, FHA proposes to extend these time periods to 30 days, and where the mortgagee acquires title, FHA also proposes to provide flexibility to the Commissioner to extend the 30-day time period.

In addition, in § 206.127(a)(2), FHA's current regulation requires that mortgagees bear the cost of the appraisal where the mortgagee acquires title but does not sell the property within six months of acquiring title; however, this cost has historically been reimbursed through the claim process. FHA proposes to clarify that mortgagees are permitted to add the cost of the appraisal to the claim amount.

Section 206.127(c) refers to §§ 203.351 and 203.353. To provide greater clarity, FHA proposes to restate these requirements in part 206, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations. These requirements will be restated, as applicable to the HECM program, in §§ 206.135(a) and 206.136, respectively, and cited to in § 206.127(c).

Finally, FHA proposes to add a new paragraph (d) to clarify that mortgagees may only file an application for insurance benefits provided the contract of insurance has not terminated.

Payment of Claim (§ 206.129)

FHA proposes to revise § 206.129(d), which governs the computation of the amount of a HECM insurance claim. This determination is based on the mortgage ''due date'', which is the date the HECM became due and payable. Paragraph (d), as currently written, provides that the due date is the date the mortgagee notified the Secretary of the borrower's death under § 206.27(c)(1) or the date the Secretary granted approval to accelerate the loan under § 206.27(c)(2). These regulations do not account for the existence of a Deferral Period, as implemented by RMSA Mortgagee Letters 2014–07 and 2015–02. Accordingly, FHA proposes to revise § 206.129(d) in paragraph (d)(1) to provide that the *due date* is the date when the mortgagee notifies or should have notified the Commissioner that the mortgage is due and payable under the conditions stated in § 206.27(c)(1), or the date that the Deferral Period, as provided for in the mortgage by § 206.27(c)(3), ends; or the date the Commissioner approves a due and payable request as provided in the mortgage by § 206.27(c)(2).

The regulation at § 206.129(d) also provides for reimbursement to the mortgagee as part of the mortgage insurance claim when the mortgagee advances its corporate funds for the payment of property charges. The proposed rule, in general, prospectively limits insurance claim reimbursement to a mortgagee for advancement of the following property charges to two years of payments for each such charge, except that the Commissioner may approve an extension under such circumstances, terms, and conditions determined and specified as acceptable to the Commissioner: Taxes, ground rents, water rates, and utility charges that are liens prior to the mortgage; special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage; and hazard insurance premiums on the mortgaged property.

FHA understands that borrowers may run into unexpected financial difficulty, causing their mortgagees to advance property charges in order to avoid declaring the loan due and payable. However, it is FHA's position that the need for property charge advances for a period greater than two years is a strong indication that a borrower's income and HECM proceeds are insufficient to meet the borrower's living expenses and cover property charges. The new limit on claims for insurance benefits for advances of property charges is intended to address this concern by encouraging mortgagees and borrowers to proactively work out mutually advantageous methods that will enable payment of property charges by the borrower or repayment of the property charges advanced by the mortgagee to avoid a due and payable status. However, FHA also recognizes that an absolute two year limitation may be too strict in certain circumstances and potentially cut-off attempts by the borrower and mortgagee to work out such solutions due to the deadline. Accordingly, this proposed rule authorizes limited exceptions to the two year period under circumstances prescribed by the Commissioner, but does not convey any right to the borrower to reach a resolution with the mortgagee.

In addition, § 206.129(d) refers to various sections in part 203 and § 204.322(l). To provide greater clarity, in § 206.129(d), FHA proposes to restate the requirements of part 203, as applicable to the HECM program, instead of cross-referencing to part 203. FHA also proposes, however, to eliminate the reference to § 204.322(l) altogether because it no longer exists.

Finally, FHA seeks feedback on the utility of instituting a pro rata interest and expense curtailment policy as was recently proposed for FHA's forward mortgages in Federal Housing Administration (FHA): Single Family Mortgage Insurance Maximum Time Period for Filing Insurance Claims, Curtailment of Interest and Disallowance of Operating Expenses Incurred Beyond Certain Established Timeframes (FR–5742–P–01). FHA specifically asks the follow questions:

(1) Should the HECM program provide for the pro rata curtailment of debenture interest and reduction of expenses incurred as a result of the mortgagee's delay in filing the mortgage insurance claim, and if so, how should such a policy be structured to ensure feasible implementation?

(2) What expenses are caused by or increase as a result of the mortgagee's delay in filing a mortgage insurance claim, and what expenses are not impacted by such a delay?

Termination of Insurance Contract (§ 206.133)

FHA proposes to revise paragraph (b) to renumber current paragraph (b) as (b)(1) and to add a new subparagraph (2) specific to termination of the insurance contract when a claim for insurance benefits will be presented.

Paragraph (e) of § 206.133 refers to the provisions of § 203.295 concerning voluntary terminations. To provide greater clarity, FHA proposes to restate the requirements of § 203.295, as applicable to the HECM program, in this section, instead of cross-referencing to a section in part 203.

In paragraph (f) FHA takes the opportunity provided by this rulemaking to clarify that when the insurance contract is terminated, the rights of the mortgagee shall also terminate. The current regulation unintentionally also references the rights of the borrower, but the borrower does not have any rights in regards to the insurance contract; that contract is between FHA and the mortgagee. In this paragraph, FHA also proposes to state that all obligations of the Commissioner shall cease immediately upon termination of the insurance contract, and such will apply prospectively.

Additional Requirements: §§ 206.134–206.146

As mentioned numerous times throughout this preamble, FHA is using the opportunity provided by this rulemaking to eliminate confusing cross-references to other parts of FHA's regulations and replace them with requirements specifically applicable to the HECM program. This is particularly true of part 203 references, for which regulations were written for the FHA forward mortgage product; the forward and reverse mortgage programs differ in many respects. In addition, cross references were appropriate at the time when the HECM program was a demonstration program of only 2,500 loans. This is no longer the case as the HECM program has been a full-fledged program for almost 20 years. Therefore, FHA proposes to add sections 206.134 through 206.146, which convey the content of a number of part 203 regulations, as applicable to the HECM program.

FHA proposes to make a few substantive changes from these part 203 provisions. In § 206.134, which contains material from § 203.343, FHA proposes to account for situations in which a dwelling is rebuilt upon an existing lot. Currently this section only allows the mortgagee, with the consent of the Commissioner, to accept an addition to or substitution of security for the purpose of removing a dwelling to a new lot, but FHA has encountered situations in which rebuilding a dwelling on the same lot is desirable. In § 206.135, which contains content from § 203.351, FHA proposes to amend the timing for the recorded assignment instrument, such that it must be forwarded to the Commissioner as soon as it is received by the mortgagee, but it need not be provided on the date the application for assignment is submitted. When the application for assignment is submitted, only a proposed assignment instrument would be required. Finally, in § 206.136, FHA proposes to address concerns with super lien states by requiring the HECM mortgage to be in first lien status prior to homeowners association and condo association liens.

Subpart D—Servicing Responsibilities

Providing Information (§ 206.203)

The current regulation at § 206.203(a) requires that the mortgagee provide the borrower with an annual statement summarizing mortgage activity during the calendar year. FHA has discovered that this requirement may have the potential for deferring notification to borrowers of important actions affecting their mortgage accounts. Further, current § 206.203(b) provides that the mortgagee shall provide the borrower with a statement of the account every time the mortgagee makes a line of credit disbursement. This may have the potential to impose an undue administrative burden on mortgagees, and also to deluge borrowers with multiple statements if several line of credit disbursements are requested within a given month. To alleviate these concerns, this proposed rule would revise § 206.203 to require the mortgagee to provide the borrower with a single statement at the end of each month summarizing account activity. The monthly statement shall be in a format acceptable to the Commissioner and contain the information that is currently required annually under § 206.203(a) for the specific month covered by the statement, as well as for the calendar year as of the date of the statement. This rule would therefore remove the requirements that the mortgagee provide the borrower with a statement of account activity every time it makes a line of credit payment or recalculates the monthly payments.

The current regulation at § 206.203(c) requires the mortgagee to provide the borrower with the name of the mortgagee's employee who has been specifically designated to respond to HECM loan inquiries. The requirement that a specific individual be named has proven to be impracticable, given the large number of HECM loans serviced by mortgagees and the fact that such inquiries are typically addressed by a team of employees rather than a single individual. Therefore, FHA proposes to require that the borrower be provided with the telephone number where the borrower may speak to employee(s) designated to address inquiries concerning their HECM loans. The use of the word ''speak'' in the regulatory language is deliberate. Although mortgagees would no longer be required to provide the name of a specific employee, it is important for mortgagees to ensure that their employees are tasked with receiving and responding to calls from HECM borrowers as opposed to having such calls routed to voicemail or handled through email.

In addition, because it is necessary for FHA to have access to information regarding individual accounts as part of FHA's oversight, in § 206.203(c)(3), FHA proposes to require mortgagees to respond to FHA requests for information concerning individual accounts, which mirrors forward mortgage requirements.

Finally, the regulation at § 206.203(c) currently provides that the ''forward mortgage'' requirements at § 203.508(a) and (b) pertaining to loan information to borrowers are also applicable to the HECM program. As mentioned earlier in this preamble, in order to provide greater clarity, FHA proposes to restate requirements in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations. Accordingly, FHA proposes to amend § 206.203 to provide the actual requirements of § 203.508(a) and (b) as applicable to the HECM program.

Property Charges (§ 206.205)

RMSA Mortgagee Letter 2014–21 [27] implemented substantial changes to FHA's Property Charge Funding Requirements in § 206.205 to address increasing property charge defaults, which resulted in higher payouts of insurance claims. RMSA Mortgagee Letter 2014–21 provided that property charges are obligations of the borrower that are defined as taxes, hazard insurance premiums, any applicable flood insurance premiums, ground rents, condominium fees, and any other special assessments that may be levied by municipalities or state law.

[27] FHA initially implemented changes to HECM's Property Charge Funding Requirements in RMSA Mortgagee Letter 2013–27, but that RMSA mortgagee letter was superseded by RMSA Mortgagee Letter 2014–21.

The current regulation at § 206.205 provided that borrowers were responsible for the payment of property charges, but allowed the borrower to elect to require the mortgagee to pay certain property charges by withholding funds from monthly payments due to the borrower or by charging such funds to a line of credit. FHA's new policy, announced in RMSA Mortgagee Letter 2014–21, however, provided additional methods for the payment of property charges, and specified the conditions under which these methods must or may be used.

Based on the results of the Financial Assessment, for fixed or adjustable interest rate HECMs, the mortgagee may require a LESA for the payment of certain property charges. For fixed interest rate HECMs, if a LESA is required, it must be a Fully-Funded LESA. For adjustable interest rate HECMs only, based on the results of the Financial Assessment, the mortgagee may require the LESA to be Partially- or Fully-Funded. If the mortgagee does not require a LESA, a borrower who selects an adjustable interest rate HECM may elect to have a Fully-Funded LESA, elect to have the mortgagee pay such property charges, or elect to be responsible for the independent payment of all property charges. If the mortgagee does not require a LESA, a borrower with a fixed interest rate HECM may elect to have a Fully-Funded LESA or elect to be responsible for the independent payment of all property charges.

This rule proposes to amend § 206.205 to codify FHA's property charge requirements announced in RMSA Mortgagee Letter 2014–21 with some exceptions and further amendments as discussed below.

As mentioned earlier in this preamble in regards to the definition of ''property charges,'' RMSA Mortgagee Letter 2014–21 did not include utilities in its definition, but FHA is now proposing to add utilities as a borrower responsibility. Corresponding amendments are proposed for the definition of ''property charges'' in § 206.3.

RMSA Mortgagee Letter 2014–21 listed specific details about the information that a mortgagee must provide to the borrower in the section titled ''Information to the Mortgagor.'' In this rule, FHA does not propose to codify in FHA's part 206 regulations the requirement regarding information to be provided to borrowers because that section of RMSA Mortgagee Letter 2014–21 is more appropriately characterized as guidance.

Similarly, RMSA Mortgagee Letter 2014–21 listed specific details about what is to be included in a notice to the borrower when the borrower fails to make property charge payments in sections titled ''Mortgagor Non-Payment of Property Charges—Fully-Funded Life Expectancy Set Aside—Adjustable Rate HECMs'' and ''Mortgagor Non-Payment of Property Charges—Partially-Funded Life Expectancy Set Aside.'' In this rule, FHA does not propose to codify in FHA's part 206 regulations the requirements regarding information that is to be provided to borrowers because that content is more appropriately characterized as guidance.

RMSA Mortgagee Letter 2014–21 states that if the insured first mortgage is assigned to the Commissioner, or if payments are made through the second mortgage under the Demand Assignment process, the Commissioner is not required to assume the responsibility for property charge payments, but may continue to administer payments for property charges for borrowers from any funds available in the LESA. In this rule, FHA proposes to further provide that for adjustable interest rate HECMs, if the LESA has a positive remaining balance but funds are insufficient to pay all property charges due or semi-annual disbursements to the borrower, the Commissioner may provide the remaining funds to the borrower as line of credit.

FHA is also proposing amendments to § 206.205 that were not included in RMSA Mortgagee Letter 2014–21 for situations in which the borrower is not required to have a LESA and elects to pay the property charges himself. The failure to pay required property charges not only places the borrower at risk of foreclosure and loss of the home, and prompts mortgagees to incur the costs of advancing its corporate funds, but it also potentially increases losses to the MMIF. Specifically, FHA is proposing to require the mortgagee to notify the borrower and Commissioner that an obligation of the mortgage has not been performed within 30 days of the mortgagee becoming aware of a missed property charge payment and there are no available HECM funds from which the mortgagee can make the payment. The borrower would then have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment. FHA also proposes to state that the mortgagee may provide any permissible loss mitigation options to the borrower. If the borrower is unable or unwilling to repay the mortgagee for any funds advanced by the mortgagee to pay property charges outside of a LESA, the mortgagee must submit a due and payable request under the provisions of § 206.27(c)(2).

Allowable Charges and Fees After Endorsement (§ 206.207)

In § 206.207(a), FHA's current regulation includes references to a number of regulatory provisions in part 203. To provide greater clarity, FHA proposes to restate these requirements in FHA's part 206 regulations, as applicable to the HECM program, instead of cross-referencing to other parts of FHA's regulations.

In § 206.207(b), FHA proposes to clarify that a mortgagee may collect a servicing charge beginning with the month of closing and continuing through a Deferral Period. FHA also proposes to allow a servicing charge to be included in the mortgage Note rate, in an amount set by the Commissioner through notice which shall be between 36 and 150 basis points.

FHA specifically solicits public comment on the following questions:

(1) What is an appropriate servicing fee range (minimum and maximum dollar amounts) for the flat monthly servicing fee, and what factors support the upper and lower bounds of that range?

(2) What is an appropriate servicing fee range, in basis points, that could be included in the Note rate, and what factors support the upper and lower bounds of that range?

Prepayment (§ 206.209)

FHA proposes to make clarifying changes in paragraph (a) to distinguish from when a borrower repays a mortgage in full and prepays a mortgage in part. FHA also proposes to add a new paragraph (c) to specify that any funds received from a partial prepayment must be applied in accordance with the Note.

Determination of Principal Residence and Contact Information (§ 206.211)

The current regulation at § 206.211 requires that the mortgagee verify, at least annually, whether the property is the principal residence of at least one borrower. To further facilitate communications between the mortgagee and borrower, this proposed rule builds upon this provision by requiring that the mortgagee also verify the borrower's contact information, including whether the borrower may voluntarily wish to designate an alternative point of contact for notifications from the mortgagee.

In addition, FHA proposes to codify changes made to the determination of principal residence and contact information that were implemented by RMSA Mortgagee Letters 2014–07 and 2015–02. Consistent with the requirements announced in these RMSA mortgagee letters, FHA proposes to amend § 206.211 to require the mortgagee, where an Eligible Non-Borrowing Spouse has been identified, to obtain an additional certification from the borrower confirming the Eligible Non-Borrowing Spouse remains his or her spouse and the Eligible Non-Borrowing Spouse continues to reside in the property as his or her principal residence. Upon the death of a borrower with an Eligible Non-Borrowing Spouse, the Eligible Non-Borrowing Spouse is required to submit the annual certification as long as that spouse remains an Eligible Non-Borrowing Spouse.

Subpart E—HECM Counselor Roster

HECM Counselor Roster (§§ 206.302, 206.304, 206.306 and 206.308)

FHA proposes to clarify that counselors, in addition to being listed on the HECM Counselor Roster, must be employed by a participating agency. FHA proposes to define ''participating agency'' in § 206.3.

FHA proposes to make minor amendments to §§ 206.304, 206.306 and 206.308 to differentiate between when a counselor is a ''housing counselor,'' and when a counselor becomes a ''HECM counselor.''

In addition, FHA proposes to remove the grandfathering clause in § 206.304(c) because the time for which it was applicable has passed.

3. Technical Amendments

The definition of ''principal limit'' in § 206.3 incorrectly cites to § 209.209(b). The correct citation is § 206.209(b).

In § 206.9(a), FHA cites to requirements in section 255(b)(3) of the NHA, but § 206.9(a) should actually cite to subsections 255(b)(2) and 255(d)(1) of the NHA.

In § 206.16, the reference to § 206.17 should be changed to § 206.107.

In § 206.23(d), the third ''mortgagee'' should be changed to ''mortgage''.

In § 206.43(b)(1), the reference to § 206.29 should be changed to § 206.25, as § 206.29 has been merged with § 206.25.

In § 206.53(b), the references to paragraphs (c) and (d) should be changed to (d) and (e), respectively.

In § 206.125(a)(3), ''forclosure'' is misspelled and should be changed to ''foreclosure'' and in § 206.125(c), the two references to § 206.27(e) should be changed to § 206.27(d), as paragraph (e) does not exist.

''Mortagee'' in § 206.127(a)(2) should be changed to ''mortgagee'' to correct an inadvertent spelling error.

In § 206.43(a), a reference is made to 24 CFR 3500.7, and in § 206.201(c)(2)(i), a reference is made to 24 CFR 3500.21(e)(2). However, effective July 21, 2011, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011, including, from HUD, the Real Estate Settlement Procedures Act of 1974 (RESPA) which had previously been implemented in HUD's Regulation X, 24 CFR part 3500. See sections 1061 and 1098 of the Dodd-Frank Act. In these section, FHA proposes to cite to 12 CFR 1024.7 and 12 CFR 1024.21(e)(2), respectively, where these provisions are now codified.

In current § 206.205(d), which FHA proposes to redesignate as § 206.205(d)(1), the reference to § 206.121(a) is incorrect and should be changed to § 206.121(b).

IV. Questions for Commenters

HUD welcomes comments on all aspects of the proposal, including the Regulatory Impact Analysis (RIA) attached to this proposed rule. In addition, there are several provisions in the rule that FHA would like to note for special consideration and is seeking public comments.

A. Maximum Closing Costs Allowed on Sale of Property

The flexibility provided in this rule to sell properties for less than the full appraised value necessitates limits to the amount of closing costs FHA should allow to be deducted from sales proceeds. This rule proposes to require that the closing costs from the sale be no more than 11 percent of the sales price. FHA specifically invites comments regarding

1. Is 11 percent a reasonable cap? FHA chose this percentage based on the policy for sale of its REO inventory, which allows for payment of 6 percent sales commission and 5 percent for other closing costs, but is interested in comments to indicate whether the amount should be higher or lower, and why the commenter believes the adjustment is appropriate.

2. Should FHA implement a tiered approach to the maximum percent of closing costs in relation to the sales price? For example, should a property selling for under $100,000 be allowed a higher percentage of closing costs than a property selling for over $100,000?

3. Should FHA implement a tiered approach to the maximum dollar amount of closing costs in relation to the sales price? For example, should a property selling for under $100,000 be allowed a different dollar amount than a property selling for over $100,000?

B. Utilities

FHA proposes to amend the definition of ''property charges'' to include utilities as a borrower obligation under the terms of the Mortgage that must be satisfied by the borrower, as applied in § 206.205 of the proposed rule. Failure to pay utilities that result in a lien against the property would potentially trigger a due and payable event. FHA requests comments on this proposal and the following:

1. What utilities, if any, should be defined as property charges?

2. When should a utility bill result in due and payable status?

3. How do mortgagees currently receive notice of delinquent utility bills and potential liens on the property?

C. Property Inspection & Repairs Subsequent to Closing

With the dwelling serving as security for the loan, it is important that the dwelling be maintained as the loan ages. To ensure that the borrower complies with their obligation under the mortgage to maintain the property in good repair, FHA is considering establishing a requirement in the final rule for Mortgagees to conduct periodic inspections of the property for the life of the HECM and allowing the cost of inspection to be included as a reasonable and customary charge that may be collected and added to the borrower's loan balance. If such a requirement is included in the final rule and the property requires repairs, FHA anticipates that where funds are available from the HECM proceeds for adjustable interest rate HECMs, it may allow the mortgagee to establish a Repair Set Aside to ensure that necessary repairs are made. FHA would further anticipate that where a property inspection during a Deferral Period identifies necessary repairs, a Repair Set Aside may not be established. The Eligible Non-Borrowing Spouse would be responsible for making any required repairs identified during a Deferral Period within a specified timeframe. FHA specifically invites comment on the following questions:

1. What is the appropriate frequency of property inspections, including whether more or less frequent inspections may be necessary under certain conditions (for example, if a property is newly constructed, a prior inspection indicated disrepair, or following a disaster event), and whether interior and exterior inspections should be required at the same frequency?

2. Should inspections consist of exterior inspections only, or should they also include interior inspections?

3. Should the borrower be required to complete the repairs within one year of the date the property was inspected?

4. When no HECM funds are available and the borrower or, if applicable, Eligible Non-Borrowing Spouse, does not have funds to make the needed repairs, how else might repairs be funded?

5. What types or categories of items for repair should a property inspector identify as being necessary? In what ways, if any, should this differ from the condition status of the property at origination?

6. What are the methods and standards the property inspector should employ when conducting the property inspection to identify items that are in need of repair?

7. If a Repair Set Aside was established to complete repairs identified during a periodic inspection and the HECM borrower passes away prior to the completion of repairs, should FHA consider allowing funds to be disbursed from a Repair Set Aside during a Deferral Period for the purpose of paying for necessary repairs identified during the property inspection?

8. What would be the potential costs to borrowers and servicers associated with periodic inspections? What benefits would result from periodic inspections and do they outweigh these costs?

9. As an alternative to the requirement proposed by this rule, HUD could require inspections consistent with the risks presented in each loan, such as the amount of the outstanding balance in relation to the value of the property and the age of the home. Would such an approach be more effective for both maintaining the value of the property and reducing costs for FHA and borrowers?

D. Non-Borrowing Spouse Communication

FHA understands that Non-Borrowing Spouses and successors in interest may face difficulties after the death of the borrower in understanding and exercising their rights with regard to the mortgage. In addition to the counseling required for all borrowers, the proposed rule would require additional housing counseling for Non-Borrowing Spouses to explain how and when the HECM would become due and payable. FHA specifically invites comment on the following questions:

1. What difficulties have Non-Borrowing Spouses, heirs, and successors in interest had in obtaining information about HECMs and understanding and exercising their rights?

2. What adjustments could FHA make to this rule to address the identified difficulties and facilitate communication with Non-Borrowing Spouses, heirs, and successors in interest?

E. Regulatory Impact Analysis—Benefits and Costs

HUD also welcomes comments on all aspects of the RIA to this proposed rule and would welcome any additional information or insight commenters may have on the benefits and costs of each provision of the rule. HUD's full RIA is available for review and comment at Regulations.gov.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Collection Numbers 2502–0524 and 2502–0611. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
206.59 Mortgagee notifies NBS of the end of the Deferral Period.	10	10,000	0.17	1,700.
206.125 Mortgagee notifies NBS of D&P status and applicable options.	10	10,000	0.10	1,000.
206.125 Notification of D&P status to HUD when Deferral Period ends.	10	10,000	0.10	1,000.
206.203 Information Sharing with HUD	10	12,844,433 (automated)	0.15 (automated)	1,926,665 (automated)
	10	10,000 (manual)	1 (manual)	10,000 (manual).
206.211 NBS Annual Occupancy Certification	10	24,000	0.33	7,920.
Totals	10	12,908,433		1,948,285.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5353) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947 and Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Review—Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule was an economically significant rule under the order. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC, 20410–0500. The Initial Economic Analysis prepared for this rule is also available for public inspection in the Regulations Division. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule reduces burdens on mortgagees by codifying all regulatory policy related to the HECM program in one place. Absent this proposed rule, mortgagees would have to deduce the current program requirements by comparing a number of mortgagee letters to the current HECM regulations at 24 CFR part 206 and determining which regulatory content has, in effect, been superseded by HERA and RMSA mortgagee letters.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Many of the policies discussed in this proposed rule, such as the requirement that mortgagees perform a Financial Assessment of prospective HECM borrowers, the requirements of the HECM for Purchase program, the introduction of the Single Lump Sum payment option, and the limitation on disbursements during the First 12-Month Disbursement Period, have already been implemented by mortgagees large and small. The codification of these policies will not impact large or small mortgagees, other than easing burden by providing them with one location to find all HECM regulatory requirements.

The new policy changes proposed by this rule would address important concerns with the HECM program, including the risk the program has, in the past, posed to the MMIF, as well as the continued availability of this program for seniors. Some of the new policy proposals are expected to relieve burdens on all mortgagees, large and small. For example, the amendment to the definition of ''expected average mortgage interest rate'' providing the mortgagee with the ability to lock-in the expected average mortgage interest rate prior to the date of loan closing will align the provision with current industry policy. Removing the duplicative appraisal requirement and creating a Cash for Keys incentive structure will both relieve burden on mortgagees. Other policies are expected to increase burdens on mortgagees, although are not expected to raise to the level of having a significant impact on a substantial number of small entities. For example, all mortgagees would be required to disclose all available HECM program options. To minimize the effect of this provision on all mortgagees, FHA intends to create disclosure documents listing all available options for mortgagees to provide to prospective borrowers. Also, while new lifetime interest rate caps for monthly adjustable interest rate HECMs will affect large and small mortgagees, the impact will be limited because the industry currently self-imposes a 10 percent life-of-loan cap on monthly adjustable interest rate HECMs. FHA believes that these policies are reasonable and provide mitigating features so that the FHA-approved mortgagees, large and small, will not be adversely affect by these policies.

Notwithstanding FHA's determination that this rule will not have a significant effect on a substantial number of small entities, FHA specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule imposes either substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Home Equity Conversion Mortgages is 14.183.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan programs-housing and community development, Mortgage insurance, Penalties.

24 CFR Part 206

Aged condominiums, loan programs, housing and community development, mortgage insurance, reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 30 and 206 to read as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1; 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 2. Revise paragraphs (a)(8) and (a)(10) of § 30.35 to read as follows:

§ 30.35 Mortgagees and lenders.

(a) * * *

(8) Fails to timely submit documents that are complete and accurate in connection with a conveyance of a property or a claim for insurance benefits, in accordance with §§ 203.365, 203.366 or 203.368; or a claim for insurance benefits in accordance with § 206.127 of this title.

* * * * *

(10) Fails to service FHA insured mortgages, in accordance with the requirements of 24 CFR parts 201, 203, 206 and 235.

* * * * *

■ 3. Revise part 206 to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

Subpart A—General

Sec.

Subpart B—Eligibility; Endorsement

Mortgages

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

Subpart A—General

§ 206.1 Purpose.

The purposes of the Home Equity Conversion Mortgage (HECM) Insurance program are set out in section 255(a) of the National Housing Act, Public Law 73–479, 48 STAT. 1246 (12 U.S.C. 1715z–20) (''NHA'').

§ 206.3 Definitions.

As used in this part, the following terms shall have the meaning indicated.

Borrower means a mortgagor who is an original borrower under the HECM Loan Agreement and Note. The term does not include successors or assigns of a borrower.

Borrower's Advance means the funds advanced to the borrower at the closing of a fixed interest rate HECM in accordance with § 206.25.

CMT Index means the U.S. Constant Maturity Treasury Index.

Commissioner means the Federal Housing Commissioner or the Commissioner's authorized representative.

Contract of insurance means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in subpart C of this part and the applicable provisions of the National Housing Act.

Day means calendar day, except where the term *business day* is used.

Deferral Period means the period of time following the death of the last surviving borrower during which the due and payable status of a HECM is deferred for an Eligible Non-Borrowing Spouse provided that the Qualifying Attributes and all other FHA requirements continue to be satisfied.

Eligible Non-Borrowing Spouse means a Non-Borrowing Spouse who meets all Qualifying Attributes for a Deferral Period.

Estate planning service firm means an individual or entity that is not a mortgagee approved under part 202 of this chapter or a participating agency approved under subpart B of 24 CFR part 214 and that charges a fee that is:

(1) Contingent on the prospective borrower obtaining a mortgage loan under this part, except the origination fee authorized by § 206.31 or a fee specifically authorized by the Commissioner; or

(2) For information that borrowers and Eligible and Ineligible Non-Borrowing Spouses, if applicable, must receive under § 206.41, except a fee by:

(i) A participating agency approved under subpart B of 24 CFR part 214; or

(ii) An individual or company, such as an attorney or accountant, in the *bona fide* business of generally providing tax or other legal or financial advice; or

(3) For other services that the provider of the services represents are, in whole or in part, for the purpose of improving a prospective borrower's access to mortgages covered by this part, except where the fee is for services specifically authorized by the Commissioner.

Expected average mortgage interest rate means the interest rate used to calculate the principal limit established at closing. For fixed interest rate HECMs, the expected average mortgage interest rate is the same as the fixed mortgage (Note) interest rate and is set simultaneously with the fixed interest rate. For adjustable interest rate HECMs, it is either the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury securities adjusted to a constant maturity of 10 years, or it is the sum of the mortgagee's margin plus the 10-year LIBOR swap rate, depending on which interest rate index is chosen by the borrower. The margin is determined by the mortgagee and is defined as the amount that is added to the index value to compute the expected average mortgage interest rate. The index type (CMT or LIBOR) used to calculate the expected average mortgage interest rate must be the same index type used to calculate mortgage interest rate adjustments—commingling of index types is not allowed. The mortgagee's margin is the same margin used to determine the initial interest rate and the periodic adjustments to the interest rate. Mortgagees, with the agreement of the borrower, may simultaneously lock-in the expected average mortgage interest rate and the mortgagee's margin prior to the date of loan closing or simultaneously establish the expected average mortgage interest rate and the mortgagee's margin on the date of loan closing.

First 12-Month Disbursement Period means the period beginning on the day of loan closing and ending on the day before the loan closing anniversary date. When the day before the anniversary date of loan closing falls on a Federally-observed holiday, Saturday, or Sunday, the end period will be on the next business day after the Federally-observed holiday, Saturday or Sunday.

HECM means a Home Equity Conversion Mortgage.

HECM counselor means an independent third-party that is currently active on FHA's HECM Counselor Roster and that is not, either directly or indirectly, associated with or compensated by, a party involved in originating, servicing, or funding the HECM, or the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product who provides statutorily required counseling to prospective borrowers who may be eligible for or interested in obtaining an FHA-insured HECM. This counseling assists elderly prospective borrowers who seek to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

Ineligible Non-Borrowing Spouse means a Non-Borrowing Spouse who does not meet all Qualifying Attributes for a Deferral Period.

Initial Disbursement Limit means the maximum amount of funds that can be advanced to a borrower of an adjustable interest rate HECM allowed at loan closing and during the First 12-Month Disbursement Period in accordance with § 206.25.

Insured mortgage means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate.

LIBOR means the London Interbank Offered Rate.

Loan documents mean the credit instrument, or Note, secured by the lien, and the loan agreement.

Mandatory Obligations are fees and charges incurred in connection with the origination of the HECM that are requirements for loan approval and which will be paid at closing or during the First 12-Month Disbursement Period in accordance with § 206.25.

Maximum claim amount means the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan; the sales price of the property being purchased for the sole purpose of being the principal residence; or the national mortgage limit for a one-family residence under subsections 255(g) or (m) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act) as of the date of loan closing. The initial mortgage insurance premium must not be taken into account in the calculation of the maximum claim amount. Closing costs must not be taken into account in determining appraised value.

MIP means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

Mortgage means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a condominium, the term *mortgage* means a first lien covering a fee interest or eligible leasehold interest in a one-family unit in a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated. The term refers to a security instrument creating a lien, whether called a *mortgage, deed of trust, security deed,* or another term used in a particular jurisdiction.

Mortgagee means original lender under a mortgage and its successors and assigns, as are approved by the Commissioner.

Mortgagor means each original mortgagor under a HECM mortgage and his heirs, executors, administrators and assigns.

Non-Borrowing Spouse means the spouse, as defined by the law of the state in which the spouse and borrower reside or the state of celebration, of the HECM borrower at the time of closing and who is also not a borrower.

Participating agency means all housing counseling and intermediary organizations participating in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved multi-state organizations (MSOs), and state housing finance agencies.

Principal limit means the maximum amount calculated, taking into account the age of the youngest borrower or Eligible Non-Borrowing Spouse, the expected average mortgage interest rate, and the maximum claim amount. The principal limit is calculated for the first month that a mortgage could be outstanding using factors provided by the Commissioner. It increases each month thereafter at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of the annual mortgage insurance rate. For an adjustable interest rate HECM, the principal limit increase may be made available for the borrower each month thereafter except that the availability during the First 12-Month Disbursement Period may be restricted. Although the principal limit of a fixed interest rate HECM will continue to increase at the rate provided by the Commissioner, no further funds may be made available for the borrower to draw against after closing. The principal limit may decrease because of insurance or condemnation proceeds applied to the outstanding loan balance under § 206.209(b).

Principal residence means the dwelling where the borrower and, if applicable, Non-Borrowing Spouse, maintain their permanent place of abode, and typically spend the majority of the calendar year. A person may have only one principal residence at any one time. The property shall be considered to be the principal residence of any borrower who is temporarily in a health care institution provided the borrower's residency in a health care institution does not exceed twelve consecutive months. The property shall be considered to be the principal residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, as long as the property is the principal residence of his or her borrower spouse, who physically resides in the property. During a Deferral Period, the property shall continue to be considered to be the principal residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, provided he or she qualified as an Eligible Non-Borrowing Spouse and physically occupied the property immediately prior to entering the health care institution and his or her residency in a health care institution does not exceed twelve consecutive months.

Property charges means, unless otherwise specified, obligations of the borrower that include property taxes, hazard insurance premiums, any applicable flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowners association fees, any other special assessments that may be levied by municipalities or state law, and utilities.

Qualifying Attributes means the requirements which must be met by a Non-Borrowing Spouse in order to be an Eligible Non-Borrowing Spouse.

§ 206.7 Effect of amendments.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but amendments to subparts B and C of this part will not adversely affect the interests of a mortgagee on any mortgage to be insured for which either the Direct Endorsement mortgagee or Lender Insurance mortgagee has approved the borrower and all terms and conditions of the mortgage, or the Commissioner has made a commitment to insure. Such amendments will not adversely affect the interests of a borrower in the case of a default by a mortgagee where the Commissioner makes payments to the borrower.

§ 206.8 Preemption.

(a) *Lien priority.* The full amount secured by the mortgage shall have the same priority over any other liens on the property as if the full amount had been disbursed on the date the initial disbursement was made, regardless of the actual date of any disbursement. The amount secured by the mortgage shall include all direct payments by the mortgagee to the borrower and all other loan advances permitted by the mortgage for any purpose, including loan advances for interest, property charges, mortgage insurance premiums, required repairs, servicing charges, counseling charges and costs of collection, regardless of when the payments or loan advances were made. The priority provided by this section shall apply notwithstanding any State constitution, law or regulation.

(b) *Second mortgage.* If the Commissioner holds a second mortgage, it shall have a priority subordinate only to the first mortgage (and any senior liens permitted by paragraph (a) of this section).

Subpart B—Eligibility; Endorsement

§ 206.9 Eligible mortgagees.

(a) *Statutory requirements.* See sections (b)(2) and 255(d)(1) of the NHA.

(b) *HUD approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under part 202 of this chapter, except an investing mortgagee approved under § 202.9 of this chapter, is eligible to apply for insurance. A mortgagee approved under §§ 202.6, 202.7, 202.9 or 202.10 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

§ 206.13 Disclosure of available HECM program options.

At the time of initial contact, the mortgagee shall inform the prospective HECM borrower, in a manner acceptable to the Commissioner, of all products, features and options of the HECM program that FHA will insure under this part, including: Fixed interest rate mortgages with the Single Lump Sum payment option; adjustable interest rate mortgages with tenure, term, and line of credit disbursement options, or a combination of these; any other FHA insurable disbursement options; and initial mortgage insurance premium options, and how those affect the availability of other mortgage and disbursement options.

§ 206.15 Insurance.

Mortgages originated under this part must be endorsed through the Direct Endorsement program under § 203.5 of this chapter, except that any references to § 203.255 in § 203.5 shall mean § 206.115. The mortgagee shall submit the information as described in § 206.115(b) for the Direct Endorsement program; the certificate of housing counseling as described in § 206.41; a copy of the title insurance commitment satisfactory to the Commissioner (or other acceptable title evidence if the Commissioner has determined not to require title insurance under § 206.45(a)); the mortgagee's election of either the assignment or shared premium option under § 206.107; and any other documentation required by the Commissioner. If the mortgagee has complied with the requirements of §§ 203.3 and 203.5, except that any reference to § 203.255 in these sections shall mean § 206.115 for purposes of this section, and other requirements of this part, and the mortgage is determined to be eligible, the Commissioner will endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate.

Eligible Mortgages

§ 206.17 Eligible Mortgages: General.

(a) [Reserved]

(b) *Interest rate and payment options.* A HECM shall provide for either fixed or adjustable interest rates in accordance with § 206.21.

(1) Fixed interest rate mortgages shall use the Single Lump Sum payment option (§ 206.19(e)).

(2) Adjustable interest rate mortgages shall initially provide for the term (§ 206.19(a)), the tenure (§ 206.19(b)), the line of credit (§ 206.19(c)), or a modified term or modified tenure (§ 206.19(d)) payment option, subject to a later change in accordance with § 206.26.

(c) *Shared appreciation.* A mortgage may provide for shared appreciation in accordance with § 206.23.

§ 206.19 Payment options.

(a) *Term payment option.* Under the term payment option, equal monthly payments are made by the mortgagee to the borrower for a fixed term of months chosen by the borrower in accordance with this section and § 206.25(e), unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c).

(b) *Tenure payment option.* Under the tenure payment option, equal monthly payments are made by the mortgagee to the borrower in accordance with this section and with § 206.25(f) unless the mortgage is prepaid in full or becomes due and payable under § 206.27(c).

(c) *Line of credit payment option.* Under the line of credit payment option, payments are made by the mortgagee to the borrower at times and in amounts determined by the borrower as long as the amounts do not exceed the payment amounts permitted by § 206.25.

(d) *Modified term or modified tenure payment option.* Under the modified term or modified tenure payment options, equal monthly payments are made by the mortgagee and the mortgagee shall set aside a portion of the principal limit to be drawn down as a line of credit as long as the amounts do not exceed the payment amounts permitted by § 206.25.

(e) *Single Lump Sum payment option.* Under the Single Lump Sum payment option, the Borrower's Advance will be made by the mortgagee to the borrower in an amount that does not exceed the payment amount permitted in § 206.25. The Single Lump Sum payment option will be available only for fixed interest rate HECMs. Set asides requiring disbursements after close may be offered in accordance with paragraphs (f)(1) through (3) of this section.

(f) *Principal limit set asides.* (1) *Repair Set Aside.* When repairs required by § 206.47 will be completed after closing, the mortgagee shall set aside a portion of the principal limit equal to 150 percent of the Commissioner's estimated cost of repairs, plus the repair administration fee.

(2) *Property Charge Set Aside.* (i) *Life Expectancy Set Aside (LESA).* When required by § 206.205(b)(1) or selected by the borrower under § 206.205(b)(2)(ii), the mortgagee shall set aside a portion of the principal limit, consistent with the requirements of § 206.205, for payment of the following property charges: Property taxes including special assessments levied by municipalities or state law, and flood and hazard insurance premiums.

(ii) *Borrower elects to have mortgagee pay property charges.* (A) *First year property charges.* When required by § 206.205(d), the mortgagee shall set aside a portion of the principal limit for payment of the following property charges that must be paid during the First 12-Month Disbursement Period: Property taxes including special assessments levied by municipalities or state law, and flood and hazard insurance premiums. The mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. The mortgagee may not require the withholding of amounts in excess of the current estimated total annual requirement, unless expressly requested by the borrower. Each month's withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(B) *Property charges for subsequent years.* For subsequent year property charges, the mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require the withholding of amounts in excess of the current estimated total annual requirement, unless expressly requested by the borrower. Each month's withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(3) *Servicing Fee Set Aside.* When servicing charges will be made as permitted by § 206.207(b), the mortgagee shall set aside a portion of the principal limit sufficient to cover charges through a period equal to the payment term which would be used to calculate tenure payments under § 206.25(f).

(g) *Interest accrual and repayment.* The interest charged on the outstanding loan balance shall begin to accrue from the funding date and shall be added to the outstanding loan balance monthly as provided in the mortgage. Under all payment options, repayment of the outstanding loan balance is deferred until the mortgage becomes due and payable under § 206.27(c).

(h) *Disbursement limits.* (1) For all HECMs, no disbursements shall be made under any of the payment options, notwithstanding anything to the contrary in this section or in § 206.25, in an amount which shall cause the outstanding loan balance after the payment to exceed any maximum mortgage amount stated in the security instruments or to otherwise exceed the amount secured by a first lien.

(2) For adjustable interest rate HECMs: (i) No disbursements shall be made under any of the payment options during the First 12-Month Disbursement Period in excess of the Initial Disbursement Limit, unless otherwise permitted by the Commissioner.

(ii) If the borrower makes a partial prepayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(3) For fixed interest rate HECMs, if the borrower makes a partial prepayment of the outstanding loan balance any time after loan closing and before the contract of insurance is terminated, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note. Any increase in the available principal limit by the amount applied towards the outstanding loan balance shall not be available for the borrower to draw against.

§ 206.21 Interest rate.

(a) *Fixed interest rate.* A fixed interest rate is agreed upon by the borrower and mortgagee.

(b) *Adjustable interest rate.* An initial expected average mortgage interest rate, which defines the mortgagee's margin, is agreed upon by the borrower and mortgagee as of the date of loan closing, or as of the date of rate lock-in, if the expected average mortgage interest rate was locked-in prior to closing. The interest rate shall be adjusted in one of two ways depending on the option selected by the borrower, in accordance with paragraphs (b)(1) and (b)(2) of this section. Whenever an interest rate is adjusted, the new interest rate applies to the entire loan balance. The difference between the initial interest rate and the index figure applicable when the firm commitment is issued shall equal the margin used to determine interest rate adjustments. If the expected average mortgage interest rate is locked-in prior to closing, the difference between the expected rate and the value of the appropriate index at the time of rate lock-in shall equal the margin used to determine interest rate adjustments.

(1) *Annual adjustable interest rate HECMs.* A mortgagee offering an annual adjustable interest rate shall offer a mortgage with an interest rate cap structure that limits the periodic interest rate increases and decreases as follows:

(i) *Types of mortgages insurable.* The types of adjustable interest rate mortgages that are insurable are those for which the interest rate may be adjusted annually by the mortgagee, beginning after one year from the date of the closing.

(ii) *Interest rate index.* Changes in the interest rate charged on an adjustable interest rate mortgage must correspond either to changes in the one-year LIBOR or to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of one year. Except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

(iii) *Frequency of interest rate changes.* (A) The interest rate adjustments must occur annually, calculated from the date of the closing, except that the first adjustment shall be no sooner than 12 months or later than 18 months.

(B) To set the new interest rate, the mortgagee will determine the change between the initial (*i.e.,* base) index figure and the current index figure, or will add a specific margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(iv) *Magnitude of changes.* The adjustable interest rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the borrower. The first adjustment to the contract interest rate shall take place in accordance with the schedule set forth under paragraph (b)(1)(iii) of this section. Thereafter, for all annual adjustable interest rate mortgages, the adjustment shall be made annually and shall occur on the anniversary date of the first adjustment, subject to the following conditions and limitations:

(A) For all annual adjustable interest rate HECMs, no single adjustment to the interest rate shall result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment for a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(B) At each adjustment date for annual adjustable interest rate HECMs, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, except that the mortgage may provide for minimum interest rate change limitations and for minimum increments of interest rate changes.

(2) *Monthly adjustable interest rate HECMs.* (i) If a mortgage meeting the requirements of paragraph (b)(1) of this section is offered, the mortgagee may also offer a mortgage which provides for monthly adjustments to the interest rate such that changes in the interest rate charged on an adjustable interest rate mortgage correspond either to changes in the one-year LIBOR or to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of one year (except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index), or to the one-month CMT index or one-month LIBOR index, and which sets a maximum interest rate that can be charged.

(ii) Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(c) *Pre-loan disclosure.* (1) At the time the mortgagee provides the borrower with a loan application, a mortgagee shall provide a borrower with a written explanation of all adjustable interest rate features of a mortgage. The explanation must include the following items:

(i) The circumstances under which the rate may increase;

(ii) Any limitations on the increase; and

(iii) The effect of an increase.

(2) Compliance with pre-loan disclosure provisions of 12 CFR part 1026 (Truth in Lending) shall constitute full compliance with paragraph (c)(1) of this section.

(d) *Post-loan disclosure.* At least 25 days before any adjustment to the interest rate may occur, the mortgagee must advise the borrower of the following:

(1) The current index amount;

(2) The date of publication of the index; and

(3) The new interest rate.

§ 206.23 Shared appreciation.

(a) *Additional interest based on net appreciated value.* Any mortgage for which the mortgagee has chosen the shared premium option (§ 206.107) may provide for shared appreciation. At the time the mortgage becomes due and payable or is paid in full, whichever occurs first, the borrower shall pay an additional amount of interest equal to a percentage of any net appreciated value of the property during the life of the mortgage. The percentage of net appreciated value to be paid to the mortgagee, referred to as the appreciation margin, shall be no more than twenty-five percent, subject to an effective interest rate cap of no more than twenty percent.

(b) *Computation of mortgagee share.* The mortgagee's share of net appreciated value is computed as follows:

(1) If the outstanding loan balance at the time the mortgagee's share of net appreciated value becomes payable is less than the appraised value of the property at the time of loan origination, the mortgagee's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds (*i.e.,* sales proceeds less transfer costs and capital improvement costs incurred by the borrower, but excluding any liens) and multiplying by the appreciation margin.

(2) If the outstanding loan balance is greater than the appraised value at the time of loan origination but less than the adjusted proceeds, the mortgagee's share is calculated by subtracting the outstanding loan balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(3) If the outstanding loan balance is greater than the adjusted sales proceeds, the net appreciated value is zero.

(4) If there has been no sale or transfer involving satisfaction of the mortgage at the time the mortgagee's share of net appreciated value becomes payable, *sales proceeds* for purposes of this section shall be the appraised value as determined in accordance with procedures approved by the Commissioner.

(c) *Effective interest rate.* To determine the effective interest rate, the amount of interest which accrued in the twelve months prior to the sale of the property or the prepayment is added to the mortgagee's share of the net appreciated value. The sum of the mortgagee's share of the net appreciated value and the interest, when divided by the sum of the outstanding loan balance at the beginning of the twelve month period prior to sale or prepayment plus the payments to or on behalf of the borrower (but not including interest) in the twelve months prior to the sale or prepayment, shall not exceed an effective interest rate of twenty percent.

(d) *Disclosure.* At the time the mortgagee provides the borrower with a loan application for a mortgage with shared appreciation, the mortgagee shall disclose to the borrower the principal limit, payments and interest rate which are applicable to a comparable mortgage offered by the mortgagee without shared appreciation.

§ 206.25 Calculation of disbursements.

(a) *Initial disbursements*— (1) *Initial Disbursement Limit—Adjustable Interest Rate HECMs:* for term, tenure, line of credit, modified term, and modified tenure payment options:

(i) The mortgagee is responsible for determining the maximum Initial Disbursement Limit.

(ii) The maximum disbursement allowed at closing and during the First 12-Month Disbursement Period is the lesser of:

(A) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or

(B) The principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside.

(iii) The maximum amount in the First 12-Month Disbursement Period or at any point in time may not exceed the principal limit.

(iv) Mortgagees shall monitor and track all disbursements that occur at loan closing and during the First 12-Month Disbursement Period; the total amount of disbursements shall not exceed the maximum Initial Disbursement Limit, unless otherwise permitted by § 206.19(h).

(v) The borrower shall notify the mortgagee at loan closing of the exact amount of the additional percentage of the principal limit beyond Mandatory Obligations that the borrower will draw or that will remain available to be drawn during the First 12-Month Disbursement Period. The borrower may not increase or decrease this election after closing.

(2) *Borrower's Advance—Fixed Interest Rate HECMs:* For the Single Lump Sum payment option:

(i) The mortgagee is responsible for determining the maximum Borrower's Advance.

(ii) The disbursement shall only be taken at the time of closing and the maximum disbursement shall not exceed the lesser of:

(A) The greater of an amount established by the Commissioner through notice which shall not be less than 50 percent of the principal limit; or the sum of Mandatory Obligations and a percentage of the principal limit established by the Commissioner through notice which shall not be less than 10 percent; or

(B) The principal limit less the sum of the funds in the LESA for payment beyond the First 12-Month Disbursement Period and the Servicing Fee Set Aside.

(iii) The maximum amount in the First 12-Month Disbursement Period or at any point in time may not exceed the principal limit.

(iv) The borrower shall notify the mortgagee at loan closing of the exact amount of the additional percentage of the principal limit beyond Mandatory Obligations that the borrower will draw. The borrower may not increase or decrease this election after closing.

(b) *Mandatory Obligations for traditional and refinance transactions include:*

(1) Initial MIP under § 206.105(a);

(2) Loan origination fee;

(3) HECM counseling fee;

(4) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the borrower;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Flood certifications.

(5) Repair Set Asides;

(6) Repair administration fee;

(7) Delinquent Federal debt;

(8) Amounts required to discharge any existing liens on the property;

(9) Customary fees and charges for warranties, inspections, surveys, and engineer certifications;

(10) Funds to pay contractors who performed repairs as a condition of closing, in accordance with standard FHA requirements for repairs required by the appraiser;

(11) Property tax and flood and hazard insurance payments required by the mortgagee to be paid at loan closing;

(12) Property charges not included in paragraph (b)(11) of this section and which are scheduled for payment during the First 12-Month Disbursement Period, as follows:

(i) *Adjustable Interest Rate HECMs.* (A) The total amount of property charge payments scheduled for payment from the borrower authorized option under § 206.205(d) during the First 12-Month Disbursement Period;

(B) The total amount of semi-annual disbursements scheduled to be made during the First 12-Month Disbursement Period to the borrower from a Partially-Funded LESA; or

(C) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(D) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice.

(ii) *Fixed Interest Rate HECMs.* (A) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(B) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice; and

(13) Other charges as authorized by the Commissioner through notice.

(c) *Mandatory Obligations for HECM for Purchase transactions include:*

(1) Initial MIP under § 206.105(a);

(2) Loan origination fee;

(3) HECM counseling fee:

(4) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the borrower;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Flood certifications.

(5) Delinquent Federal debt;

(6) Fees and charges for real estate purchase contracts, warranties, inspections, surveys, and engineer certifications;

(7) The amount of the principal that is advanced towards the purchase price of the subject property;

(8) Property tax and flood and hazard insurance payments required by the mortgagee to be paid at loan closing;

(9) Property charges not included in paragraph (c)(8) of this section and which are scheduled for payment during the First 12-Month Disbursement Period, as follows:

(i) *Adjustable Interest Rate HECMs.* (A) The total amount of property charge payments scheduled for payment from the borrower authorized option under § 206.205(d) during the First 12-Month Disbursement Period;

(B) The total amount of semi-annual disbursements scheduled to be made during the First 12-Month Disbursement Period to the borrower from a Partially-Funded LESA; or

(C) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(D) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice.

(ii) *Fixed Interest Rate HECMs.* (A) The total amount of property charges scheduled for payment during the First 12-Month Disbursement Period from a Fully-Funded LESA.

(B) Mortgagees shall use the actual insurance premium and actual tax amount; if a new tax bill has not been issued, the mortgagee must use the prior year's amount multiplied by 1.04 or an amount set by the Commissioner through notice; and

(10) Other charges as authorized by the Commissioner through notice.

(d) *Timing of disbursements.* Mortgage proceeds may not be disbursed until after the expiration of the 3-day rescission period under 12 CFR part 1026, if applicable.

(e) *Monthly disbursements—term option.* (1) Using factors provided by the Commissioner, the mortgagee shall calculate the monthly disbursement so that the sum of paragraphs (e)(1)(i) or (e)(1)(ii) of this section added to paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(v) of this section shall be equal to the principal limit at the end of the payment term.

(i) An initial disbursement under paragraph (a) of this section plus any initial servicing charge set aside under § 206.19(f)(3); or

(ii) The outstanding loan balance at the time of a change in payment option in accordance with § 206.26, plus any remaining servicing charge set aside under § 206.19(f)(3); and

(iii) The amount of the principal limit set aside in accordance with § 206.19(f) which is not included in amount set aside in paragraphs (e)(1)(i) or (e)(1)(ii) of this section;

(iv) All MIP or monthly charges due to the Commissioner in lieu of mortgage insurance premiums due through the payment term; and

(v) All interest through the remainder of the payment term. The expected average mortgage interest rate shall be used for this purpose.

(2) The mortgagee shall make all monthly disbursements through the payment term even if the outstanding loan balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected average mortgage interest rate unless the HECM becomes due and payable under § 206.27(c). In the event of a deferral of due and payable status in accordance with § 206.27(c)(3), disbursements shall cease immediately upon the death of the borrower and no further disbursements are permissible.

(3) Mortgagees shall ensure that term monthly disbursements made to the borrower during the First 12-Month Disbursement Period do not exceed the Initial Disbursement Limit. If the sum of disbursements made during the First 12-Month Disbursement Period would exceed the Initial Disbursement Limit for that time period, the mortgagee shall decrease the monthly disbursements during the First 12-Month Disbursement Period to conform with the Initial Disbursement Limit; upon conclusion of the First 12-Month Disbursement Period, the borrower may request a payment plan recalculation.

(4) If the borrower makes a partial prepayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(5) If the mortgagee receives repayment from insurance or condemnation proceeds after restoration or repair of the damaged property, the available principal limit and outstanding loan balance shall be reduced by the amount of such payments.

(f) *Monthly disbursements—tenure option.* (1) Monthly disbursements under the tenure payment option shall be calculated as if the number of months in the payment term equals 100 minus the lesser of the age of the youngest borrower or 95, multiplied by 12, but payments shall continue until the mortgage becomes due and payable under § 206.27(c), except that in the event that payments would exceed any maximum mortgage amount stated in the security instrument or would otherwise exceed the amount secured by the first lien, in accordance with § 206.19(h) payments will cease immediately; payments may be reinstated only in the event a new Note and mortgage are executed in accordance with § 206.27(b)(10); and in the event of a deferral of due and payable status in accordance with § 206.27(c)(3) payments will cease immediately upon the death of the borrower.

(2) Mortgagees shall ensure that tenure monthly disbursements made to the borrower during the First 12-Month Disbursement Period do not exceed the Initial Disbursement Limit. If the sum of disbursements made during the First 12-Month Disbursement Period would exceed the Initial Disbursement Limit for that time period, the mortgagee shall decrease the monthly disbursements during the First 12-Month Disbursement Period to conform with the maximum Initial Disbursement Limit; upon conclusion of the First 12-Month Disbursement Period, the borrower may request a payment plan recalculation.

(3) If the borrower makes a partial prepayment of the outstanding loan balance during the First 12-Month Disbursement Period, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(4) If the mortgagee receives repayment from insurance or condemnation proceeds after restoration or repair of the damaged property, the available principal limit and outstanding loan balance shall be reduced by the amount of such payments.

(g) *Line of credit separately or with monthly disbursements.* If the borrower has a line of credit, separately or combined with the term or tenure payment option, the principal limit is divided into an amount set aside for servicing charges under § 206.19(f)(3), an amount equal to the line of credit (including any portion of the principal limit set aside for repairs or property charges under § 206.19(f)(1) or (2)), and the remaining amount of the principal limit (if any). The line of credit amount increases at the same rate as the total principal limit increases under § 206.3. The sum of disbursements made during the First 12-Month Disbursement Period shall not exceed the Initial Disbursement Limit. If a requested disbursement would exceed the Initial Disbursement Limit, the mortgagee may make a partial disbursement to the borrower for the amount that will not exceed the limit. Upon the conclusion of the First 12-Month Disbursement Period, the borrower may request subsequent disbursements up to the available principal limit.

(h) *Single Lump Sum payment option.* (1) Under the Single Lump Sum payment option, the Borrower's Advance shall be made by the mortgagee to the borrower in an amount that does not exceed the maximum allowable Borrower's Advance under paragraph (a)(2) of this section.

(2) If the borrower makes a partial prepayment of the outstanding loan balance any time after loan closing and before the contract of insurance is terminated, the mortgagee shall apply the funds from the partial prepayment in accordance with the Note.

(i) *Payment of MIP and interest.* At the end of each month, including the first month, interest accrued during that month shall be added to the outstanding loan balance. Where the first month is a partial month, a prorated amount of interest shall be added. Monthly MIP, which will accrue from the closing date, shall be added to the outstanding loan balance beginning with the first day of the second month after closing when paid to the Commissioner.

(j) *Mortgagee late charge.* The mortgagee shall pay a late charge to the borrower for any late disbursement. If the mortgagee does not mail or electronically transfer a scheduled monthly disbursement to the borrower on the first business day of the month or make a line of credit disbursement within 5 business days of the date the mortgagee received the request, the late charge shall be 10 percent of the entire amount that should have been paid to the borrower for that month or as a result of that request. In no event shall the total late charge exceed five hundred dollars. For each additional day that the borrower does not receive payment, the mortgagee shall pay interest at the mortgage interest rate on the late payment. Any late charge and interest shall be paid from the mortgagee's funds and shall not be added to the outstanding loan balance.

(k) *No minimum payments.* A mortgagee shall not require, as a condition of providing a loan secured by a mortgage insured under this part, that the monthly payments under the term or tenure payment option or draws under the line of credit payment option exceed a minimum amount established by the mortgagee.

§ 206.26 Change in payment option.

(a) *General.* The payment option may be changed as provided in this section.

(b) *Borrower request for payment plan change*—(1) *Adjustable Interest Rate HECMs.* (i) During the First 12-Month Disbursement Period, no payment plan change shall cause disbursements to exceed the Initial Disbursement Limit.

(ii) After the First 12-Month Disbursement Period, as long as the outstanding loan balance is less than the principal limit, a borrower may request a recalculation of the current payment option, a change from any payment option to another available payment option or a disbursement of any amount (not to exceed the difference between the principal limit and the sum of the outstanding loan balance and any set asides for repairs, servicing charges or property charges). A mortgage will continue to bear interest at an adjustable interest rate as agreed between the mortgagee and the borrower at loan origination. The mortgagee shall recalculate any future monthly payments in accordance with § 206.25.

(iii) *Fee for change in payment.* The mortgagee may charge a fee, not to exceed an amount determined by the Commissioner, whenever there is a payment plan change or whenever payments are recalculated.

(iv) *Limitations.* The Commissioner may, through notice, establish limitations on the frequency of payment plan changes, a minimum notice period that a borrower must provide in order to make a request under paragraph (b)(1)(ii) of this section, or other limitations on payment plan change requests by the borrower.

(2) *Fixed Interest Rate HECMs.* Borrowers may not request a change in payment option.

(c) *Change due to initial repairs.* When initial repairs after closing under § 206.47 are required using a Repair Set Aside, mortgagees shall comply with the following:

(1) *Adjustable Interest Rate HECMs.* (i) If repairs after closing under § 206.47 are completed without using all of the funds set aside for repairs, the mortgagee shall transfer the remaining amount to a line of credit, modified term or modified tenure payment option and inform the borrower of the sum available to be drawn.

(ii) If repairs after closing under § 206.47 cannot be completed with the funds set aside for repairs, the mortgagee may advance additional funds to complete repairs from an existing line of credit. If a line of credit is not sufficient to make the advance or if no line of credit exists, future monthly disbursements shall be recalculated for use as a line of credit in accordance with § 206.25.

(iii) If repairs are not completed when required by the mortgage, the mortgagee shall stop monthly payments and the mortgage shall convert to the line of credit payment option. Until the repairs are completed, the mortgagee shall make no line of credit disbursements except as needed to pay for repairs required by the mortgage.

(2) *Fixed Interest Rate HECMs.* No unused set aside funds shall be made available to the borrower, except that a borrower may be reimbursed for the cost of repair materials (not including labor), in accordance with § 206.47, under conditions established by the Commissioner.

§ 206.27 Mortgage provisions.

(a) *Form.* The mortgage shall be in a form meeting the requirements of the Commissioner.

(b) *Provisions.* The terms of the mortgage shall contain an explanation of how payments will be made to the borrower, how interest will be charged and when the mortgage will be due and payable. The mortgage shall include a provision deferring the due and payable status that occurs because of the death of the last surviving borrower for an Eligible Non-Borrowing Spouse. It shall also contain provisions designed to ensure compliance with this part and provisions on the following additional matters:

(1) Disbursements by the mortgagee under the term or tenure payment options shall be mailed to the borrower or electronically transferred to an account of the borrower on the first business day of each month beginning with the first month after closing. Disbursements under the line of credit payment option shall be mailed to the borrower or electronically transferred to an account of the borrower within five business days after the mortgagee has received a written request for disbursement by the borrower. In accordance with § 206.55, in no event may disbursements continue during a Deferral Period.

(2) The borrower shall insure all improvements on the property that serves as collateral for the HECM whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including but not limited to fire and flood, for which the mortgagee requires insurance. Such insurance shall be maintained in the amount and for the period of time that is necessary to protect the mortgagee's investment. Whether or not the mortgagee imposes a flood insurance requirement, the borrower shall at a minimum insure all improvements on the property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Commissioner. If the mortgagee imposes insurance requirements, all insurance shall be carried with companies acceptable to the mortgagee, and the insurance policies and any renewals shall be held by the mortgagee and shall include loss payable clauses in favor of and in a form acceptable to the mortgagee.

(3) The borrower shall not participate in a real estate tax deferral program or permit any liens to be recorded against the property, unless such liens are subordinate to the insured mortgage and, if applicable, any second mortgage held by the Commissioner.

(4) A mortgage may be prepaid in full or in part in accordance with § 206.209.

(5) The borrower must keep the property in good repair.

(6) The borrower must provide for the payment of property charges in accordance with § 206.205.

(7) The payment of monthly MIP may be added to the outstanding principal balance.

(8) The borrower shall have no personal liability for payment of the outstanding loan balance. The mortgagee shall enforce the debt only through sale of the property. The mortgagee shall not be permitted to obtain a deficiency judgment against the borrower if the mortgage is foreclosed.

(9) If the mortgage is assigned to the Commissioner under § 206.121(b), the borrower shall not be liable for any difference between the insurance benefits paid to the mortgagee and the outstanding loan balance including accrued interest, owed by the borrower at the time of the assignment.

(10) If State law limits the first lien status of the mortgage as originally executed and recorded to a maximum amount of debt or a maximum number of years, the borrower shall agree to execute any additional documents required by the mortgagee and approved by the Commissioner to extend the first lien status to an additional amount of debt and an additional number of years and to cause any other liens to be removed or subordinated.

(c) *Date the mortgage comes due and payable.* (1) The mortgage shall state that the outstanding loan balance will be due and payable in full if a borrower dies and the property is not the principal residence of at least one surviving borrower, except that the due and payable status shall be deferred in accordance with paragraph (c)(3) of this section if the requirements of the Deferral Period are met; or if a borrower conveys all of his or her title in the property and no other borrower retains title to the property. For purposes of the preceding sentence, a borrower retains title in the property if the borrower continues to hold title to any part of the property in fee simple, as a leasehold interest as set forth in § 206.45(a), or as a life estate.

(2) The mortgage shall state that the outstanding loan balance shall be due and payable in full, upon approval of the Commissioner, if any of the following occur:

(i) The property ceases to be the principal residence of a borrower for reasons other than death and the property is not the principal residence of at least one other borrower;

(ii) For a period of longer than 12 consecutive months, a borrower fails to occupy the property because of physical or mental illness and the property is not the principal residence of at least one other borrower;

(iii) The borrower does not provide for the payment of property charges in accordance with § 206.205; or

(iv) An obligation of the borrower under the mortgage is not performed.

(3) *Deferral of due and payable status.* The mortgage documents shall contain a provision deferring due and payable status, called the Deferral Period, for an Eligible Non-Borrowing Spouse until the death of the last Eligible Non-Borrowing Spouse or the requirements of the Deferral Period in § 206.55 cease to be met and have not been cured as provided for in § 206.57.

(d) *Second mortgage to Commissioner.* Unless otherwise provided by the Commissioner, a second mortgage to secure any payments by the Commissioner as provided in § 206.121(c) must be given to the Commissioner before a Mortgage Insurance Certificate is issued for the mortgage. If the Commissioner does not require a second mortgage to be given to the Commissioner prior to the issuance of a Mortgage Insurance Certificate, the Commissioner may require a second mortgage to be given to the Commissioner at a later day in order to secure payments by the Commissioner as provided in § 206.121(c).

§ 206.31 Allowable charges and fees.

(a) *Fees at closing.* The mortgagee may collect, either in cash at the time of closing or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination, processing and closing of the mortgage loan:

(1) *Loan Origination Fee.* Mortgagees may charge a loan origination fee and may use such fee to pay for services performed by a sponsored third-party originator. The loan origination fee limit shall be the greater of $2,500 or two percent of the maximum claim amount of $200,000, plus one percent of any portion of the maximum claim amount that is greater than $200,000. Mortgagees may accept a lower origination fee. Mortgagees may pay fees for services performed by a sponsored third-party originator and these fees may be included as part of the loan origination fee. The total amount of the loan origination fee may not exceed $6,000, except that the Commissioner may through notice adjust the maximum limit in accordance with the annual percentage increase in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor in increments of $500 only when the percentage increase in such index, when applied to the maximum origination fee, produces dollar increases that exceed $500. The loan origination fee may be fully financed with the mortgage.

(2) *Reasonable and customary amounts.* Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the borrower;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property;

(vii) Flood certifications; and

(viii) Such other charges as may be authorized by the Commissioner.

(b) *Repair administration fee.* If the property requires repairs after closing in order to meet FHA requirements, the mortgagee may collect a fee for each occurrence as compensation for administrative duties relating to repair work pursuant to § 206.47(c) and (d), not to exceed the greater of one and one-half percent of the amount advanced for the repairs or fifty dollars. The mortgagee shall collect the repair fee by adding it to the outstanding loan balance.

§ 206.32 No outstanding unpaid obligations.

In order for a mortgage to be eligible under this part, a borrower must establish to the satisfaction of the mortgagee that after the initial payment of loan proceeds under § 206.25(a), there will be no outstanding or unpaid obligations incurred by the borrower in connection with the mortgage transaction, except for mortgage servicing charges permitted under § 206.207(b) and any future Repair Set Aside established pursuant to § 206.19(f)(1)(ii); and the initial disbursement will not be used for any payment to or on behalf of an estate planning service firm.

Eligible Borrowers

§ 206.33 Age of borrower.

The youngest borrower shall be 62 years of age or older at the time of loan closing.

§ 206.34 Limitation on number of mortgages.

(a) Once a borrower has obtained an insured mortgage under this part, the borrower is eligible to obtain future insured HECM loan financing if the existing HECM is satisfied prior to or at the closing of the new HECM, or as part of divorce or annulment of a marriage the ex-spouse, who had previously jointly obtained a HECM with their ex-spouse, presents a final divorce decree awarding all financial obligation of the prior HECM to the other ex-spouse, and has relinquished title as evidenced by a recorded deed.

(b) Current HECM borrowers that plan to sell their existing residence and use the HECM for Purchase program to obtain a new principal residence must pay off the existing FHA-insured mortgage before the HECM for Purchase mortgage can be insured.

§ 206.35 Title of property which is security for HECM.

(a) A mortgagor is not required to be a borrower; however, any borrower is required to be on title to the property which serves as collateral for the HECM, and is therefore, by definition, also a mortgagor.

(b) The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage. If one or more mortgagors hold a life estate in the property, for purposes of this section only, the term "mortgagor" shall include each holder of a future interest in the property (remainder or reversion) who has executed the mortgage.

(c) If Non-Borrowing Spouses and non-borrowing owners of the property will continue to hold title to the property which serves as collateral for the HECM, such Non-Borrowing Spouses and non-borrowing owners must sign the mortgage as mortgagors, evidencing their commitment of the property as security for the mortgage.

(d) All Non-Borrowing Spouses and non-borrowing owners shall sign a certification that:

(1) Consents to their spouse or other borrowing owner obtaining the HECM;

(2) Acknowledges the terms and conditions of the mortgage; and

(3) Acknowledges that the property will serve as collateral for the HECM as evidenced by mortgage lien(s).

§ 206.36 Seasoning requirements for existing non-HECM liens.

(a) The Commissioner may establish, through notice, seasoning requirements for existing non-HECM liens. Such seasoning requirements shall not prohibit the payoff of existing non-HECM liens using HECM proceeds if the liens have been in place for longer than 12 months or if the liens have resulted in cash to the borrower in an amount of $500 or less, whether at closing or through cumulative draws prior to the date of the initial HECM loan application.

(b) Mortgagees must provide documentation satisfactory to the Commissioner as established by notice that the seasoning requirement was met.

§ 206.37 Credit standing.

(a) Each borrower shall have a general credit standing satisfactory to the Commissioner.

(b) *Required Financial Assessment*—(1) *Requirement for Financial Assessment prior to loan approval.* Prior to loan approval, the mortgagee shall assess the financial capacity of the borrower to comply with the terms of the mortgage and evaluate whether the HECM is a sustainable solution for the borrower, in accordance with instructions established by the Commissioner through notice. The Financial Assessment shall consider the borrower's credit history, cash flow and residual income, extenuating circumstances, and compensating factors.

(i) *Credit history.* In accordance with FHA guidelines in existence at the time of FHA Case Number assignment, mortgagees shall conduct an in-depth credit history analysis to determine if the borrower has demonstrated the willingness to meet his or her financial obligations.

(ii) *Cash flow and residual income analysis.* In accordance with FHA guidelines in existence at the time of FHA Case Number assignment, mortgagees shall conduct a cash flow and residual income analysis to determine the capacity of the borrower to meet his or her documented financial obligations with his or her documented income.

(iii) *Extenuating circumstances.* Where the borrower's credit history does not meet the criteria set by the mortgagee based on FHA guidelines in existence at the time of FHA Case Number assignment, mortgagees shall consider and document, as part of the Financial Assessment, extenuating circumstances that led to the credit issues.

(iv) *Compensating factors.* The mortgagee shall document and identify in the Financial Assessment any considered compensating factors.

(2) *Completion and approval of Financial Assessment.* The Financial Assessment shall be completed and approved by a DE Underwriter registered in HUD's system of record by the underwriting mortgagee.

(3) *Nondiscrimination.* (i) The Financial Assessment shall be conducted in a uniform manner that shall not discriminate because of race, color, religion, sex, national origin, familial status, disability, marital status, actual or perceived sexual orientation, gender identity, source of income of the borrower, location of the property, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

(ii) The Financial Assessment shall be conducted in compliance with all applicable laws and regulations, including but not limited to, the following:

(A) Fair Housing Act (42 U.S.C. 3601 *et seq.*);

(B) Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

(C) Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*); and

(D) 12 CFR part 1002.

§ 206.39 Principal residence.

(a) The property must be the principal residence of each borrower, and if applicable, Eligible Non-Borrowing Spouse, at closing.

(b) *HECM for Purchase.* For HECM for Purchase transactions, each borrower, and if applicable, Eligible Non-Borrowing Spouse, must occupy the property within 60 days from the date of closing.

§ 206.40 Disclosure, verification and certifications.

(a) *Disclosure and certification of Social Security and Employer Identification Numbers.*

(1) *Borrower.* The borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(2) *Eligible Non-Borrowing Spouse.* The Eligible Non-Borrowing Spouse shall comply with the requirements for disclosure and verification of Social Security and Employer Identification Numbers by borrowers in paragraph (a)(1) of this section.

(b) *Certifications.* Each borrower and each Non-Borrowing Spouse shall provide all required certifications to HUD and the mortgagee, as required by the Commissioner.

(c) *Designation of agent.* At the time of origination, the Commissioner may require a borrower to designate an agent or other party to act on his behalf when FHA is unable to make contact or to communicate with the borrower. If such designation is not required by the Commissioner, and at any time, the borrower may voluntarily designate such agent or other person to act on his behalf.

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective borrower, the mortgagee shall give the borrower a list of the names, addresses, and telephone numbers of HECM counselors and their employing agencies, which have been approved by the Commissioner, in accordance with subpart E of this part, as qualified and able to provide the information described in paragraph (b) of this section. The borrower, any Eligible or Ineligible Non-Borrowing Spouse and any non-borrowing owner must receive counseling.

(b) *Information to be provided.* (1) A HECM counselor must discuss with the borrower:

(i) The information required by subsection 255(f) of the NHA;

(ii) Whether the borrower has signed a contract or agreement with an estate planning service firm that requires, or purports to require, the borrower to pay a fee on or after closing that may exceed amounts permitted by the Commissioner or this part;

(iii) If such a contract has been signed under paragraph (b)(1)(ii) of this section, the extent to which services under the contract may not be needed or may be available at nominal or no cost from other sources, including the mortgagee; and

(iv) Any other requirements determined by the Commissioner.

(2) If the HECM borrower has an Eligible Non-Borrowing Spouse, in addition to meeting the requirements of paragraph (b)(1) of this section, a HECM

counselor shall discuss with the borrower and Eligible Non-Borrowing Spouse:

(i) The requirement that the Eligible Non-Borrowing Spouse must obtain ownership of the property or other legal right to remain in the property for life, upon the death of the last surviving borrower;

(ii) A failure to obtain ownership or other legal right to remain in the property for life will result in the HECM becoming due and payable and the Eligible Non-Borrowing Spouse will not receive the benefit of the Deferral Period;

(iii) The requirement that the property must be the principal residence of the Eligible Non-Borrowing Spouse prior to and after the death of the borrowing spouse;

(iv) The requirement that the Eligible Non-Borrowing Spouse fulfills all obligations of the mortgage, including the payment of property charges and upkeep of the property; and

(v) Any other requirements determined by the Commissioner.

(3) If the HECM borrower has an Ineligible Non-Borrowing Spouse, in addition to meeting the requirements of paragraph (b)(1) of this section, a HECM counselor shall discuss with the borrower and Ineligible Non-Borrowing Spouse:

(i) The Deferral Period will not be applicable;

(ii) The HECM will become due and payable upon the death of the last surviving borrower; and

(iii) Any other requirements determined by the Commissioner.

(c) *Certificate.* The HECM counselor will provide the borrower with a certificate stating that the borrower, Non-Borrowing Spouse and non-borrowing owner, as applicable, has received counseling. The HECM counselor shall upload the certificate to the appropriate electronic database.

(d) *HECM for Purchase.* For HECM for Purchase transactions, prospective borrowers shall complete the required HECM counseling prior to signing a sales contract and/or making an earnest money deposit, unless a later date is provided for by the Commissioner.

§ 206.43 Information to borrower.

(a) *Disclosure of costs of obtaining mortgage.* The mortgagee shall ensure that the borrower has received full disclosure of all costs of obtaining the mortgage. The mortgagee shall ask the borrower about any costs or other obligations that the borrower has incurred to obtain the mortgage, as defined by the Commissioner, in addition to providing the Good Faith Estimate required by 12 CFR 1024.7. The mortgagee shall clearly state to the borrower which charges are required to obtain the mortgage and which are not required to obtain the mortgage.

(b) *Lump sum disbursement.* (1) If the borrower requests that at least 25 percent of the principal limit amount (after deducting amounts excluded in the following sentence) be disbursed at closing to the borrower (or as otherwise permitted by § 206.25), the mortgagee must make sufficient inquiry at closing to confirm that the borrower will not use any part of the amount disbursed for payments to or on behalf of an estate planning service firm, with an explanation of § 206.32 as necessary or appropriate.

(2) This paragraph does not apply to any part of the principal limit used for the following:

(i) Initial MIP under § 206.105(a) or fees and charges allowed under § 206.31(a) paid by the mortgagee from mortgage proceeds instead of by the borrower in cash; and

(ii) Amounts set aside in accordance with § 206.19(f) for repairs under § 206.47, for property charges under § 206.205, or for servicing charges under § 206.207(b).

§ 206.44 Monetary investment for HECM for Purchase program.

(a) *Monetary investment.* At closing, HECM for Purchase borrowers shall provide a monetary investment that will be applied to satisfy the difference between the principal limit and the sale price for the property, plus any HECM loan-related fees that are not financed into the loan, minus the amount of the earnest deposit.

(b) *Funding sources.* To satisfy the required monetary investment, borrowers may use:

(1) Cash on hand;

(2) Cash from the sale or liquidation of the borrower's assets;

(3) HECM mortgage proceeds; or

(4) Other approved funding sources as determined by the Commissioner through notice.

(c) *Interested party contributions.* (1) The following interested party contributions are permissible:

(i) Fees required to be paid by a seller under state or local law; and

(ii) The purchase of the Home Warranty policy by the seller.

(2) The Commissioner may define additional permissible interested party contributions and impose requirements for permissible interested party contributions through a notice for comment published in the **Federal Register**.

Eligible Properties

§ 206.45 Eligible properties.

(a) *Title.* A mortgage must be on real estate held in fee simple; or on a leasehold that is under a lease with a duration lasting until the later of: 99 years, if such lease is renewable; or the actuarial life expectancy of the mortgagor plus a number of years specified by the Commissioner, which shall not be more than 99 years. The mortgagee shall obtain a title insurance policy satisfactory to the Commissioner. If the Commissioner determines that title insurance for reverse mortgages is not available for reasonable rates in a state, then the Commissioner may specify other acceptable forms of title evidence in lieu of title insurance.

(b) *Type of property.* The property shall include a dwelling designed principally as a residence for one family or such additional families as the Commissioner shall determine. A condominium unit designed for one-family occupancy shall also be an eligible property.

(c) *Borrower and mortgagee requirement for maintaining flood insurance coverage.* (1) If the mortgage is to cover property improvements (dwelling and related structures or equipment essential to the value of the property and subject to flood damage) that:

(i) Are located in an area designated by the Federal Emergency Management Agency (FEMA) as a floodplain area having special flood hazards; or

(ii) Are otherwise determined by the Commissioner to be subject to a flood hazard, and if flood insurance under the National Flood Insurance Program (NFIP) is available with respect to these property improvements, the borrower and mortgagee shall be obligated, by a special condition to be included in the mortgage commitment, to obtain and to maintain NFIP flood insurance coverage on the property improvements during such time as the mortgage is insured.

(2) No mortgage may be insured that covers property improvements located in an area that has been identified by FEMA as an area having special flood hazards, unless the community in which the area is situated is participating in the NFIP and such insurance is obtained by the borrower. Such requirement for flood insurance shall be effective one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards.

(3) The flood insurance must be maintained during such time as the

mortgage is insured in an amount at least equal to the lowest of the following:

(i) 100 percent replacement cost of the insurable value of the improvements, which consists of the development or project cost less estimated land cost; or

(ii) The maximum amount of the NFIP insurance available with respect to the particular type of the property; or

(iii) The outstanding principal balance of the loan.

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, 24 CFR 200.810(d) shall apply unless the borrower certifies that no child who is less than six years of age resides or is expected to reside in the dwelling, except that any reference to ''mortgagor'' in 24 CFR 200.810(d) shall mean ''borrower'' for purposes of this paragraph.

(e) *Restrictions on conveyance.* The property must be freely marketable. Conveyance of the property may only be restricted as permitted under this section, except that a right of first refusal to purchase a unit in a condominium project is permitted if the right is held by the condominium association for the project.

(1) As used in this section, *legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the borrower or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the borrower to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the borrower for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to borrower efforts to convey;

(iii) Terminate or subject to termination all or a part of the interest held by the borrower in the mortgaged property if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(2) *Policy of free assumability with no restrictions.* A HECM shall not be eligible for insurance if the property securing the HECM is subject to legal restrictions on conveyance, except as permitted by this section.

(3) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(i) The restrictions do not have an undue effect on marketability; and

(ii) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(4) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (e)(2) of this section, mortgages insured on property in the Northern Mariana Islands or American Samoa shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

(f) *Location of property.* The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any location where the housing standards meet the requirements of the Commissioner.

(g) *HECM for Purchase.* (1) A HECM for Purchase transaction is where title to the property is transferred to the HECM borrower and, at the time of closing, the HECM first and second liens, if applicable, will be the only liens against the property.

(2) Properties are eligible for FHA insurance under the HECM for Purchase program when construction is completed and the property is habitable, as evidenced by the issuance of a Certificate of Occupancy or its equivalent, by the local jurisdiction.

§ 206.47 Property standards; repair work.

(a) *Need for repairs.* Properties must meet the applicable property requirements of the Commissioner in order to be eligible. Properties that do not meet the property requirements must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage.

(b) *Assurance that repairs are made.* The mortgage may be closed before the repair work is completed if the Commissioner estimates that the cost of the remaining repair work will not exceed 15 percent of the maximum claim amount and the mortgage contains provisions approved by the Commissioner concerning payment for the repairs.

(c) *Reimbursement to contractor.* When repair work is completed after closing by a contractor, the mortgagee shall cause one or more inspections of the property to be made by an inspector or other qualified individual acceptable to the Commissioner in order to ensure that the repair work is satisfactory, and prior to the release of funds from the Repair Set Aside. The mortgagee shall hold back a portion of the contract price attributable to the work done before each interim release of funds, and the total of the hold backs will be released after the final inspection and approval of the release by the mortgagee. The mortgagee shall ensure that all mechanics' and materialmen's liens are released of record.

(d) *Reimbursement to borrower.* The mortgagee shall not reimburse the borrower for any labor the borrower performed. The mortgagee may reimburse the borrower for the actual cost of repair materials from the Repair Set Aside, provided that the mortgagee causes one or more inspections of the property by an inspector or other qualified individual acceptable to the Commissioner and meets all reimbursement requirements established by the Commissioner.

(e) *HECM for Purchase.* For HECM for Purchase transactions, where major property deficiencies threaten the health and safety of the homeowner or jeopardize the soundness and security of the property, all repairs must be completed by the seller prior to closing. Appraisers shall complete the appraisal report as ''Subject To'' the completion of the repairs.

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Commissioner.

§ 206.52 Eligible sale of property–HECM for Purchase.

(a) *Sale by owner of record*— (1) *Owner of record requirement.* To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract.

(2) *Supporting documentation.* The mortgagee shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to FHA as part of the application for mortgage insurance, in

accordance with §§ 206.15 and 206.115(b)(9).

(b) *Time restrictions on re-sales.* (1) *General.* The eligibility of a property for a mortgage insured by FHA is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance (the re-sale date). The mortgagee shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to FHA as part of the application for mortgage insurance, in accordance with § 206.115(b).

(2) *Re-sales occurring 90 days or less following acquisition.* If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a mortgage to be insured by FHA.

(3) *Re-sales occurring between 91 days and 180 days following acquisition.* (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a mortgage insured by FHA.

(ii) However, FHA will require that the mortgagee obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The mortgagee may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) FHA may revise the level at which additional documentation is required under paragraph (b)(3) of this section at 50 to 150 percent over the original purchase price. FHA will revise this level by **Federal Register** notice with a 30 day delayed effective date.

(4) *Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.* (i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a mortgage to be insured by FHA.

(ii) However, FHA may require that the mortgagee provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At FHA's discretion, such documentation must include, but is not limited to, an appraisal from another appraiser. FHA may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum claim amount. Otherwise, the value supported by the first appraisal will be used to calculate the maximum claim amount.

(iv) FHA will announce its determination to require additional value documentation through issuance of a **Federal Register** notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. Further, the **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. Any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

(v) The level at which additional documentation is required under paragraph (b)(4) of this section shall supersede that under paragraph (b)(3) of this section.

(5) *Re-sales occurring more than 12 months following acquisition.* If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

(c) *Exceptions to the time restrictions on sales.* The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the NHA (12 U.S.C. 1710);

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by local and state government agencies; and

(8) Only upon announcement by FHA through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

(d) *Sanctions and indemnification.* Failure of a mortgagee to comply with the requirements of this section may result in HUD requesting indemnification of the mortgage loan, or seeking other appropriate remedies under 24 CFR part 25.

Refinancing of Existing Home Equity Conversion Mortgages

§ 206.53 Refinancing a HECM loan.

(a) *General.* Except as otherwise provided in this section, all requirements applicable to the insurance of HECMs under this part apply to the insurance of refinanced HECMs. FHA may, upon application by a mortgagee, insure any mortgage given to refinance an existing HECM insured under this part, including loans assigned to the Commissioner as described in § 206.107(a)(1) and § 206.121(b) of this part.

(b) *Definition of ''total cost of the refinancing''.* For purposes of paragraphs (d) and (e) of this section, the term ''total cost of the refinancing'' means the sum of the allowable charges and fees permitted under § 206.31 and the initial MIP described in § 206.105(a) and paragraph (c) of this section.

(c) *Initial MIP limit.* (1) The initial MIP paid by the mortgagee pursuant to § 206.105(a) shall not exceed the difference between: Three percent of the increase in the maximum claim amount for the new HECM, minus the amount of the initial MIP already charged and paid by the borrower for the existing HECM that is being refinanced. No refunds will be given if the initial MIP paid on the existing HECM exceeds the initial MIP due on the new HECM.

(2) The HECM refinance authority is only applicable when the property that serves as collateral for the FHA-insured mortgage remains the same.

(3) Existing HECM borrowers refinancing an existing HECM are eligible for a MIP reduction under the conditions of this section, but existing HECM borrowers who participate in a HECM for Purchase transaction are ineligible for a reduction in the initial MIP.

(d) *Anti-churning disclosure*— (1) *Contents of anti-churning disclosure.* In addition to providing the required disclosures under § 206.43, the mortgagee shall provide to the borrower its best estimate of:

(i) The total cost of the refinancing to the borrower; and

(ii) The increase in the borrower's principal limit as measured by the estimated initial principal limit on the mortgage to be insured less the current principal limit on the HECM that is being refinanced under this section.

(2) *Timing of anti-churning disclosure.* The mortgagee shall provide the anti-churning disclosure concurrently with the disclosures required under § 206.43.

(e) *Waiver of counseling requirement.* The borrower and any Non-Borrowing Spouse may elect not to receive counseling under § 206.41, but only if:

(1) The original HECM was assigned a Case Number on or after August 4, 2014, and the borrower and Non-Borrowing Spouse, if applicable, received counseling required under § 206.41; or where the original HECM was assigned a Case Number prior to August 4, 2014, and there is no applicable Non-Borrowing Spouse.

(2) The borrower has received the anti-churning disclosure required under paragraph (d) of this section.

(3) The increase in the borrower's principal limit (as provided in the anti-churning disclosure) exceeds the total cost of the refinancing by an amount established by the Commissioner through **Federal Register** notice. FHA may periodically update this amount through publication of a notice in the **Federal Register**. Publication of any such revised amount will occur at least 30 days before the revision becomes effective.

(4) The time between the date of the closing on the original HECM and the date of the application for refinancing under this section does not exceed five years (even if less than five years have passed since a previous refinancing under this section).

Deferral of Due and Payable Status

§ 206.55 Deferral of due and payable status for Eligible Non-Borrowing Spouses.

(a) *Deferral Period.* If the last surviving borrower predeceases an Eligible Non-Borrowing Spouse, and if the requirements of paragraph (d) of this section are satisfied, the due and payable status will be deferred for as long as the Eligible Non-Borrowing Spouse continues to meet the Qualifying Attributes in paragraph (c) of this section and the requirements of paragraphs (d) and (e).

(b) *End of Deferral Period.* (1) If a Deferral Period ceases or becomes unavailable because a Non-Borrowing Spouse no longer satisfies the Qualifying Attributes and has become an Ineligible Non-Borrowing Spouse, a mortgagee may not provide an opportunity to cure the default, and the HECM will become immediately due and payable as a result of the death of the last surviving borrower.

(2) If a Deferral Period ceases but the Eligible Non-Borrowing Spouse continues to meet the Qualifying Attributes, the mortgagee must provide an Eligible Non-Borrowing Spouse with 30 days to cure the default, in accordance with § 206.57.

(c) *Qualifying Attributes.* (1) In order to qualify as an Eligible Non-Borrowing Spouse, the Non-Borrowing Spouse must:

(i) Have been the spouse of a HECM borrower at the time of loan closing and remained the spouse of such HECM borrower for the duration of the HECM borrower's lifetime;

(ii) Have been properly disclosed to the mortgagee at origination and specifically named as an Eligible Non-Borrowing Spouse in the HECM mortgage and loan documents;

(iii) Have occupied, and continue to occupy, the property securing the HECM as his or her principal residence; and

(iv) Meet any other requirements as the Commissioner may prescribe by **Federal Register** notice for comment.

(2) A Non-Borrowing Spouse who meets the Qualifying Attributes in paragraph (c)(1) of this section at origination is an Eligible Non-Borrowing Spouse and may not elect to be ineligible for the Deferral Period. A Non-Borrowing Spouse that is ineligible for the Deferral Period at the time of loan origination because he or she failed to satisfy the Qualifying Attributes requirements in paragraph (c)(1) of this section is not subsequently eligible for a Deferral Period when the borrowing spouse dies or moves out of the home.

(3) An Eligible Non-Borrowing Spouse shall become an Ineligible Non-Borrowing Spouse should any of the Qualifying Attributes requirements in paragraph (c)(1) of this section cease to be met.

(d) *Additional requirements for Deferral Period.* An Eligible Non-Borrowing Spouse must satisfy and continue to satisfy the following requirements:

(1) Within 90 days from the death of the last surviving HECM borrower, establish legal ownership or other ongoing legal right to remain for life in the property securing the HECM;

(2) After the death of the last surviving borrower, ensure all other obligations of the HECM borrower(s) contained in the loan documents continue to be satisfied; and

(3) After the death of the last surviving borrower, ensure that the HECM does not become eligible to be called due and payable for any other reason.

(e) *Unaffected terms of HECM.* All applicable terms and conditions of the mortgage and loan documents, and all FHA requirements, continue to apply and must be satisfied.

(f) Nothing in this section may be construed as interrupting or interfering with the ability of the borrower's estate or heir(s) to dispose of the property if they are otherwise legally entitled to do so.

§ 206.57 Cure provision enabling reinstatement of Deferral Period.

(a) When the mortgagee is required by § 206.55(b)(2) to provide an Eligible Non-Borrowing Spouse with 30 days to cure the default, this section shall apply.

(b) If the default is cured within the 30-day timeframe, the Deferral Period shall be reinstated, unless:

(1) The mortgagee has reinstated the Deferral Period within the past two years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable;

(2) The reinstatement of the Deferral Period will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(3) The reinstatement of the Deferral Period will adversely affect the priority of the mortgage lien.

(c) If the default is not cured within the 30-day timeframe, the mortgagee shall proceed in accordance with the established timeframes to initiate foreclosure and reasonable diligence in prosecuting foreclosure.

(d) Even after a foreclosure proceeding has been initiated, the mortgagee shall permit an Eligible Non-Borrowing Spouse to cure the condition which resulted in the Deferral Period ceasing, consistent with § 206.55(b)(2), and to reinstate the mortgage and Deferral Period, and the mortgage insurance shall continue in effect. The mortgagee may require the Eligible Non-Borrowing Spouse to pay any costs that the mortgagee incurred to reinstate the mortgage, including foreclosure costs and reasonable attorney's fees. Such costs may not be added to the outstanding loan balance and shall be paid from some other source of funds. The mortgagee shall reinstate the Deferral Period unless:

(1) The mortgagee has reinstated the Deferral Period within the past two years immediately preceding the latest notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable;

(2) The reinstatement of the Deferral Period will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(3) The reinstatement of the Deferral Period will adversely affect the priority of the mortgage lien.

§ 206.59 Obligations of mortgagee.

(a) *Certifications and disclosures at closing.* At closing, the mortgagee shall obtain the appropriate certification from each borrower identified as married as well as from each identified Non-Borrowing Spouse. When a HECM borrower has identified an Ineligible Non-Borrowing Spouse, the mortgagee shall also disclose the amount of mortgage proceeds that would have been available under the HECM if he or she were an Eligible Non-Borrowing Spouse.

(b) *Divorce.* In the event of a divorce between the HECM borrower and Eligible Non-Borrowing Spouse, a mortgagee shall obtain a copy of the final divorce decree and shall not require the now Ineligible Non-Borrowing Spouse to fulfill any further requirements.

(c) *Death of borrower.* Within 30 days of being notified of the death of the borrower, the mortgagee shall:

(1) Obtain all certifications, as required by the Commissioner, from the Eligible Non-Borrowing Spouse, and continue to obtain the required certifications no less than annually thereafter for the duration of the Deferral Period; and

(2) Notify any Eligible Non-Borrowing Spouse that the due and payable status of the loan is in a Deferral Period only for the amount of time that such Eligible Non-Borrowing Spouse continues to meet all requirements established by the Commissioner.

(d) *Non-compliance with requirements.* If the Eligible Non-Borrowing Spouse ceases to meet any requirements established by the Commissioner, the mortgagee shall notify the Eligible Non-Borrowing Spouse within 30 days that the Deferral Period has ended and the HECM is immediately due and payable, unless the Deferral Period is reinstated in accordance with § 206.57. The mortgagee shall obtain documentation validating the reason for the cessation of the Deferral Period and, if applicable, the reason for reinstatement of the Deferral Period.

§ 206.61 HECM proceeds during a Deferral Period.

(a) The HECM is not assumable. HECM proceeds may not be disbursed to any party during a Deferral Period, except as determined by the Commissioner through notice.

(b) If a Repair Set Aside was established as a condition of the HECM, funds may be disbursed from the Repair Set Aside during a Deferral Period for the sole purpose of paying the cost of those repairs that were specifically identified prior to origination as necessary to the insurance of the HECM. Repairs under this paragraph shall only be paid for using funds from the Repair Set Aside if the repairs are satisfactorily completed during the time period established in the Repair Rider or such additional time as provided by the Commissioner. Unused funds remaining beyond the established time period shall not be disbursed.

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge

§ 206.101 Sale, assignment and pledge of insured mortgages.

(a) *Sale of interests in insured mortgages.* No mortgagee may sell or otherwise dispose of any mortgage insured under this part, or group of mortgages insured under this part, or any partial interest in such mortgage or mortgages by means of any agreement, arrangement or device except pursuant to this subpart.

(b) *Sale of insured mortgage to approved mortgagee.* A mortgage insured under this part may be sold to another approved mortgagee. The seller shall notify the Commissioner of the sale within 15 calendar days, on a form prescribed by the Commissioner and acknowledged by the buyer.

(c) *Effect of sale of insured mortgage.* When a mortgage insured under this part is sold to another approved mortgagee, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract, provided that the seller shall not be relieved of its obligation to pay mortgage insurance premiums until the notice required by § 206.101(b) is received by the Commissioner.

(d) *Assignments, pledges and transfers by approved mortgagee.* (1) An assignment, pledge, or transfer of a mortgage or group of mortgages insured under this part, not constituting a final sale, may be made by an approved mortgagee to another approved mortgagee provided the following requirements are met:

(i) The assignor, pledgor or transferor shall remain the mortgagee of record.

(ii) The Commissioner shall have no obligation to recognize or deal with any party other than the mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(2) An assignment or transfer of an insured mortgage or group of insured mortgages may be made by an approved mortgagee to other than an approved mortgagee provided the requirements under paragraphs (d)(1)(i) and (d)(1)(ii) of this section are met and the following additional requirements are met:

(i) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan) which certifies to the approved mortgagee that:

(A) It has assets of $100,000 or more; and

(B) It has lawful authority to hold an insured mortgage or group of insured mortgages.

(ii) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the following alternate courses of action within 1 year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(A) The transferor or assignor shall repurchase and accept a reassignment of such mortgage or group of mortgages.

(B) The transferor or assignor shall obtain a sale and transfer of such mortgage or group of mortgages to an approved mortgagee.

(3) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

(e) *Declaration of trust.* A sale of a beneficial interest in a group of mortgages insured under this part, where the interest to be acquired is related to all of the mortgages as an entirety, rather than an interest in a specific mortgage, shall be made only pursuant to a declaration of trust, which has been approved by the Commissioner prior to any such sale.

(f) *Transfers of partial interests.* A partial interest in a mortgage insured under this part may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(1) *Principal mortgagee.* The insured mortgage shall be held by an approved mortgagee which, for the purposes of

this section, shall be referred to as the *principal mortgagee.*

(2) *Interest of principal mortgagee.* The principal mortgagee shall retain and hold for its own account a financial interest in the insured mortgage.

(3) *Qualification for holding partial interest.* A partial interest in an insured mortgage shall be issued to and held only by:

(i) A mortgagee approved by the Commissioner; or

(ii) A corporation, trust or organization (including, but not limited to any pension fund, pension trust, or profit-sharing plan) which certifies to the principal mortgagee that:

(A) It has assets of $100,000 or more; and

(B) It has lawful authority to acquire a partial interest in an insured mortgage.

(4) *Participation agreement provisions.* The participation agreement shall include provisions that:

(i) The principal mortgagee shall retain title to the mortgage and remain the mortgagee of record under the contract of mortgage insurance.

(ii) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal mortgagee with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(iii) The mortgage and loan documents shall remain in the custody of the principal mortgagee.

(iv) The responsibility for servicing the insured mortgages shall remain with the principal mortgagee.

§ 206.102 Insurance Funds.

Loans endorsed for insurance under this part, prior to October 1, 2008, shall be obligations of the General Insurance Fund. Loans endorsed for insurance under this part, on or after October 1, 2008, shall be obligations of the Mutual Mortgage Insurance Fund.

Mortgage Insurance Premiums

§ 206.103 Payment of MIP.

(a) The payment of any MIP due under this subpart shall be made to the Commissioner by the mortgagee in cash until an event described in paragraph (b) or (c) of this section occurs.

(b) *Payment of the mortgage.* The MIP shall no longer be remitted if the mortgage is paid in full.

(c) *Acquisition of title.* (1) If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Commissioner that a claim for the payment of the insurance benefits will not be presented, the MIP shall no longer be remitted.

(2) If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale or the mortgagee acquires title by a deed in lieu of foreclosure, or where the property is sold in accordance with § 206.125(c), and a claim for the payment of the insurance benefits will be presented, the MIP shall no longer be remitted as of the date of the foreclosure sale, the date the deed in lieu of foreclosure is recorded, or the date in which the sale in accordance with § 206.125(c) is completed, as applicable.

§ 206.105 Amount of MIP.

(a) *Initial MIP.* The mortgagee shall pay to the Commissioner an initial MIP that does not exceed three percent of the maximum claim amount.

(b) *Monthly MIP.* The Commissioner may establish and collect a monthly MIP, which will accrue daily from the closing date, at a rate not to exceed 1.50 percent of the remaining insured principal balance, or up to 1.55 percent for any mortgage involving an original principal obligation that is greater than 95 percent of appraised value of the property. A mortgagee may only add the monthly MIP to the loan balance when paid to the Commissioner.

(c) *Calculation of the initial MIP.* The mortgagee shall calculate the initial MIP based on the amount of funds the borrower has elected to be made available during the First 12-Month Disbursement Period, except that the calculation shall not include any funds set aside in the Servicing Fee Set Aside, if applicable. The initial MIP calculation shall be determined based on the sum of the following amounts:

(1) For adjustable interest rate HECMs, the amount of Mandatory Obligations, the amount disbursed to the borrower at loan closing, and the amount of the available Initial Disbursement Limit not taken by the borrower at loan closing that the borrower selects to remain available during the First 12-Month Disbursement Period.

(2) For fixed interest rate HECMs, the amount of Mandatory Obligations and the amount disbursed to the borrower at loan closing.

(d) *Adjustments to initial or monthly MIP.* The Commissioner may adjust the amount of any initial or monthly MIP through notice. Such notice shall establish the effective date of any premium adjustment therein.

§ 206.107 Mortgagee election of assignment or shared premium option.

(a) *Election of option.* Before the mortgage is submitted for insurance endorsement, the mortgagee shall elect either the assignment option or the shared premium option.

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Commissioner if the outstanding loan balance is equal to or greater than 98 percent of the maximum claim amount, regardless of the deferral status, or the borrower has requested a payment which exceeds the difference between the maximum claim amount and the outstanding loan balance and:

(i) The mortgagee is current in making the required payments under the mortgage to the borrower;

(ii) The mortgagee is current in its payment of the MIP (and late charges and interest on the MIP, if any) to the Commissioner;

(iii) The mortgage is not due and payable under § 206.27(c)(1), or, if due and payable under § 206.27(c)(1), its due and payable status has been deferred pursuant to a Deferral Period;

(iv) An event described in § 206.27(c)(2) has not occurred, or the Commissioner has been so informed but has denied approval for the mortgage to be due and payable. At the mortgagee's option, the mortgagee may forgo assignment of the mortgage and file a claim under any of the circumstances described in § 206.123(a)(3)–(5); and

(v) The mortgage is a first lien of record and title to the property securing the mortgage is good and marketable. The provisions of § 206.136 pertaining to mortgagee certifications also apply.

(2) Under the shared premium option, the mortgagee may not assign a mortgage to the Commissioner unless the mortgagee fails to make payments and the Commissioner demands assignment (§ 206.123(a)(2)), but the mortgagee shall only be required to remit a reduced monthly MIP to the Commissioner. The mortgagee shall collect from the borrower the full amount of the monthly MIP provided in § 206.105(b) but shall retain a portion of the monthly MIP paid by the borrower as compensation for the default risk assumed by the mortgagee. The portion of the MIP to be retained by a mortgagee shall be determined by the Commissioner as calculated in § 206.109. For a particular mortgage, the applicable portion shall be determined as of the date of the commitment. The mortgagee retains the right to file a claim under any of the circumstances described in § 206.123(a)(2)–(5).

(b) *No election for shared appreciation.* Shared appreciation mortgages shall be insured by the Commissioner only under the shared premium option.

§ 206.109 Amount of mortgagee share of premium.

Using the factors provided by the Commissioner, the amount of the mortgagee share of the premium shall be determined for each mortgage based upon the age of the youngest borrower or Eligible Non-Borrowing Spouse and the expected average mortgage interest rate.

§ 206.111 Due date of MIP.

(a) *Initial MIP.* The mortgagee shall pay the initial MIP to the Commissioner within fifteen days of closing and as a condition to the endorsement of the mortgage for insurance.

(b) *Monthly MIP.* Each monthly MIP shall be due to the Commissioner on the first business day of each month except the month in which the mortgage is closed.

§ 206.113 Late charge and interest.

(a) *Late charge.* Initial MIP remitted to the Commissioner more than 5 days after the payment date in § 206.111(a) and monthly MIP remitted to the Commissioner more than 5 days after the payment date in § 206.111(b) shall include a late charge of four percent of the amount owed.

(b) *Interest.* In addition to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any initial MIP remitted to the Commissioner more than 20 days after closing, and interest on any monthly MIP remitted to the Commissioner more than 5 days after the payment date prescribed in § 206.111(b). Such interest rate shall be paid at a rate set in conformity with the Treasury Financial Manual.

(c) *Paid by mortgagee.* Any late charge and interest owed may not be added to the outstanding loan balance and must be paid by the mortgagee.

§ 206.115 Insurance of mortgage.

(a) *Mortgages with firm commitments.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5 (any reference to § 203.255 in § 203.5 shall mean § 206.115 for purposes of this section), the Commissioner will endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate.

(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the Direct Endorsement program under § 203.5 (any reference to § 203.255 in § 203.5 shall mean § 206.115 for purposes of this section), the mortgagee shall submit to the Commissioner, within 60 days after the date of closing of the loan or such additional time as permitted by the Commissioner, properly completed documentation and certifications as listed in this paragraph (b):

(1) Property appraisal upon a form meeting the requirements of the Commissioner (including, if required, any additional documentation supporting the appraised value of the property under § 206.52), and a HUD conditional commitment, or a Lender's Notice of Value issued by the Lender Appraisal Processing Program (LAPP) approved lender when the appraisal was originally completed for use in a VA application, but only if the appraiser was also on the FHA roster as of the effective date of the appraisal, and all accompanying documents required by the Commissioner;

(2) An application for insurance of the mortgage in a form prescribed by the Commissioner;

(3) A certified copy of the mortgage and loan documents executed upon forms which meet the requirements of the Commissioner;

(4) An underwriter certification, on a form prescribed by the Commissioner, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with FHA underwriting requirements, and incorporates each of the underwriter certification items that apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees, except that if FHA makes the TOTAL Mortgage Scorecard available to HECM mortgagees by setting out requirements applicable for the use of the TOTAL Mortgage Scorecard in a **Federal Register** notice for comment, mortgagees may follow such procedures and meet such requirements in lieu of providing the underwriter certification;

(5) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(6) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with § 200.926d(f);

(7) A mortgage certification on a form prescribed by the Commissioner, stating that the authorized representative of the mortgagee who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of paragraph (b) of this section. The certification shall incorporate each of the mortgagee certification items that apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(8) Documents required by § 206.15;

(9) Documentation providing that the seller is the owner of record in accordance with § 206.52(a) and the time restriction requirements of § 206.52(b) are met;

(10) For HECM for Purchase transactions, a Certificate of Occupancy, or its equivalent, if required for new construction; and

(11) Such other documents as the Commissioner may require.

(c) *Pre-endorsement review for Direct Endorsement.* (1) Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Commissioner will review the documents and determine that:

(i) The mortgage is executed on a form which meets the requirements of the Commissioner;

(ii) The mortgage maturity meets the requirements of the applicable program;

(iii) The stated mortgage amount does not exceed 150 percent of the maximum claim amount;

(iv) All documents required by paragraph (b) of this section are submitted;

(v) All necessary certifications are made in accordance with paragraph (b) of this section;

(vi) There is no mortgage insurance premium, late charge or interest due to the Commissioner; and

(vii) The mortgage was not in default when submitted for insurance or, if submitted for insurance more than 60 days after closing, the mortgagee certifies that the borrower is current in paying all property charges or is otherwise in compliance with all the terms and conditions of the mortgage documents.

(2) The Commissioner is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the

Commissioner will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Commissioner will inform the mortgagee in writing of this determination, and include the reasons for the determination and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c) of this section, the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Commissioner may review all documents required by paragraph (b) of this section. If, following this review, the Commissioner determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Commissioner may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 206.15, or refer the matter to the Mortgagee Review Board for action pursuant to part 25 of this title.

(f) *Creation of the contract.* The mortgage shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate, from the date of the endorsement of the credit instrument, or from the date of FHA's electronic acknowledgement to the mortgagee that the mortgage is insured, as applicable. The Commissioner and the mortgagee are thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the National Housing Act.

§ 206.116 Refunds.

No amount of the initial MIP shall be refundable except as authorized by the Commissioner.

HUD Responsibility to Borrowers

§ 206.117 General.

The Commissioner is required by statute to take any action necessary to provide a borrower with funds to which the borrower is entitled under the mortgage and which the borrower does not receive because of the default of the mortgagee. The Commissioner may hold a second mortgage to secure repayment by the borrower under § 206.27(d). Where the Commissioner does not hold a second mortgage, but makes a payment to the borrower, and such payment is not reimbursed by the mortgagee, the Commissioner shall accept assignment of the first mortgage.

§ 206.119 [Reserved]

§ 206.121 Commissioner authorized to make payments.

(a) *Investigation.* The Commissioner will investigate all complaints by a borrower concerning late payments. If the Commissioner determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Commissioner shall pay such payments and late charges to the borrower.

(b) *Reimbursement or assignment.* The Commissioner may demand that within 30 days from the demand, the mortgagee reimburse the Commissioner, with interest from the date of payment by the Commissioner, or assign the insured mortgage to the Commissioner. Interest shall be paid at a rate set in conformity with the Treasury Financial Manual. If the mortgagee complies with the reimbursement demand, then the contract of insurance shall not be affected. If the mortgagee complies by assigning the mortgage for record within 30 days of the demand, then the Commissioner shall pay an insurance claim as provided in § 206.129(e)(3) and assume all responsibilities of the mortgagee under the first mortgage. If the mortgagee fails to comply with the demand within 30 days, the contract of insurance will terminate as provided in § 206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the borrower by the Commissioner will be secured by the second mortgage, unless otherwise provided by the Commissioner. Payments will be due and payable in the same manner as under the insured first mortgage. The liability of the borrower under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the borrower (including prior recoupment of the MIP remitted by the mortgagee and billed to the borrower), and shall exclude accrued interest, whether or not it has been included in the outstanding loan balance, and shared appreciation, if any. Interest will stop accruing on the first mortgage when the Commissioner begins to make payments under the second mortgage. The first mortgage will not be due and payable until the second mortgage is due and payable.

Claim Procedure

§ 206.123 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of § 206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Commissioner;

(2) The mortgagee is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Commissioner pursuant to the Commissioner's demand, as provided in § 206.121(b);

(3) The borrower or other permissible party sells the property for less than the outstanding loan balance and the mortgagee releases the mortgage of record to facilitate the sale, as provided in § 206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g) for an amount which does not satisfy the outstanding loan balance or fails to sell the property as provided in § 206.127(a)(2); or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the outstanding loan balance, as provided in § 206.125(e).

(b) [Reserved]

§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Commissioner within 60 days of the mortgage becoming due and payable when the conditions stated in the mortgage, as required by § 206.27(c)(1) have occurred or when the Deferral Period ends. The mortgagee shall notify the Commissioner within 30 days of one of the conditions stated in the mortgage, as required by § 206.27(c)(2), occurring.

(2) After notifying and receiving approval of the Commissioner when needed, the mortgagee shall notify the borrower, Eligible Non-Borrowing Spouse, borrower's estate and borrower's heir(s), as applicable, within 30 days of the later of notifying the Commissioner or receiving approval, if needed, that the mortgage is due and payable. The mortgagee shall give the applicable party 30 days from the date of notice to engage in the following actions:

(i) Pay the outstanding loan balance, including any accrued interest, MIP, and mortgagee advances in full;

(ii) Sell the property for an amount not to be less than the amount determined by the Commissioner through notice, which shall not exceed 95 percent of the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied towards the outstanding loan balance. In no event shall closing costs exceed 11 percent of the sales price. For the purposes of this section, *sell* includes the transfer of title by operation of law;

(iii) Provide the mortgagee with a deed in lieu of foreclosure;

(iv) Correct the condition which resulted in the mortgage coming due and payable for reasons other than the death of the last surviving borrower;

(v) For an Eligible Non-Borrowing Spouse, correct the condition which resulted in an end to the Deferral Period in accordance with § 206.57; or

(vi) Such other actions as permitted by the Commissioner through notice.

(3) For a borrower, even after a foreclosure proceeding is begun, the mortgagee shall permit the borrower to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. The mortgagee may require the borrower to pay any costs that the mortgagee incurred to reinstate the borrower, including foreclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the outstanding loan balance. The mortgagee may refuse reinstatement by the borrower if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the borrower that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(4) For an Eligible Non-Borrowing Spouse, even after a foreclosure proceeding has been initiated, the mortgagee shall permit the Eligible Non-Borrowing Spouse to cure the condition which resulted in the Deferral Period ceasing, in accordance with § 206.57(d).

(b) *Appraisal.* The mortgagee shall have the property appraised by an appraiser on the FHA roster no later than 30 days after receipt of the request by an applicable party in connection with a potential property sale. The property shall be appraised before a foreclosure sale and have an effective appraisal date that is no more than 30 days before such sale. The appraisal shall be at the requesting party's expense unless the mortgage is due and payable. If the mortgage is due and payable, the appraisal shall be at the mortgagee's expense but the mortgagee shall have a right to be reimbursed out of the proceeds of any sale by the borrower or other permissible party.

(c) *Sale by borrower or other permissible party.* Where the HECM is not due and payable, the borrower or an authorized representative of the borrower may sell the property for at least the lesser of the outstanding loan balance or the appraised value. Where the HECM is due and payable at the time the contract for sale is executed, the borrower or other party with legal right to dispose of the property may sell the property in accordance with the amount established by § 206.125(a)(2)(ii). The mortgagee shall satisfy the mortgage of record (and the Commissioner will satisfy any second mortgage required by the Commissioner under § 206.27(d) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Commissioner if required under § 206.27(d)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within six months of the due date defined in § 206.129(d)(1), or within such additional time as may be approved by the Commissioner.

(2) If the laws of the State, city or municipality or other political subdivision in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of the foreclosure in accordance with § 206.125(d)(1), the mortgagee shall commence foreclosure within six months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee shall give written notice to the Commissioner within 30 days after the initiation of foreclosure proceedings, and shall exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Commissioner to constitute ''reasonable diligence'' for each State is made available to mortgagees.

(4) The mortgagee shall bid at the foreclosure sale an amount at least equal to the lesser of the sum of the outstanding loan balance and any and all other incurred expenses, or the current appraised value of the property.

(e) *Other bidders at foreclosure sale.* If a party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of the sale shall be applied to the outstanding loan balance.

(f) *Deed in lieu of foreclosure.* (1)(i) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the borrower or other party with legal right to dispose of the property provided it is within 9 months of the due date and the mortgagee is able to obtain good and marketable title.

(ii) *Cash for Keys.* The Commissioner may provide a financial incentive, in an amount to be determined by the Commissioner, to be paid by the mortgagee and reimbursed through any subsequent claim where a borrower or other party with a legal right to do so deeds the property within 6 months of the due date.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the borrower and satisfy the mortgage of record. If applicable, the mortgagee shall request that the Commissioner cancel the credit instrument and deliver it to the borrower and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by foreclosure or deed in lieu of foreclosure, the mortgagee shall take possession of, preserve and repair the property and shall make diligent efforts to sell the property within six months from the date the mortgagee acquired the property, or such additional time as provided by the Commissioner. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless the mortgagee does not file an application for insurance benefits or written permission is obtained from the Commissioner authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law, or the requirements of the Commissioner or the Secretary of Veterans Affairs if the sale of the property is financed with a mortgage insured by the Commissioner or guaranteed, insured or taken by the Secretary of Veterans Affairs. No other repairs shall be made without the specific advance approval of the Commissioner.

(3) The mortgagee shall not enter into a contract for the preservation, repair or sale of the property with any officer, employee, or owner of ten percent or more interest in the mortgagee or with any other person or organization having

an identity of interest with the mortgagee or with any relative of such officer, employee, owner or person.

§ 206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 30 days after the sale of the property by the mortgagee or within such additional time as approved by the Commissioner. Application shall be made by notifying the Commissioner of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, have the property appraised. Within 30 days of receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a) of this section, substituting the appraised value for the sale price. The mortgagee may add the cost of the appraisal to the claim amount.

(b) *Party other than the mortgagee acquires title.* The mortgagee shall apply for the payment of the insurance benefits within 30 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Commissioner of the sale of the property and the sale price. Transferring a portfolio that includes REO properties to another entity does not constitute a ''sale'' under this section.

(c) *Mortgagee assigns the mortgage.* The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Commissioner. The application for the payment of the insurance benefits shall include the items listed in § 206.135(a) and the certification required under § 206.136.

(d) *Contract of insurance not terminated.* Mortgagees may only file an application for insurance benefits provided the contract of insurance has not terminated.

§ 206.129 Payment of claim.

(a) *General.* If the claim for the payment of the insurance benefits is acceptable to the Commissioner, payment shall be made in cash in the amount determined under this section.

(b) *Limit on claim amount.* (1) For HECMs assigned Case Numbers prior to [insert effective date of final rule], in no case may the claim paid under this subpart exceed the maximum claim amount. The interest allowance provided in paragraphs (d)(3)(x), (e)(2) and (f)(2)(i) of this section shall not be included in determining the limit on the claim amount.

(2) For HECMs assigned Case Numbers on or after [insert effective date of final rule], in no case may the claim paid under this subpart exceed the maximum claim amount, as defined in § 206.3. The interest allowance provided in paragraphs (d)(3)(x), (e)(2) and (f)(2)(ii) of this section shall be made in cash in the amount determined under this section.

(c) *Shared appreciation mortgages.* The terms *loan balance* and *accrued interest* as used in this section do not include interest attributable to the mortgagee's share of the appreciated value of the property.

(d) *Amount of payment—mortgagee acquires title or is unsuccessful bidder.* This paragraph describes the amount of payment if the mortgagee acquires title by purchase, foreclosure, or deed in lieu of foreclosure, or when a party other than the mortgagee is the successful bidder at the foreclosure sale.

(1) *Due date* means the date when the mortgagee notifies or should have notified the Commissioner that the mortgage is due and payable under the conditions stated in the mortgage, as required by § 206.27(c)(1) or the date that the Deferral Period, as provided for in the mortgage by § 206.27(c)(3), ends; or the date the Commissioner approved a due and payable request as provided for in the mortgage by § 206.27(c)(2).

(2) The amount of the claim shall be computed by:

(i) Totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance as of the due date, and allowances for items set forth in paragraph (d)(3) of this section; and

(ii) Subtracting from that total the amount for which the property was sold (or the appraised value determined under § 206.127(a)(2)) and the items set forth in paragraph (d)(4) of this section.

(3) The claim shall include items listed in paragraphs (d)(2)(i) through (xiv) of this section. For HECMs with Case Numbers assigned on or after [insert effective date of final rule], the inclusion of items listed in paragraphs (d)(2)(i), (ii), and (iii) of this section shall be limited to two years of advances made by the mortgagee on such expenses. The Commissioner may approve an extension of the two-year limitation under such circumstances, terms, and conditions determined and specified as acceptable to the Commissioner.

(i) Taxes, ground rents, water rates, and utility charges that are liens prior to the mortgage;

(ii) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage;

(iii) Hazard and flood insurance premiums on the mortgaged property not in excess of a *reasonable rate*;

(A) For purposes of this section, *reasonable rate* means a rate that is not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate;

(B) If a State has neither a FAIR Plan nor a State-licensed rating organization for essential property insurance in the voluntary market, the mortgagee must provide to the Home Ownership Center (HOC) having jurisdiction, information concerning the lowest rates available from an insurer for the types of coverage involved, with a request for a determination of whether the rate is reasonable. FHA will determine the rate to be reasonable if it approximates the rate assessed for comparable insurance coverage applicable to similarly situated properties in a State that offers a FAIR Plan or maintains a State-licensed rating organization;

(iv) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee pursuant to § 206.125;

(v) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property, or removing debris from the property;

(vi) Reasonable costs for performing property inspections required by § 206.140 and to determine if the property is vacant or abandoned are considered to be costs of protecting, operating or preserving the property;

(vii) Charges for the administration, operation, maintenance, or repair of community-owned property or the maintenance or repair of the mortgaged property, paid by the mortgagee for the purpose of discharging an obligation arising out of a covenant filed for record prior to the issuance of the mortgage; and charges for the repair or maintenance of the mortgaged property required by, and in an amount approved by, the Commissioner under § 206.142;

(viii) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by FHA, to determine if the criteria for approval of the mortgagee's acceptance of a deed in lieu of foreclosure or to determine clear title to complete a pre-foreclosure sale;

(ix) Foreclosure costs or costs of acquiring the property in accordance with such conditions as the Commissioner shall prescribe;

(x) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(A) *Debenture interest rate.* The debenture interest rate provided for in § 206.146 shall be used.

(B) *Maturity of debentures.* Debentures shall mature 20 years from the date of issue.

(C) *Registration of debentures.* Debentures shall be registered as to principal and interest.

(D) *Form and amounts of debentures.* Debentures issued under this part shall be in such form and amounts; and shall be subject to such term and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Commissioner, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Commissioner by regulation may prescribe.

(E) *Redemption of debentures.* Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

(F) *Issue date of debentures.* The issue date of debentures is determined by the due date as defined in paragraph (d)(1) of this section.

(G) *Cash adjustment.* Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof;

(xi) Any amount of incentive paid by the mortgagee in accordance with § 206.125(f)(1)(ii);

(xii) Costs of any appraisal under §§ 206.125 or 206.127, provided that the property was appraised after the mortgage became due and payable and that the mortgagee is not otherwise reimbursed for such costs;

(xiii) Reasonable payments made by the mortgagee for:

(A) Preservation and maintenance of the property;

(B) Repairs necessary to meet the objectives of the property standards required for mortgages insured by the Commissioner, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner; and

(C) Expenses in connection with the sale of the property including a sales commission at the rate customarily paid in the community and, if the sale to the buyer involves a mortgage insured by the Commissioner or guaranteed by the Secretary of Veterans Affairs, a discount at a rate not to exceed the maximum allowable by the Commissioner, as of the date of execution of the discounted loan; and

(xiv) A certification that the property is undamaged in accordance with § 206.143.

(4) There shall be deducted from the amount computed in paragraph (d)(2)(i) of this section:

(i) The items listed in § 206.145; and

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 206.140, 206.141, and 206.142.

(e) *Amount of payment—assigned mortgages.* This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Commissioner under § 206.107(a)(1) or § 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1), the amount of payment shall be computed by subtracting from the outstanding loan balance on the date of assignment all cash retained by the mortgagee, including amounts held or deposited for the account of the borrower or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness, and any adjustments for damage or neglect to the property pursuant to §§ 206.140, 206.141 and 206.142.

(2) The claim shall also include:

(i) Reimbursement for such costs and attorney's fees as the Commissioner finds were properly incurred in connection with the assignment of the mortgage to the Commissioner; and

(ii) An amount equivalent to the interest allowance which will have been earned from the date the mortgage was assigned to the Commissioner to the date the claim is paid, if the claim had been paid in debentures, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in the payment of the claim shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures are applicable except that the issue date of the debentures shall be the date the mortgage was assigned to the Commissioner.

(3) When a mortgagee assigns a mortgage under § 206.121(b) after demand by the Commissioner, the mortgagee will not receive the entire claim payment as contained in paragraphs (e)(1) and (2) of this section. The amount of the claim shall be computed by totaling the payments made by the mortgagee to the borrower or for the benefit of the borrower, and subtracting from the total the cash retained by the mortgagee, including amounts held or deposited for the account of the borrower or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness, and any adjustments for damage or neglect to the property pursuant to §§ 206.141 and 206.142. The claim shall also be reduced by an amount determined by the Commissioner to reimburse the Commissioner for administrative expenses incurred in assuming the mortgagee's responsibility under the mortgage, which may include expenses for staff time. If more than one mortgage is assigned to the Commissioner, the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Commissioner. The

claim shall not include accrued interest whether or not it has been included in the loan balance.

(f) *Amount of payment-borrower sells the property.* This paragraph describes the amount of payment if the property is sold in accordance with § 206.125(c) to one other than the mortgagee for less than the outstanding loan balance, and the mortgagee releases the mortgage to facilitate the sale.

(1)(i) *For HECMs assigned Case Numbers prior to [insert effective date of final rule],* the amount of the claim shall be computed by totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance on the date the deed is recorded, and an allowance for items set forth in paragraph (d)(3)(i)–(vii) and (d)(3)(xi) of this section, and subtracting from the total the amount for which the property was sold.

(ii) *For HECMs assigned Case Numbers on or after [insert effective date of final rule], the following provisions apply.*

(A) *When the loan is not in due and payable status.* The amount of the claim shall be computed by totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance on the date the deed is recorded, and an allowance for items set forth in paragraph (d)(3)(xiii)(C) of this section, and subtracting from the total the amount for which the property was sold.

(B) *When the loan is in due and payable status.* The amount of the claim shall be computed by totaling the outstanding loan balance and any accrued interest and servicing fees which have not been added to the outstanding loan balance as of the due date, the items set forth in paragraph (d)(3) of this section, and subtracting from the total the amount for which the property was sold.

(2)(i) *For HECMs assigned Case Numbers prior to [insert effective date of final rule],* the claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, if the claim had been paid in debentures, and in a manner satisfactory to the Commissioner; the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures apply except that the issue date of the debentures is the date the deed is recorded instead of the due date.

(ii) *For HECMs assigned Case Numbers on or after [insert effective date of final rule], the following provisions apply:*

(A) *When the loan is not in due and payable status.* The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, if the claim had been paid in debentures, and in a manner satisfactory to the Commissioner; the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures apply except that the issue date of the debentures shall be the date the deed is recorded.

(B) *When the loan is in due and payable status.* The claim shall also include an amount equivalent to the interest allowance which would have been earned from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any of the applicable requirements of §§ 206.125 and 206.127 within the specified time determined by the due date, as defined in paragraph (d)(1) of this section (or within such further time as the Commissioner may approve in writing), and in a manner satisfactory to the Commissioner; the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of paragraphs (d)(3)(x)(A)–(G) of this section pertaining to debentures apply.

Condominiums

§ 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

(a) *Additional requirements.* The requirements of this subpart shall be applicable to mortgages on individual dwelling units in a condominium, except as modified by this section.

(b) *References.* The term *property* as used in this subpart shall be construed to include the individual dwelling unit and the undivided interest in the common areas and facilities as may be designated.

(c) *Assignment of the mortgage.* If the mortgagee assigns the mortgage on the individual dwelling unit to the Commissioner, the mortgagee shall certify:

(1) To any changes in the plan of apartment ownership including the administration of the property;

(2) That as of the date the assignment is filed for record, the family unit is assessed and subject to assessment for taxes pertaining only to that unit; and

(3) To the condition of the property as of the date the assignment is filed for record. Section 234.275 of this chapter concerning the certification of condition is incorporated by reference.

(d) *Condition of the multifamily structure.* The provisions of § 234.270 (a) and (b) of this chapter concerning the condition of the multifamily structure in which the property is located shall be applicable to mortgages insured under this part which are assigned to the Commissioner.

Termination of Insurance Contract

§ 206.133 Termination of insurance contract.

(a) *Payment of the mortgage.* The contract of insurance shall be terminated if the mortgage is paid in full.

(b) *Acquisition of title.* (1) If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Commissioner that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(2) For HECMs with Case Numbers assigned on or after [insert effective date of final rule], if the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale or the mortgagee acquires title by a deed in lieu of foreclosure and a claim for the payment of the insurance benefits will be presented, the contract of insurance shall be terminated as of claim payment.

(c) *Mortgagee fails to make payments.* If the mortgagee fails to make the payments to the borrower as required under the mortgage, and does not reimburse the Commissioner or assign the mortgage to the Commissioner within 30 days from the demand by the Commissioner for reimbursement or assignment, the contract of insurance shall automatically terminate. The Commissioner may later reinstate the contract of insurance, which shall continue in force as if no termination had occurred, upon reimbursement with interest as provided in § 206.121. Upon reinstatement, the mortgagee shall be liable for all MIP which would have been due if no termination had occurred, including late charge and interest as provided in § 206.113.

(d) *Notice of termination.* The mortgagee shall give written notice to the Commissioner, or other notice acceptable to the Commissioner, within 15 days of the occurrence of an event under paragraphs (a) and (b) of this section. No contract of insurance shall be terminated under paragraphs (a) or (b) of this section unless such notice is given.

(e) *Voluntary termination.* The borrower and the mortgagee may jointly request the Commissioner to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Commissioner shall make certain that the borrower is aware of the consequences which could arise out of the voluntary termination of the contract of insurance. The mortgagee shall cancel the insurance endorsement on the Mortgage Insurance Certificate or Note upon receipt of notice from the Commissioner that the contract of insurance is terminated. Notwithstanding any provision in a mortgage instrument, there shall be no voluntary termination charge due the Commissioner on account of the voluntary termination of any mortgage insurance contract where the request for termination is received by the Commissioner.

(f) *Effect of termination.* When the insurance contract is terminated all rights of the mortgagee shall terminate, including the right to file a claim for insurance benefits. All obligations of the Commissioner shall also cease immediately.

Additional Requirements

§ 206.134 Partial release, addition or substitution of security.

(a) A mortgagee shall not release the security or any part thereof, while the mortgage is insured, without the prior consent of the Commissioner.

(b) A mortgagee may, with the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot or replacing the dwelling with a similar or like kind on the existing lot under the following conditions:

(1) The mortgagee obtains a good and valid first lien on the property to which the dwelling is removed or the existing lot upon which the dwelling is rebuilt;

(2) All damages to the structure are repaired or all rebuilding of the structure is completed without cost to FHA; and

(3) The property to which the dwelling is removed or rebuilt is in an area known to be reasonably free from natural hazards or, if in a flood zone, the borrower will insure or reinsure under the National Flood Insurance Program.

(c) A mortgagee may, without the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot under the following conditions:

(1) The dwelling has survived an earthquake or other disaster with little damage, but continued location on the property might be hazardous;

(2) The conditions stated in paragraph (b) of this section exist; and

(3) Immediately following the emergency removal the mortgagee notifies the Commissioner of the reasons for removal.

§ 206.135 Application for insurance benefits and fiscal data.

(a) On the date the application for assignment is filed, the mortgagee shall submit to the Commissioner:

(1) *Credit and security instrument.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage.

(2) *Proposed assignment instrument.* A copy of the proposed assignment of mortgage.

(3) *Hazard and flood insurance.* All hazard and flood insurance (if applicable) policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee.

(4) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the borrower or others arising out of the mortgage transaction.

(5) *Property.* All property of the borrower held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee).

(6) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction.

(7) *Additional information.* Any additional information or data which the Commissioner may require.

(8) *Title evidence.* All title evidence held by the mortgagee. It need not be extended to include the recordation of the assignment. The title insurance policy shall be endorsed from the mortgage insurance company up to the point of assignment. At the point of assignment, the Commissioner shall be named insured under such policy.

(b) All documents required in paragraph (a) of this section must be submitted and approved before a claim for assignment may be submitted.

(c) *Recorded assignment instrument.* The original of the recorded assignment of mortgage shall be forwarded to the Commissioner as soon as received by the mortgagee, but in no case shall it be longer than 12 months after recordation. If the original of the assignment is not available, a copy shall be furnished and the original forwarded as soon as possible.

§ 206.136 Conditions for assignment.

(a) In order for a HECM to be eligible for assignment, the following must be met:

(1) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens, homeowners association liens or condo association liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise based on any act or omission by the mortgagee except such liens or other matters as may have been approved by the Commissioner.

(2) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage.

(3) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

(b) The mortgagee shall certify that the conditions of paragraph (a) have been met.

§ 206.137 Effect of noncompliance with regulations.

If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply. In the alternative to holding processing in abeyance, the Commissioner may reconvey title to the property or reassign the mortgage to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled and the mortgagee shall refund the insurance benefits to the Commissioner as well as other funds required by § 206.138 of this part. The mortgagee may reapply for insurance benefits at a subsequent date; provided, however, that the mortgagee may not be reimbursed for any expenses incurred in connection with the property after it has been reconveyed or the mortgage reassigned by the Commissioner, or paid any debenture interest accrued after the date of initial conveyance, whichever is earlier, and there will be deducted from the insurance benefits any reduction in the Commissioner's estimate of the value of the property occurring from the time of reconveyance or mortgage reassignment to the time of reapplication.

§ 206.138 Mortgagee's liability for certain expenditures.

Where the Commissioner accepts an assignment, acquires a property after accepting an assignment of a mortgage, or otherwise pays a claim for insurance benefits and thereafter it becomes necessary for the Commissioner to either reconvey the property or reassign the mortgage to the mortgagee due to the mortgagee's noncompliance with these regulations, the mortgagee shall reimburse the Commissioner for all expenses incurred in connection with such acquisition and reconveyance or reassignment. The reimbursement shall include interest on the amount of insurance benefits refunded by the mortgagee from the date the insurance benefits were paid to the date of refund at an interest rate set in conformity with the Treasury Fiscal Requirements Manual, and the Commissioner's cost of holding the property or servicing the mortgage, accruing on a daily basis, from the date of assignment or claim payment to the date of reconveyance or reassignment. These costs are based on the Commissioner's estimate of the taxes, maintenance and operating expenses of the property, and administrative expenses. Appropriate adjustments shall be made by the Commissioner on account of any income received from the property.

§ 206.140 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan is in a due and payable status. When a mortgage is in due and payable status and efforts to reach the borrower or applicable party by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until assigned to the Commissioner or an application for insurance benefits is filed, if such action does not constitute an illegal trespass. ''Reasonable action'' includes the commencement of foreclosure within the time required by § 206.125.

§ 206.141 Property condition.

(a) *Condition at time of transfer.* When the mortgage is assigned to the Commissioner or the property is sold by the mortgagee, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the borrower, its heirs, successors or assigns in connection with mortgage insurance claims.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, hurricane, or tornado; and

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 206.140.

(d) *Limitation.* The mortgagee's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

§ 206.142 Adjustment for damage or neglect.

(a) Except as provided for in paragraphs (a)(1) and (a)(2) of this section: if the property has been damaged by fire, flood, earthquake, hurricane, or tornado, the damage must be repaired before assignment of the mortgage to the Commissioner; if the property has suffered damage because of the mortgagee's failure to take action as required by § 206.140, the damage must be repaired before the mortgagee sells the property.

(1) If the prior approval of the Commissioner is obtained, there will be deducted from the insurance benefits the Commissioner's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(2) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(i) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of 100 percent of the insurable value of the improvements, or the principal loan balance of the mortgage;

(ii) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium;

(iii) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (a)(2)(i) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate;

(iv) The extent of coverage obtained by the mortgagee in accordance with paragraph (a)(2)(iii) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(v) The mortgagee took the actions required by § 206.140.

(b) If the property has been damaged during the time of the mortgagee's possession by events other than fire, flood, earthquake, hurricane, or tornado, or if it was damaged notwithstanding reasonable action by the mortgagee as required by § 206.140, the mortgagee must provide notice of such damage to the Commissioner and may not sell the property until directed to do so by the Commissioner. The Commissioner will either:

(1) Allow the mortgagee to sell the property damaged; or

(2) Require the mortgagee to repair the damage before sale, and the Commissioner will reimburse the mortgagee for reasonable payments not in excess of the Commissioner's estimate of the cost of repair, less any insurance recovery.

§ 206.143 Certificate of property condition.

(a) The mortgagee shall certify that as of the date the mortgagee sold the property in accordance with § 206.125(g) or assignment of the mortgage to the Commissioner, the property was:

(1) Undamaged by fire, flood, earthquake, hurricane or tornado; and

(2) Undamaged due to failure of the mortgagee to take action as required by § 206.140; and

(3) Undamaged while the property was in the possession of the mortgagee.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Commissioner as establishing the condition of the property, as of the date of mortgagee sale or assignment of the mortgage to the Commissioner.

§ 206.144 Final payment.

The mortgagee may not file any supplemental claims to its mortgage insurance claim after six months from settlement by the Commissioner of the claim payment except where the Commissioner determines it appropriate and expressly authorizes an extension of time for supplemental claim filings.

§ 206.145 Items deducted from payment.

(a) There shall be deducted from the total of the added items in § 206.129 the following cash items:

(1) All amounts received by the mortgagee on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property or otherwise after due and payable.

(2) All amounts received by the mortgagee from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

(3) All cash retained by the mortgagee including amounts held or deposited for the account of the borrower or to which it is entitled under the mortgage transaction that have not been applied in reduction of the outstanding loan balance.

(4) With regard to claims filed pursuant to successful short sales, all amounts received by the mortgagee relating to the sale of the property.

(b) [Reserved]

§ 206.146 Debenture interest rate.

(a) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is higher. For applications involving mortgages originated under the single family Direct Endorsement program, debentures shall bear interest from the date of issue, payable semiannually on the first day of January and on the first day of July of each year at the rate in effect as of the date the mortgage was endorsed for insurance;

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

Subpart D—Servicing Responsibilities

§ 206.201 Mortgage servicing generally; sanctions.

(a) *General.* This subpart identifies servicing practices that the Commissioner considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Commissioner. Failure to comply with this subpart shall not be a basis for denial of the insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of FHA mortgagee approval.

(b) *Importance of timely payments.* The paramount servicing responsibility is to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including 2 CFR part 2424 (Debarment, Suspension, and Limited Denial of Participation), and 24 CFR part 25 (Mortgagee Review Board).

(c) *Responsibility for servicing.* (1) Servicing of insured mortgages must be performed by a mortgagee that is approved by FHA to service insured mortgages. The servicer must fully discharge the servicing responsibilities of the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Commissioner for proper servicing, and the actions of its servicer shall be considered to be the actions of the mortgagee. The servicer also shall be fully responsible to the Commissioner for its actions as a servicer.

(2) Whenever servicing of any mortgage is transferred from one mortgagee or servicer to another, notice of the transfer of service shall be delivered:

(i) By the transferor mortgagee or servicer to the borrower. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in 12 CFR 1024.21(e)(2); and

(ii) By the transferee mortgagee or servicer:

(A) *To the borrower.* The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in 12 CFR 1024.21(e)(2); and

(B) *To the Commissioner.* This notification shall be delivered within 15 days of the transfer, in a format prescribed by the Commissioner.

§ 206.203 Providing information.

(a) *Statements of account activity.* The mortgagee shall provide to the borrower a monthly statement regarding the activity of the mortgage for each month, as well as for the calendar year. The statement shall summarize the total principal amount which has been paid to the borrower under the mortgage during that calendar year, the MIP paid to the Commissioner and charged to the borrower, the total amount of deferred interest added to the outstanding loan balance, the total outstanding loan balance and the current principal limit. The mortgagee shall include an accounting of all payments for property charges. The statement shall be provided to the borrower monthly until the mortgage is paid in full by the borrower. The mortgagee shall provide the borrower with a new payment plan every time it recalculates monthly payments or the payment option is changed. The statements shall be in a format acceptable to the Commissioner.

(b) [Reserved]

(c) *Servicing—Providing information.* (1) Mortgagees shall provide loan information to borrowers and arrange for individual loan consultation on request. The mortgagee must establish written procedures and controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(i) A servicing office staffed with competent personnel located within 200 miles of the property, capable of providing timely responses to requests for information. Complete records need not be maintained in such an office if the staff is able to secure needed information and pass it on to the borrower.

(ii) Toll-free telephone service at an office capable of providing needed information.

(2)(i) All borrowers must be informed of and reminded annually of the system available for obtaining answers to loan inquiries and the office from which needed information may be obtained. Toll-free telephone service need not be provided to a borrower other than at the office designated to serve the borrower nor other than from the immediate vicinity of the security property.

(ii) The mortgagee shall provide the borrower with the telephone number where the borrower may speak to employee(s) specifically designated by the mortgagee or its servicer to address inquiries concerning mortgages insured under this part. Such information shall be provided annually and whenever the servicer or the designated employee (or employee group) changes.

(3) Mortgagees must respond to FHA requests for information concerning individual accounts.

§ 206.205 Property charges.

(a) *General.* (1) The borrower shall be responsible for the payment of the following property charges before or on the due date: Ground rents, condominium fees, planned unit development fees, homeowners association fees and all utilities.

(2) Payment of the following property charges are obligations of the borrower and shall be made through the LESA, by the borrower, or by the mortgagee, in accordance with paragraphs (b) through (e) of this section on or before the due date: Property taxes, including any special assessments levied by local or State law, hazard insurance premiums, and applicable flood insurance premiums.

(b) *Method of property charge payment.* (1) *LESA required.* For fixed or adjustable interest rate HECMs, based on the results of the Financial Assessment, the mortgagee may require the borrower to have a Fully-Funded LESA for the payment of property charges identified in paragraph (a)(2) of this section. For adjustable interest rate HECMs, based on the results of the Financial Assessment, the mortgagee may require the borrower to have a Partially-Funded LESA for the payment of property charges identified in paragraph (a)(2) of this section.

(2) *LESA not required.* If, based on the results of the Financial Assessment, the mortgagee does not require the borrower to have a LESA, the borrower shall elect one of the following at closing, whereby an election of the option in paragraph (b)(2)(ii) or (iii) of this section cannot be cancelled by the borrower:

(i) Borrower is responsible for the independent payment of all property charges;

(ii) Borrower elects to have a Fully-Funded LESA for the payment of property charges identified in paragraph (a)(2) of this section; or

(iii) For adjustable interest rate HECMs only, borrower elects to have the mortgagee pay property charges listed in paragraph (a)(2) of this section and ground rents which would have otherwise been required to be paid by the borrower, in accordance with paragraph (d) of this section.

(c) *Life Expectancy Set Aside.* (1) *General.* (i) For a Fully-Funded LESA, the mortgagee shall:

(A) Make payments for property charges identified in paragraph (a)(2) of this section before bills become delinquent and establish controls to ensure that the information needed to pay such bills is obtained on a timely basis;

(B) Make early payments to take advantage of a discount whenever it is to the borrower's advantage;

(C) Not charge the borrower penalties for late payments for property charges unless it can be shown that the penalty was the direct result of the borrower's error or omission;

(D) Ensure that LESA funds are not held in an escrow account;

(E) Add payments for property charges to the outstanding loan balance when the mortgagee disburses funds to the taxing authority or insurance carrier; and

(F) Provide written notification to the borrower and FHA within 30 days of the mortgagee receiving notification that a property charge payment is outstanding when there are no funds or insufficient funds remaining in the LESA, and recommend that the borrower speak with a HUD-Approved Housing Counselor.

(ii) For a Partially-Funded LESA, the mortgagee shall:

(A) Ensure that LESA funds are disbursed to the borrower semi-annually;

(B) Establish controls to ensure the taxing authority, insurance carrier, or both, received the borrower's payment;

(C) Ensure the LESA funds are not held in an escrow account;

(D) Add payments disbursed to the borrower for the payment of property charges identified in paragraph (a)(2) to the outstanding loan balance when the mortgagee disburses the funds; and

(E) Provide written notification to the borrower and FHA within 30 days of the mortgagee receiving notification that a property charge payment is outstanding when there are no funds or insufficient funds remaining in the LESA, and recommend that the borrower speak with a HUD-Approved Housing Counselor.

(2) *Calculation of property charges.* (i) The projected cost of property charges that will be required over the life expectancy of the youngest borrower shall be calculated based on a formula established by the Commissioner.

(ii) The mortgagee shall not require any LESA to be funded in excess of the projected cost of property charges.

(iii) For a Fully-Funded LESA, the amount withheld from the mortgage proceeds shall equal the projected cost of property charges.

(iv) For a Partially-Funded LESA, the amount withheld from the mortgage proceeds is based on a calculation of the gap in residual income and may not exceed the projected cost of property charges.

(v) Mortgagees shall use the *HECM Financial Assessment and Property Charge Guide,* or subsequent guide issued by the Commissioner, to determine whether a LESA is required; view the formula for calculating the projected costs of property charges; and view the formulas for calculating the Fully- and Partially-Funded LESA amounts.

(3) *Annual analysis of LESA.* Mortgagees shall perform an annual analysis of the LESA to determine whether the funds are sufficient to make required distributions for the next year. If funds are exhausted or there is an insufficient balance determination, the mortgagee shall notify the borrower, in writing and within 15 calendar days of the annual analysis of the determination, that LESA funds are exhausted or insufficient and the borrower will be responsible for the payment of property charges.

(4) *Non-payment of property charges*—(i) *Fully-Funded LESA for an adjustable interest rate HECM with no remaining funds.* (A) If the LESA is exhausted and the borrower fails to make property charge payments, the mortgagee shall use any available principal limit to pay the outstanding property charge amount in full and charge the borrower's account.

(B) The mortgagee shall provide the borrower with a written notification within 30 days of the mortgagee receiving notification that a property charge payment is outstanding. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment.

(C) If there is no available principal limit from which the mortgagee can pay the property charge amount in full, and the borrower fails to pay the property charges, the mortgage will become due and payable under § 206.27(c)(2).

(ii) *Fully-Funded LESA for a fixed interest rate HECM with no remaining funds.* If the LESA is exhausted and the borrower fails to make property charge payments, the mortgage will become due and payable under § 206.27(c)(2).

(iii) *Partially-Funded LESA with remaining funds.* If funds remain in the LESA and the borrower fails to make property charge payments, the mortgagee shall:

(A) Immediately suspend future semi-annual payments to the borrower from the Partially-Funded LESA, although scheduled and unscheduled payments from the borrower's payment option may continue;

(B) Disburse funds from the Partially-Funded LESA to pay the full amount owed for the past due property charge; and

(C) Provide written notification to the borrower, within 30 days of the mortgagee receiving notification that a property charge payment is outstanding, that funds were advanced from the Partially-Funded LESA to pay the outstanding property charge. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment.

(iv) *Partially-Funded LESA with no remaining funds.* (A) If the LESA is exhausted and the borrower fails to make property charge payments when due, the mortgagee shall use any funds available in the principal limit to pay the outstanding property charge amount in full and charge the borrower's account.

(B) The mortgagee shall provide written notification to the borrower within 30 days of the mortgagee receiving notification that a property charge payment is outstanding. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment.

(C) If there is no available principal limit from which the mortgagee can pay the property charge amount in full, and the borrower fails to pay the property charges, the mortgage will become due and payable under § 206.27(c)(2).

(5) *Unused LESA funds.* During a Deferral Period or when one of the events listed in § 206.27(c)(1) or (c)(2) have occurred, no unused funds from the LESA shall be disbursed.

(6) *Assignment of mortgage to the Commissioner.* If the insured first mortgage is assigned to the Commissioner, or if payments are made through the second mortgage under the Demand Assignment process, the Commissioner is not required to assume the responsibility for property charge payments, but may continue to administer payments for property charges for a borrower with a Fully-Funded LESA or semi-annual disbursements to a borrower with a Partially-Funded LESA to the extent that there are any funds available in the LESA. For adjustable interest rate HECMs, if the LESA has a positive remaining balance but funds are insufficient to pay all property charges due or semi-annual disbursements to the borrower, the Commissioner may provide the remaining funds to the borrower as a line of credit.

(d) *Borrower elects to have mortgagee pay property charges.* If, based on the results of the Financial Assessment, the mortgagee does not require the borrower to have a LESA, for adjustable interest rate HECMs, the borrower may elect at closing to require the mortgagee to pay property charges identified in paragraph (a)(2) of this section and ground rents by withholding funds from monthly payments due to the borrower or by charging such funds to a line of credit. This voluntary election to have funds withheld by the mortgagee to pay property charges cannot be canceled by the borrower at any time. If the sum of the outstanding loan balance and any unused set aside for repairs and servicing charges has reached the principal limit or the HECM proceeds are otherwise insufficient to pay the property charges, the borrower shall pay such property charges, even though the borrower elected payment to be made by the mortgagee.

(1) *Assignment of mortgage to the Commissioner.* If the insured first mortgage is assigned to the Commissioner under § 206.107(a)(1) or § 206.121(b), or if payments are made through the second mortgage under § 206.121(c), the Commissioner is not required to assume the mortgagee's responsibility under paragraph (d) of this section, despite the election by the borrower.

(2) *Mortgagee's responsibilities.* (i) Funds withheld from payments due to the borrower for property charges under paragraph (d) of this section shall not be paid into an escrow account. When property charges are actually paid, the mortgagee may add the amount paid to the outstanding loan balance.

(ii) It is the mortgagee's responsibility to make disbursements for property charges before bills become delinquent. Mortgagees shall establish controls to ensure that the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for property charges must not be charged to the borrower unless it can be shown that the penalty was the direct result of the borrower's error or omission. Early payment of a bill to take advantage of a discount should be made whenever it is to the borrower's benefit.

(iii) Not later than the end of the second loan year the mortgagee shall establish a system for the periodic analysis of the amounts withheld from monthly payments. The analysis shall be performed at least once a year thereafter. The amount shall be adjusted, after analysis, to provide sufficient available funds to make anticipated disbursements during the ensuing year. The borrower shall be given at least ten days' notice of adjustment in the amount of withholding and an adequate explanation of the reasons for any change. When the amount withheld is analyzed in accordance with this paragraph, any surplus shall be paid to the borrower and added to the outstanding loan balance. Any shortage shall be corrected through increasing the monthly withholding as provided in paragraph (d)(2)(iv) of this section. If amounts withheld are insufficient to pay a property charge before it is delinquent, and the borrower could request a payment equal to the shortage under § 206.26(b), then the mortgagee shall pay the full property charge and treat payment of the shortage as a payment requested by the borrower under § 206.26(b).

(iv) The mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require withholding in excess of the current estimated total annual requirement, unless expressly requested by the borrower. Each monthly withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(e) *Borrower elects to pay property charges.* (1) If, based on the results of the Financial Assessment, the mortgagee does not require the borrower to have a LESA, the borrower may elect to be responsible for the independent payment of all property charges and shall pay all property charges in a timely manner and shall provide evidence of payment to the mortgagee as required in the mortgage.

(2) *Failure to pay property charges.* If the borrower fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments in accordance with paragraph (d) of this section:

(i) The mortgagee may make the payment for the borrower and charge the borrower's account if there are available funds from which the mortgagee may make payment. If a pattern of missed payments occurs, the mortgagee may establish procedures to pay the property charges from the borrower's funds as if the borrower elected to have the mortgagee pay the property charges under this section.

(ii) The mortgagee shall provide a written notification to the borrower and notify the Commissioner that an obligation of the mortgage has not been performed within 30 days of the mortgagee receiving notification of a missed payment when there are no available HECM funds from which the mortgagee may make payment. The borrower shall have 30 days to respond to the mortgagee to explain the circumstances which resulted in the non-payment. The mortgagee may provide any permissible loss mitigation made available by the Commissioner through notice. If the borrower is unable or unwilling to repay the mortgagee for any funds advanced by the mortgagee to pay property charges outside of a LESA, the mortgagee shall submit a due and payable request under the provisions of § 206.27(c)(2).

§ 206.207 Allowable charges and fees after endorsement.

(a) *Reasonable and customary charges.* The mortgagee may collect reasonable and customary charges and fees from the borrower after insurance endorsement, only to the extent that the mortgagee is not reimbursed for such fees by FHA, by adding them to the outstanding loan balance, but only for: Items listed in paragraph (a)(1) of this section; items authorized by the Commissioner under paragraph (a)(2) of this section, or as provided at § 206.26(b)(1)(iii); or charges and fees related to additional documents described in § 206.27(b)(10) and related title search costs.

(1)(i) Charges for substitution of a hazard insurance policy at other than the expiration of term of the existing hazard insurance policy;

(ii) Attorney's and trustee's fees and expenses actually incurred (including the cost of appraisals and cost of advertising) when a case has been referred for foreclosure in accordance with the provisions of this part after a firm decision to foreclose if foreclosure is not completed because of a reinstatement of the account (no attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney or for the services of a collection attorney other than the attorney handling the foreclosure);

(iii) A trustee's fee if the security instrument in deed-of-trust states provides for payment of such a fee for execution of a satisfactory, release, or trustee's deed when the deed of trust is paid in full;

(iv) Where permitted by the security instrument, attorney's fees and expenses actually incurred in the defense of any suit or legal proceeding wherein the mortgagee shall be made a party thereto by reason of the mortgage (no attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney); and

(v) Property preservation expenses incurred pursuant to § 206.140.

(2) Such other reasonable and customary charges as may be authorized by the Commissioner, but which shall not include:

(i) Charges for servicing activities of the mortgagee or servicer;

(ii) Fees charged by independent tax servicer organizations which contract to furnish data and information necessary for the payment of property taxes;

(iii) *Satisfaction, termination,* or *reconveyance* fees when a mortgage is paid in full (other than as provided in paragraph (a)(1)(iii) of this section); or

(iv) The fee for recordation of a satisfaction of the mortgage in states where recordation is the responsibility of the mortgagee.

(b) *Servicing charges.* (1) If the following conditions are met, the mortgagee may include a servicing charge in the mortgage Note rate, starting with the month of loan closing and continuing through the life of the loan, including any applicable Deferral Period:

(i) The charge is authorized by the Commissioner;

(ii) The charge is selected by the mortgagee;

(iii) The charge is within the range established by the Commissioner, which shall be set, through notice, in an amount which shall be between 36 and 150 basis points. The Commissioner may, through a **Federal Register** notice for comment, extend the range of permissible charges below 36 basis points and above 150 basis points; and

(iv) The charge is disclosed as required by § 206.43 to the borrower in a manner acceptable to the Commissioner at the time the mortgagee provides the borrower with a loan application; or

(2) If the following conditions are met, the mortgagee may collect, starting with the month of loan closing and continuing through any applicable Deferral Period, a fixed monthly charge for servicing activities of the mortgagee or servicer:

(i) The charge is authorized by the Commissioner;

(ii) The charge is disclosed as required by § 206.43 to the borrower in a manner acceptable to the Commissioner at the time the mortgagee provides the borrower with a loan application;

(iii) Amounts to pay the charge are set aside as a portion of the principal limit in accordance with § 206.19(f)(3); and

(iv) The charge is payable only from the Servicing Fee Set Aside.

§ 206.209 Prepayment.

(a) *No charge or penalty.* The borrower may repay a mortgage in full or prepay a mortgage in part without charge or penalty at any time, regardless of any limitations on repayment or prepayment stated in a mortgage.

(b) *Insurance and condemnation proceeds.* If insurance or condemnation proceeds are paid to the mortgagee, the principal limit and the outstanding loan balance shall be reduced by the amount of the proceeds not applied to restoration or repair of the damaged property.

(c) Funds received from a partial prepayment shall be applied in accordance with the Note.

§ 206.211 Determination of principal residence and contact information.

(a) *Annual certification.* At least once during each calendar year, the mortgagee shall verify the contact information for the borrower(s) and determine whether or not the property is the principal residence of at least one borrower. The mortgagee shall require each borrower to make an annual certification of his or her contact information and principal residence. As part of the annual certification, the borrower may designate a point of contact to receive copies of the notifications from the mortgagee, and who the mortgagee may contact if the borrower is unwilling or unable to reply to requests from the mortgagee. The mortgagee may rely on the certification unless it has information indicating that the certification may be false.

(b) *Requirements when an Eligible Non-Borrowing Spouse exists.* Where an Eligible Non-Borrowing Spouse has been identified, the mortgagee shall obtain an additional annual certification from the borrower confirming the Eligible Non-Borrowing Spouse remains his or her spouse and the Eligible Non-Borrowing Spouse continues to reside in the property as his or her principal residence.

(1) *Death of borrower with Eligible Non-Borrowing Spouse.* If a borrower with an Eligible Non-Borrowing Spouse has died, the mortgagee shall obtain the annual certification in paragraph (a) of this section from the Eligible Non-Borrowing Spouse. For purposes of this paragraph, the term ''Eligible Non-Borrowing Spouse'' shall replace the term ''borrower'' in paragraph (a) of this section.

(2) *Failure of previously Eligible Non-Borrowing Spouse to reside in the property as his or her principal residence.* If a Non-Borrowing Spouse fails to reside in the property as his or her principal residence, the Non-Borrowing Spouse becomes an Ineligible Non-Borrowing Spouse and the deferral of due and payable status that would

prevent the displacement of an Eligible Non-Borrowing Spouse will no longer be in effect. Once this occurs, the Eligible Non-Borrowing Spouse annual certifications are no longer required to be obtained.

Subpart E—HECM Counselor Roster

§ 206.300 General.

This subpart provides for the establishment of the HECM Counselor Roster (Roster) and sets forth the requirements for the operation of the HECM Counselor Roster.

§ 206.302 Establishment of the HECM Counselor Roster.

(a) *HECM Counselor Roster.* FHA maintains a Roster of HECM counselors. Only counselors listed on the Roster and employed by a participating agency are approved to provide HECM counseling. A prospective borrower applying for a HECM loan to be insured by FHA must receive the required HECM counseling from one of the counselors on the Roster.

(b) *Disclaimer.* The inclusion of a HECM counselor on the Roster does not create or imply a warranty or endorsement by FHA of the listed counselor to a prospective HECM borrower or to any other organization or individual, nor does it represent a warranty of any counseling provided by the listed HECM counselor. The inclusion of a counselor on the Roster means that a listed counselor has met the FHA-prescribed qualifications and conditions for inclusion on the Roster and that the counselor is approved to provide HECM counseling by telephone or face-to-face.

§ 206.304 Eligibility for placement on the HECM Counselor Roster.

(a) *Application.* To be considered for placement on the Roster, a housing counselor must apply to FHA in a form and in a manner prescribed by the Commissioner.

(b) *Eligibility.* FHA will approve an application for placement on the Roster if the application demonstrates that the housing counselor:

(1) Is employed by a HUD-approved housing counseling agency or an affiliate of a HUD-approved intermediary or State housing finance agency;

(2) Successfully passed a standardized HECM counseling exam administered by FHA, or a party selected by FHA, within the last 3 years. In order to maintain eligibility, a HECM counselor must successfully pass a standardized HECM counseling exam every 3 years;

(3) Received training and education related to HECMs within the prior 2 years;

(4) Has access to and is supported by technology that enables FHA to track the results of the counseling offered to each loan applicant, *e.g.,* what action(s), if any, did the client take after receiving the HECM counseling; and

(5) Is not listed on:

(i) The General Services Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Response System.

§ 206.306 Removal from the HECM Counselor Roster.

(a) *General.* FHA reserves the right to remove a HECM counselor from the Roster, in accordance with this section.

(b) *Cause for removal.* Cause for removal of a HECM counselor from the Roster includes, but is not limited to:

(1) Failure to comply with the education and training requirements of § 206.308;

(2) Failure to respond within a reasonable time to HUD inquiries or requests for documentation;

(3) Misrepresentation or fraudulent statements;

(4) Promotion, representation, or recommendation of any specific mortgagee;

(5) Failure to comply with applicable fair housing and civil rights requirements;

(6) Failure to comply with applicable statutes and regulations;

(7) Failure to comply with applicable statutory counseling requirements found at subsection 255(f) of the National Housing Act, which include, but are not limited to, providing information about: Options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the applicant may request;

(8) Failure to maintain any registration, license, or certification requirements of a State or local authority;

(9) Unsatisfactory performance in providing counseling to HECM loan applicants. FHA may determine that a HECM counselor's performance is unsatisfactory based on a review of counseling files or other monitoring activities, or if the counselor fails to employ the minimum competencies, as measured by the FHA-administered HECM counseling exam; or

(10) For any other reason HUD determines to be so serious as to justify an administrative sanction.

(c) *Automatic removal from HECM Counselor Roster for failure to maintain required State or local licensure.* A HECM counselor who is required to maintain a State or local registration, license, or certification and whose registration or certification is revoked, suspended, or surrendered will be automatically suspended from the Roster until FHA receives evidence demonstrating that the local- or State-imposed sanction has been lifted.

(d) *Removal procedure.* Except as provided in paragraph (c) of this section, the following procedures apply to removal of a HECM counselor from the Roster.

(1) FHA will give the HECM counselor written notice of the proposed removal. The notice will state the reasons for and the duration of the proposed removal.

(2) The HECM counselor will have 30 days from the date of receipt of the notice (or such time as described in the notice, but in no event less than a period of 30 days) to submit a written appeal of the proposed removal, along with a written request for a conference.

(3) An FHA official will review the appeal and render a response affirming, modifying, or canceling the removal. The FHA official will not be a person who was involved in FHA's initial removal decision. FHA will respond with a decision within 30 days after the date of receiving the appeal or, if the HECM counselor has requested a conference, within 30 days after the conference was held. FHA may extend the 30-day period by providing written notice to the counselor.

(4) If the HECM counselor does not submit a timely written response, the removal will be effective 31 days after the date of FHA's initial removal notice (or after the period provided in the notice, if longer than 30 days). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of FHA's notice affirming or modifying the initial removal decision.

(e) *Maximum time period of removal.* The maximum time period for removal from the Roster is 12 months from the effective date of removal for all removed counselors. A counselor who has been removed must apply for reinstatement on the Roster.

(f) *Placement on the Roster after removal.* A counselor who has been removed from the Roster must apply for reinstatement on the Roster (in accordance with § 206.304) after the period of the counselor's removal from the Roster has expired. FHA may require the counselor to retake and pass the HECM exam for reinstatement when the reason for removal from the Roster was particularly egregious. Typically, the counselor will not be required to take and pass the HECM exam; however, FHA must be ensured by the counselor that the HECM counseling requirements are understood and will be followed. An application from a counselor for reinstatement on the Roster will be rejected if the period of the counselor's removal from the Roster has not expired.

(g) *Voluntary removal.* A HECM counselor will be removed from the Roster upon FHA's receipt of a written request from the counselor.

(h) *Other action.* Nothing in this section prohibits HUD from taking such other action against a HECM counselor or from seeking any other remedy against a counselor available to HUD by statute or other authority.

§ 206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.

A HECM counselor listed on the Roster must receive, on a continuing basis, training, education, and technical assistance related to HECMs. The HECM counselor must maintain evidence of the successful completion of such continuing education, and such evidence must be made available to FHA upon request. FHA will consider a HECM counselor's successful completion of a HECM course no less than once every 2 years as satisfying the requirements of this section.

Dated: April 19, 2016.

Edward L. Golding,

Principal Deputy, Assistant Secretary for Housing.

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