DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 206

[Docket No. FR–5353–F–03]

RIN 2502–AI79

Federal Housing Administration: Strengthening the Home Equity Conversion Mortgage Program

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

ACTION: Final rule.

SUMMARY: This final rule codifies 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 makes additional regulatory changes. The HECM 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. This rulemaking strengthens the FHA Home Equity Conversion Mortgage program and codifies changes that reduce risk to the Mutual Mortgage Insurance Fund and increase the sustainability of this important program for seniors. This final rule follows publication of a May 19, 2016, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* September 19, 2017.

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 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 predominantly 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. The economic value of the HECM portfolio has fluctuated from a negative $1.2 billion reported in FHA's Fiscal Year (FY) 2014 submission to Congress, to a positive $6.8 billion in FY 2015, to a negative $7.7 billion in FY 2016. Even under an improved housing market, the positive impacts of program changes on the HECM portfolio overall will be gradual and initially difficult to model for purposes of the actuarial study, as they will be evidenced only in future cohorts of activity. As a result, 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) (Pub. L. 113–29). 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 months of the HECM; and eliminating future draws on fixed interest rate HECMs.

On May 19, 2016 (81 FR 31770), HUD published a proposed rule to codify these policies, with amendments as discussed in the preamble to the proposed rule. In addition, FHA proposed to implement a number of new policies. Also, so that all regulatory requirements are codified in the HECM regulations, HUD also proposed to codify HECM program changes made by mortgagee letter[2] under the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289), which implemented the HECM for Purchase program and established new origination fee limits, and amends the initial and monthly mortgage insurance premium (MIP) limits to correspond with statutory changes. This final rule follows publication of the May 19, 2016, proposed rule and takes into consideration the public comments received on the proposed rule.

B. Summary of Major Provisions of This Final Rule

In this rule, FHA codifies existing policy which has been implemented by mortgagee letters under various statutory authorities; implements statutory changes; issues new origination and servicing policies; and clarifies existing regulatory language. The main policy provisions are discussed below. All policies which have been implemented by mortgagee letters will remain in effect until the effective date of this final rule.

Implementing Statutory Changes and Codifying Existing Policies Implemented Under Statutory Authority

Financial Assessment and Property Charge Funding Requirements. RMSA Mortgagee Letter 2014–21 required mortgagees 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

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

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

property charges; for Fully-Funded LESAs, 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 limits of 60 percent and 10 percent 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 regulations such that the 60 percent cap will never be modified to be less than 50 percent, and the additional percentage will never be modified to be less than 10 percent absent future rulemaking.

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 were originally located in HERA Mortgagee Letter 2009–11. This rule codifies the HECM for Purchase program requirements, with an important change to the existing prohibition on interested party contributions. The rule permits the seller to pay fees required to be paid by the seller under state or local law and fees that are customarily paid by a seller in the locality of the subject property and to purchase the Home Warranty policy. The rule also allows 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 clarifies that such loan origination fee limits include expenses incurred in originating, processing and closing the HECM.

Amount of MIP. This rule amends 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.

Seasoning Requirements. HUD implemented seasoning requirements for existing non-HECM liens through Mortgagee Letter 2014–21. Under the mortgagee letter, borrowers could only pay off existing non-HECM liens using HECM proceeds if the liens had been in place longer than 12 months or resulted in less than $500 cash to the borrower. This rule adopts these seasoning requirements for existing non-HECM liens but amends them to: (1) Impose the 12-month requirement beginning at the date of the HECM closing rather than the HECM loan application; and (2) allow the pay-off, at closing, of Home Equity Lines of Credit (HELOCs) that do not meet seasoning requirements from borrower funds, the HECM funds, or a combination of HECM funds and borrower funds, as long as the draw from HECM funds does not exceed the draw limits during the first 12 months of the HECM.

New Origination and Servicing Policies

Disclosure of Available HECM Program Options. This rule requires 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.

Interest Rate Lock-In. This rule amends 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.

Appraisal Requirements. This rule requires 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. The rule also allows the Commissioner to approve the use of other appraisers when the mortgagee is required to appraise the property.

Limiting Reimbursement of Property Charge Advances. This rule limits insurance claim reimbursement to a mortgagee to two-thirds of the total payments for: (a) Taxes, ground rents, and water rates; (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.

Acquisition and Sale of Property. This rule replaces 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 requires that the closing costs from the sale be no more than the greater of 11 percent of the sales price, or a fixed dollar amount as determined by the Commissioner through **Federal Register** notice.

Cash for Keys. This rule provides an incentive for 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. The rule also applies the Cash for Keys incentive when a bona fide tenant vacates the property prior to an eviction being initiated by the mortgagee in the case of a foreclosure. This rule grants the Commissioner the flexibility to increase the minimum amount of time a mortgagee shall grant the borrower or bona fide tenant to vacate the property and the authority to establish the amount of the financial incentive.

Pay-Off of Debt Not Secured by the Property. This rule allows HECM proceeds to be used to pay off debt that is not secured by the property, as defined by the Commissioner through

Federal Register notice, as a mandatory obligation.

Property Charge Payments. This rule allows the Commissioner, through **Federal Register** notice, to establish an incentive for the borrower voluntarily electing a Life Expectancy Set Aside. Additionally, the final rule authorizes the Commissioner, through **Federal Register** notice, to expand the borrower's options for electing to have the mortgagee make property charge payments.

C. Costs and Benefits of This Rule [3]

This rule codifies the following 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; removal of 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 Life Expectancy 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, and hazard and flood insurance payments. The new changes to the HECM program are expected to 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; and provide homeowners with the ability to purchase a more suitable home without incurring the costs of two loan closings. 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 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, thereby reducing choices for potential HECM borrowers to access home equity and imposing an equivalent cost on them; 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; and reduce loan origination costs for 2,000 ''HECM for Purchase'' borrowers, saving them $12 million per year representing transfers from mortgagees to borrowers.

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 rule.

Absent the changes in the HECM program made by mortgagee letters issued by HUD under the authority of RMSA, the ongoing operation of the HECM program would have required a credit subsidy appropriation under the Federal Credit Reform Act of approximately $684 million. The fact that this appropriation was not required represents a transfer from potential HECM borrowers to taxpayers. This transfer was effected by the regulatory mortgagee letters, and not this final rule which merely codifies these existing policies in the Code of Federal Regulations. This transfer amount is reported in this analysis to inform the public, but had no bearing on whether these provisions would be included in the final rule.

Benefits	Costs	Transfers
4,400 fewer foreclosures per year from tax and insurance default. • $1.1 billion aggregate unpaid principal balance. • Reduction in ancillary costs of foreclosures to neighborhoods, borrowers, and local governments.	Reduce FHA HECM insurance endorsements by $1.9 billion per year, thereby reducing choices for potential HECM borrowers to access home equity.	Mortgagee letters issued under authority granted by the Reverse Mortgage Stabilization Act and codified by this rule reduced credit subsidy appropriations required under the Federal Credit Reform Act for the HECM program from $684 million to $0. This is a transfer from potential HECM borrowers to taxpayers.
Reduced loan origination costs for 2,000 ''HECM for Purchase'' borrowers per year. • Total benefit of $12 million per year. • Frees resources for other purposes.	No additional costs	No additional transfers.

Other benefits include the following:

• Improving the financial condition of the FHA MMIF due to:

○ Fewer foreclosures and lower loss rates;

○ Financial incentives of a Cash for Keys program for short sales and REO properties;

○ 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 overall HECM program viability and in turn improving suitability and attractiveness for potential borrowers

○ 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;

[3] Any changes made in this section from what was presented in the proposed rule only indicate policy changes that were made based on public comments or reconsideration of the issues.

○ 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.

II. Background

A. Program Description

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. 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.

B. HUD's May 19, 2016, Proposed Rule

On May 19, 2016, HUD published its proposed rule to implement the HERA and RMSA mortgagee letters described above in addition to other regulatory changes. HUD proposed to strengthen the HECM program by consolidating the requirements of these HERA and RMSA mortgagee letters into the regulations and introducing new requirements that would reduce risk to the Mutual Mortgage Insurance Fund and increase the sustainability of the HECM program for seniors. Interested readers should refer to the preamble of the May 19, 2016, proposed rule for details regarding the proposed regulatory changes to the HECM program.

C. Solicitation of Comment on Required Assignment

On August 11, 2016, at 81 FR 53095, HUD published in the **Federal Register** a supplemental notice of proposed rulemaking to solicit comment in response to a proposal raised by one of the public commenters on the proposed rule. The document opened the public comment period solely to address this proposal regarding the mortgagee's option to file a claim when the loan balance reaches 98 percent of the maximum claim amount.

The current regulations at § 206.107(a) provide the mortgagee an option, before the mortgage is submitted for insurance endorsement, to select either: (1) The assignment option, which allows the mortgagee to assign the HECM to the Secretary if the mortgage balance is equal to or greater than 98 percent of the maximum claim amount; or (2) the shared premium option, which allows the mortgagee to retain a portion of the monthly MIP but does not allow the mortgagee to assign the mortgage unless the mortgagee fails to make payments and the Secretary demands assignment. Under the assignment option, the mortgagee may only assign the mortgage to the Secretary if the following requirements are satisfied: (1) The mortgagee is current in making the required payments to the mortgagor; (2) the mortgagee is current in making the required MIP payments to the Secretary; (3) the mortgage is not due and payable; and (4) the mortgage is a first lien of record and title to the property securing the mortgage is good and marketable.

The public commenter suggested that, under the assignment option, HUD should instead require that the mortgagee assign the HECM loan to FHA if the outstanding loan balance is equal to or greater than 98 percent of the maximum claim amount. The commenter stated that, in some cases, a mortgagee may decline to file a claim in this scenario if the property value has risen rapidly and the loan has an above-market rate. The commenter concluded that lenders in this way have a ''put option'' and ''can choose to keep the best loans and make claims for the worst ones''.

HUD is deferring its final determination as to whether to adopt the commenter's proposal at this time, and after HUD fully reviews and takes into consideration the comments received, HUD will issue, or choose not to issue, its final determination of this proposal through a subsequent final rule.

III. Overview of Final Rule—Key Changes Made at Final Rule Stage

In the May 19, 2016, proposed rule, HUD explicitly solicited public comment on numerous proposed policy changes, including specific questions on the maximum closing costs allowed on the sale of a property, including utilities as property charges, property inspections, non-borrowing spouse communication, and the benefits and costs of the rule. HUD received 241 public comments, including 83 unique comments, on the proposed rule. HUD appreciates all the questions raised, and suggestions and recommendations made by the public commenters. After review and consideration of the public comments and upon further consideration of issues by HUD, the following highlights key clarifications and changes made by HUD at the final rule stage.

The final rule:

- Amends the provision limiting the number of mortgages by allowing borrowers to provide legal documentation evidencing the release of the borrower's financial obligation to satisfy the existing HECM rather than requiring the borrower to demonstrate a final divorce decree. (See § 206.34.)
- Amends the seasoning requirements for existing non-HECM liens to: (1) Impose the 12-month requirement beginning at the date of the HECM closing rather than the HECM loan application; and (2) allow the pay-off at closing of Home Equity Lines of Credit (HELOCs) that do not meet the seasoning requirements from borrower funds, the HECM funds, or a combination of HECM funds and borrower funds, as long as the draw from HECM funds does not exceed the draw limits during the first 12 months of the HECM. (See § 206.36.)
- Includes required pay-off of debt not secured by the property, as defined by the Commissioner through **Federal Register** notice, as a mandatory obligation. (See § 206.25(b) and § 206.25(c).)
- Clarifies that the mortgagees are required to request borrowers to designate, at the borrower's discretion, an alternative individual for the purpose of communicating with the mortgagee if the mortgagee has not been able to reach the borrower directly. (See § 206.40(c).)
- Retains the current policy requirement that the mortgagor must provide the mortgagee with a physical copy of the housing counseling

certificate, and removes the requirement that the HECM counselor upload the certificate to an electronic database. (See § 206.41(c).)

- Clarifies that the mortgagee shall provide any disclosures required by law when asking the borrower about any costs or other obligations that the borrower has incurred to obtain the mortgage. (See § 206.43(a).)
- Allows fees customarily paid by the seller in the subject property locality to be included as an interested party contribution. (See § 206.44(c).)
- Clarifies the requirement for maintaining flood insurance coverage. (See § 206.45(c).)
- Grants the FHA Commissioner the authority, where a HECM is due and payable, to increase the maximum closing costs allowable for selling the property above 11% of the sales price by establishing a fixed dollar amount as determined through **Federal Register** notice. (See § 206.125(a)(2)(ii).)
- Allows the FHA Commissioner to approve the use of qualified appraisers acceptable to and identified by the Commissioner when the mortgagee is required to appraise the property. (See § 206.125(b).)
- Authorizes the FHA Commissioner to expand availability of the Cash for Keys incentive, in an amount to be determined by the Commissioner, on REO properties with bona fide tenants. (See § 206.125(g)(4).)
- For the Cash for Keys incentive, authorizes the Commissioner to increase the minimum amount of time a mortgagee shall grant the borrower or bona fide tenant to vacate the property. (See § 206.125(f)(1)(ii) and § 206.125(g)(4).)
- Amends the limitation on reimbursements for advances made by the mortgagee for property charges to cover two-thirds of the overall advances made by the mortgagee rather than the full value of the first two years of such advances. (See § 206.129(d)(3).)
- Removes the ability for the borrower to elect that the mortgagee pay ground rents through the borrower's voluntary election to have the mortgagee pay property charges. (See § 206.205(b)(2) & § 206.205(d).)
- Authorizes the Commissioner to establish an incentive for voluntarily electing a Life Expectancy Set Aside through **Federal Register** notice. (See § 206.205(b)(2)(ii).)
- Authorizes the Commissioner to expand the borrower's options for property charge payment by the mortgagee through **Federal Register** notice. (See § 206.205(d).)

Deferred Final Determination

Additionally, in order to fully consider the comments received on these issues, HUD will defer making its final determination of the policies listed below from the proposed rule and afterwards, HUD will issue its final determination on these issues in a final rule.

- The change to the cap on interest rate adjustments for annually adjustable interest rate products and the imposition of a five percent cap on interest rate adjustments for monthly adjustable interest rate products;
- The establishment of extenuating circumstances exceptions for exceeding the Initial Disbursement Limit or Borrower's Advance during the First 12-Month Disbursement Period;
- Post-closing property inspections;
- The requirement to undergo counseling before signing a HECM for Purchase contract and/or making an earnest money deposit; and
- The definition of property charges to include utilities.

IV. Public Comments and HUD's Response to Public Comments

A. The Public Comments Generally

HUD received 241 public comments, including duplicate mass mailings, resulting in 83 unique public submissions covering a wide range of issues. Comments came from a wide variety of entities, including lenders, servicers, interest groups, real estate agents, and academics. In general, the public commenters expressed support for codifying policy implemented via Mortgage Letter under statutory authority, updating CFR part 206 and a number of the proposed regulatory changes. Many commenters also raised questions or offered suggestion for changes at the final rule stage. This section of the preamble discusses the significant issues raised by the commenters and provides HUD's responses to the comments received. All public comments can be viewed at *https://www.regulations.gov/docket?D=HUD-2016-0052.*

B. Specific Public Comments

1. Definitions

Comment: The definition of ''borrower'' should be consistent with the definition used in the Mortgagee Optional Election Assignment guidance (Mortgagee Letter 2015–15) to mean the ''original borrower under a note and mortgage.'' The commenter encouraged the use of consistent definitions throughout HECM program guidance.

HUD Response: With the recent changes to the HECM program, particularly the protections and benefits for non-borrowing spouses, it was necessary for HUD to revise the definitions of ''borrower'' and ''mortgagor'' in order to resolve title issues involving quit claiming practices of non-borrowing spouses or other non-borrowing owners. The definition of ''borrower,'' as provided in 206.3, ''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.''

Comment: HUD should clarify that the new proposed definition of ''mortgagee'' does not conflict with the rule change regarding sales to other FHA-approved entities, as proposed in § 206.101(d)(2). The commenter stated that ''mortgagee'' is defined as the original lender under a mortgage and its successors and assigns, as approved by the Commissioner, but that HUD also proposed to include a non-FHA-approved entity as a possible successor or assign, in some limited cases.

HUD Response: These requirements are not new additions to the HECM program. They were previously listed in the regulations at 24 CFR part 203 and incorporated into the HECM program by reference. This rule simply moves the regulations into part 206 in order to reduce the number of cross-references. HUD intends to retain these regulatory requirements.

2. State Statutes of Limitations

Comment: HUD should state that when a HECM loan is assigned to HUD, any state statute of limitations on collecting or foreclosing upon the loan does not apply to HUD. The commenter also suggested that HUD state that any such state law is preempted by HUD HECM regulations and program guidelines.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future rulemaking and policy guidance. However, FHA reminds mortgagees that the model loan document provided must be adapted by the lenders to local and state requirements that preserve first lien status.

3. Program Complex/Disclosures

Comment: The HECM program is incredibly complex and could be improved by the use of plain language educational materials and software.

HUD Response: HUD agrees that the program is complex. The HECM program is unique and was designed to reduce the effects of economic hardships that senior homeowners may experience. Over the years, changing borrower and industry practices have required HUD to respond with appropriate policymaking to manage risk to the MMIF and support sustainability of the program. HUD supports consumer education and awareness through its HECM counseling requirement. HUD understands the need to provide plain language educational materials and appreciates suggested content. However, prospective borrowers must understand the terms and conditions of the mortgage as defined in the legal documents.

Comment: The program changes are overly restrictive and protective of senior borrowers. The commenter stated that seniors are not necessarily uneducated and have had many years of experience. The commenter also stated that the current disclosure and guideline requirements are sufficient.

HUD Response: HUD's mission is to serve underserved markets, which must be balanced with HUD's inherent, as well as, statutory obligation under the NHA to protect the MMIF. Knowing that many seniors are educated and resourceful, HUD must take every precaution to ensure seniors who need a reverse mortgage are equipped with the information necessary to make an informed decision of whether the HECM is a sustainable solution that enhances their financial position.

Comment: The changes in this rule are less about protecting seniors and more about controlling the marketplace, lenders, and seniors, and that the same policies do not apply to forward mortgages.

HUD Response: Despite the varying opinions concerning the recent changes to the HECM program, HUD's mission is to serve underserved markets, which must be balanced with HUD's inherent, as well as statutory, obligation under the NHA to protect the MMIF. Governance of the marketplace is beyond HUD's purview and the reverse mortgage industry must examine its practices to determine what is acceptable and beneficial for the survival of this program. The requirements of the HECM program are unique and it is important to note that the program has a very different risk profile than Forward Mortgages. Where feasible, HUD strives to adopt forward mortgage requirements that can be applied to the HECM Program.

Comment: HUD should expand the disclosure requirement to allow for new and improved methods with which to inform potential HECM borrowers. One commenter proposed that HUD host a technology roundtable to discuss and evaluate a new consumer-friendly marketing campaign. Another commenter stated that HUD should elaborate on the disclosure requirement and further define the extent to which lenders must disclose all products, features, and options that HUD will insure. Commenters stated that the description of these products should include overall access to equity, costs, and the amount of funds available during the first 12 months.

HUD Response: Mortgagees are required to explain in clear, consistent language all requirements and features of the HECM program. Mortgagees have the flexibility to identify and use methods that will ensure borrowers are properly informed of all features and products that are available.

Comment: HUD should discourage product-steering by lenders.

HUD Response: HUD believes its requirement that mortgagees must disclose all products, whether they are offered by the mortgagee or not, will discourage product-steering.

Comment: HUD should promulgate suitability rules to ensure that lenders only recommend reverse mortgage loans that are suitable for borrowers' needs.

HUD Response: Housing counseling and the Financial Assessment are prudent practices for evaluating whether the HECM is a sustainable solution. Both practices promote the participation of homeowners who are well-informed and financially well-positioned for a HECM loan.

Comment: Disclosing too many options may be confusing to borrowers.

HUD Response: HUD disagrees and believes that the full disclosure of all products is necessary to insure borrowers are aware of all options and to avoid potential steering.

4. Interest Rate Lock-In

Comment: HUD should eliminate the credit line growth feature of adjustable-rate HECM loans. The commenter stated that the growth is determined by interest rate, lender margin, and mortgage insurance premiums, and borrowers have access to increasing amounts of funds even if home prices fall, which leads to greater risk for the MMIF.

HUD Response: The HECM program was designed to allow the line growth feature to insure borrowers had access to equity. Other program features balance risk such as principal limit factors, MIP, controls over large cash draws upfront, and no future draws on fixed rate product.

Comment: HUD should clarify that rate locks are optional.

HUD Response: The rate lock is optional. HUD notes that the proposed rule, in its definition "expected average mortgage interest rate," indicates that mortgagees, with the agreement of the borrower, may lock in the expected average mortgage interest rate and the mortgagee's margin prior to the date of loan closing or on the date of loan closing. HUD retains this option in this final rule.

Comment: HUD should maintain the current policy regarding the timing of when the mortgagee may lock in the rate that determines the principal limit, which is the application date.

HUD Response: HUD appreciates the feedback but believes the borrower should have the flexibility of setting the expected average mortgage interest rate and mortgagee's margin, if applicable, any time prior to closing or at closing.

Comment: HUD should continue to permit the "float down" option whereby the principal limit may be recalculated at closing if the expected interest rate has declined and is lower than at application date.

HUD Response: HUD will continue to permit the "float down" option, per ML 2006–22.

Comment: HUD should allow the borrower to keep the rate lock they have chosen or the expected rate based on the index in effect at closing, whichever is most beneficial to the borrower.

HUD Response: HUD will continue to permit the "float down" option, per ML 2006–22.

Comment: HUD should elaborate on the interest rate lock-in timeframes and further clarify the terms used.

HUD Response: The guidance found in ML 2006–22 provides useful background for interest rate lock-in timeframes.

5. Shared Premium/Shared Appreciation

Comment: Shared appreciation should not be utilized in the HECM market. One commenter stated that the terms of a shared appreciation reverse mortgage are heavily weighted towards benefiting the mortgagee and not the borrower. Another commenter stated that there should be a prohibition against shared appreciation schemes, due to the harm done to the borrower.

HUD Response: The National Housing Act provides for a shared appreciation option, and HUD will retain the shared appreciation option in the regulations to allow for future potential product design.

Comment: The shared appreciation option has not been utilized, but may be useful in the future. One commenter stated that shared appreciation could be an example of a product that seems unnecessary but eventually becomes popular due to changing market conditions. The commenter stated that ''low balance'' HECM options or the HECM Saver product could be other examples of such products. Commenters stated that these items could allow for important product design and innovation in the future. Some commenters suggested that this could give an opportunity for further review and study on how such features may be used to design new products and features. Some commenters also stated that the product could be used in the future to reduce risk to the MMIF. One commenter stated that these options have the potential for creating competitive loan products in the marketplace.

HUD Response: HUD will retain the shared appreciation option in the regulations for future potential product design.

Comment: More information is needed on the shared premium and shared appreciation options. The commenter also stated that the 2009 PLF tables do not include the shared premium basis points as in previous versions, and that there is little explanation of how the shared premium and shared appreciation options are administered or audited by HUD, or whether these loans are eligible for securitization.

HUD Response: We do not currently administer these options.

6. Deferral of Due & Payable Status

Comment: Eligible Non-Borrowing Spouses should continue to enjoy the benefits of any monthly distributions or the availability of any line of credit funds once the last borrower dies. The commenter stated that the eligible NBS should still have access to these benefits since the amount available to the borrower is determined by the age of the NBS.

HUD Response: The NBS is not a borrower and as such is not a party to the Loan Agreement. The Loan Agreement is a contract solely between the borrower and the mortgagee, not the NBS. Upon the last surviving borrower's death, the terms of the Loan Agreement provide that no further funds can be made available to a person who is not a party to the Agreement.

Comment: Ninety days is insufficient for a grieving spouse to take practical measures to secure her or his right to the property. One commenter stated that the probate process alone can take longer than ninety days for reasons outside of the surviving spouse's control. Commenters suggested that the time frame should be extended to 180 days. Another commenter suggested 120 days would be sufficient. One commenter also suggested that HUD may require that a probate action be opened within a reasonable time after the borrower's death.

HUD Response: HUD appreciates the recommendation. HUD would like to remind the public that a NBS does not have to obtain legal title in order to be eligible for a deferral period. A NBS must establish a legal right to remain in the property, which may be accomplished through means other than obtaining legal title to the property. While HUD understands and appreciates that concerns raised about the time required to obtain legal title, as it is not the requirement and the NBS has other means in which to establish a legal right to remain, HUD will not adopt this recommendation at this time.

Comment: Thirty days after a deferral period ceases is not a sufficient time frame to cure a default. The commenter stated that most spouses will need more time to obtain documentation or evidence from a taxing authority to provide timely payment and to successfully navigate the servicer's protocols.

HUD Response: Non-borrowing spouses are provided the same timeframes and opportunity during a deferral period to cure a default as a borrower is provided during his or her lifetime and HUD believes this timeframe to be sufficient. Additionally, borrowers and non-borrowing spouses can cure a default up until the foreclosure sale occurs.

Comment: HUD should expand the definition of events that are able to trigger the deferral period under § 206.55. The commenter recommended that the definition should be expanded to cover all events that are outside the control of the borrower, such as significant health or life events. Another commenter stated that due and payable status should also be deferred when a borrower is no longer residing in the home serving as collateral property but there is an Eligible NBS present and occupying the home.

HUD Response: HUD understands the issue raised by the commenter but is unable to adopt this suggestion to expand events that would be eligible for a deferral period. The other events that would give rise to a due and payable status result from a borrower failing to comply with his or her obligations of the mortgage. As such, HUD cannot provide for a deferral where there is a breach of a contractual duty. Additionally, by providing a deferral period for a NBS where the borrowing spouse has died, the requirements of this provision in the NHA are satisfied.

7. Initial Disbursement Limit/Borrower's Advance

Comment: HUD should allow any funds disbursed as a monthly tenure payment to the borrower to exceed the Initial Disbursement Limit (IDL) during the first 12 months. One commenter stated that applying the Initial Disbursement Limit to monthly tenure payments causes confusion by requiring the payments to be reduced so that they remain less than the IDL during the first 12 months, and then recast at the end of the first year to recapture the amount reduced during that time period.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future rulemaking or policy guidance.

Comment: HUD should clarify what constitutes fees and charges for real estate purchase contracts, warranties, inspections, surveys, and engineer certifications.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance.

Comment: HUD should only require the borrower to report whether the amount drawn during the First 12-Month Disbursement Period will exceed the 60 percent limit. Commenters stated that reporting the exact percentage would be confusing and unnecessary.

HUD Response: HUD has amended the language in this final rule to remove the word ''exact'' from § 206.25(a) to avoid any confusion. HUD will continue to require the borrower to indicate what percentage, up to 10% of the principal limit, she or he chooses to receive during the first year. The additional amount that the borrower plans to use during the First 12-Month Disbursement Period is needed for the initial MIP calculations.

Comment: HUD should not further amend the limits on the initial disbursements during the first 12 months.

HUD Response: HUD appreciates the concern raised. However, the flexibility in the regulation will enable HUD to react to market conditions, for the viability of the HECM program, and to protect the fiscal soundness of the MMIF. The flexibility in place at § 206.25(a) allows the Commissioner to raise or lower the maximum initial draw but cannot go lower than 50% and the additional percentage cannot be less than 10%.

Comment: HUD should be careful not to set limits at a point in which it eliminates access to the program for many potential borrowers. The commenter referenced examples of seniors who were convinced to withdraw the maximum amount at closing and immediately invest in financial products.

HUD Response: The flexibility in place at § 206.25(a) only allows the Commissioner to raise or lower the maximum initial draw but cannot go lower than 50% and the additional percentage cannot be less than 10%. This limitation was specifically designed to reduce initial draws and is presently set at the amount of Mandatory Obligations or 60% plus an additional 10% of the Principal Limit. In addition, the MIP Structure also provides a lower upfront rate of 0.50% for draws of 60% or less and 2.50% for draws in excess of 60%. Mortgagee Letter 2014–10 provides specific guidance regarding the borrower's right to determine the amount of the initial disbursement and requires mortgagees to inform them of these rights.

8. Allowable Charges and Fees

Comment: HUD should clarify in the preamble to the final rule that the origination fee limit does not include and does not apply to third party closing costs or fees. Another commenter stated that including more fees without increasing the allowable origination fee is reducing funds for a company to operate even though the costs of operating a business and the cost of living is increasing.

HUD Response: HUD is not seeking to include additional borrower charges in the loan origination fee. The amendments to § 206.31 in this final rule clarify the loan origination fee includes expenses incurred in originating, processing, and closing the HECM. Third party closing costs or fees such as an appraisal fee, MIP, transfer fees, etc., are the responsibility of the borrower. The practice of the lender using the loan origination fee to cover the full amount or a portion of those fees and charges to reduce the borrower's out-of-pocket expenses may continue.

Comment: HUD should clarify the ability of mortgagees to charge other fees, which should also be included as allowable Mandatory Obligations. Commenters stated the following should fall under this category: Tax history verifications, credit report fees, 4506T tax verifications, and other verifications such as verification of employment, income, bank statements, and assets. Another commenter requested that HUD allow mortgagees to incur and pass along to HECM borrowers a document delivery or technology fee that allows for the delivery of loan documents and disclosures as well as any required document review fee such as those mandated by state law. Another commenter requested additional clarification on the allowance of closing charges and fees.

HUD Response: Section 206.25 was amended by the proposed rule to include credit report fees as mandatory obligations. The final rule retains this language. HUD issued ML 2016–10 to permit a Third Party Property Tax Verification Fee to verify the borrower's property tax payment history and the annual amount of property taxes due for a specific property. HUD will use its administrative authority to clarify its policy concerning the handling of reasonable and customary fees and charges that are required to do business as an FHA-approved lender.

Comment: HUD should consider adding regulations to limit broker compensation, particularly as to adjustable rate line of credit reverse mortgages where the Truth in Lending Act regulations do not apply. The commenter provided an example of a mortgage broker receiving a yield spread premium of 15 percent of the loan amount in exchange for acceptance of a higher-than-market interest rate, without the borrower's understanding of the situation.

HUD Response: HUD does not have regulatory authority to issue these requirements. Loan originator compensation is regulated by the CFPB under the Truth in Lending Act and its implementing Regulation Z (12 CFR part 1026). The provisions apply to closed-end consumer credit transactions secured by a dwelling, including reverse mortgages that are not home equity lines of credit under 12 CFR 1026.40. *See* 12 CFR 1026.36.

Comment: HUD should consider addressing the allowance of Appraisal Management Company fees and document preparation fees as part of the allowable loan origination fees and charges.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance.

Comment: A second HECM should be allowed in the case of a divorce. Commenters stated that the divorced co-borrower must show a divorce decree and/or a copy of the deed indicating the former spouse is responsible for the prior marital home.

HUD Response: HUD is adopting in this final rule the proposed rule change that allows for a new HECM when the existing HECM is satisfied prior to or at the closing of the new HECM, or the borrower provides legal documentation, acceptable to the Commissioner, evidencing release of financial obligation to satisfy the existing HECM, which may include a divorce.

Comment: A second HECM should be allowed when the individual is no longer on title to the property with the existing HECM and a new primary residence has been established. The commenter stated that the proposed rule solved for married individuals only and not other situations such as domestic partners or relatives.

HUD Response: HUD is adopting in this final rule the proposed rule change that allows for a new HECM when the existing HECM is satisfied prior to or at the closing of the new HECM, or the borrower provides legal documentation, acceptable to the Commissioner, evidencing release of financial obligation to satisfy the existing HECM. This requirement is applicable to all borrowers and not just married individuals.

10. Title of Property Which Is Security for the HECM

Comment: HUD should allow the NBS to go on title without having to refinance or qualify for another loan. The commenter stated that there are many examples of spouses not qualifying under the new regulations and as a result, they have to stay off title, which causes other legal issues not pertaining to the mortgage on the property.

HUD Response: The new definitions for ''mortgagor'' and ''borrower'' in § 206.3 of this final rule address the commenter's concern.

Comment: Allowing non-borrowing spouses to remain on the title could open the door to claims by other non-borrowing owners. Commenters expressed concerns over whether other co-owners could demand the sale of the property or demand to receive their share of the home title. One commenter asked if HUD could limit the ability to remain on title to eligible NBSs only or perhaps only to owners who also reside in the home. Another commenter suggested that HUD should limit the ability of a non-borrower to remain on title to spouses, or alternatively, grant a life estate right to the borrower so that the borrower could keep the home.

HUD Response: While HUD understands the potential issues that could arise from shared legal ownership of a property, HUD has determined it is not in a place to dictate to a homeowner or homeowners how to best structure legal ownership to a property. Further, even should HUD be inclined to limit those individuals on title at origination, there is nothing that would prevent the borrower from subsequently adding additional individuals to title. These individuals whether added before or after origination would have certain legal rights as would any other legal owner of a property. Ultimately, how a homeowner or homeowners elect to hold title is within their control.

Comment: HUD should clarify when a certification must be signed by all non-borrowing spouses and non-borrowing owners to consent to the borrower obtaining a HECM. The commenter recommended that the certification be required at the time of closing or funding.

HUD Response: HUD will take these comments under consideration when implementing related policy through guidance.

Comment: HUD should clarify that HECM servicers may encourage borrowers on currently outstanding HECMs to add NBSs and heirs to the title when preparing for end-of-life arrangements.

HUD Response: HUD has determined it is not appropriate to dictate to a homeowner or homeowners how to best structure legal ownership to a property.

12. Seasoning Requirements for Existing Non-HECM Liens

Comment: An unintended consequence of the rule is that it disallows a HECM even when the non-HECM lien would not result in exceeding the 60 percent of the initial disbursement limit. Some commenters suggested that the policy should be changed so that liens seasoned for less than one year can be paid off at closing if the PLU is 60 percent or less.

HUD Response: HUD has considered this proposal and is incorporating a change to the final rule for HELOCs. The final rule allows borrowers to pay off unseasoned HELOCs using their own funds, HECM funds, or a combination of HECM funds and non-HECM funds. The final rule allows the use of HECM funds to pay off unseasoned HELOCs if the IDL or Borrower's Advance remains at or under the percentage set by the Commissioner in § 206.25(a).

Comment: The seasoning requirement should be eliminated altogether. The commenter stated that many seniors take out a home equity line of credit without realizing a reverse mortgage would be a better option. The commenter explained that if an emergency makes it difficult for this senior to make monthly payments on the HELOC, it would put the borrower in an even worse financial situation if the borrower could not apply for a HECM for twelve months. Another commenter stated that this requirement only hurts the seniors who have to wait up to twelve months to get their HECM loan. One commenter asked what is wrong with allowing debts to be paid off at closing. Some commenters stated that it is not reasonable to expect a homeowner to possibly know that an ordinary consumer transaction such as opening a home equity line of credit will close the door to a HECM. One commenter suggested two alternatives: (1) Reduce the seasoning requirement to draws made in the last 60 to 90 days; or (2) make the effective date the date of closing rather than the date of application.

HUD Response: This final rule retains an amended seasoning requirement that imposes the 12-month requirement beginning at the date of the HECM closing rather than the HECM loan application, and at closing, allows the pay-off of HELOCs that do not meet seasoning requirements from borrower funds, HECM funds, or a combination of a borrower's own funds and HECM funds if the IDL or Borrower's Advance remains under the percentage set by the Commissioner in § 206.25(a).

Comment: The seasoning requirement should be rewritten to exclude construction and rehab loans, as long as the borrower can show that all loan proceeds were paid to contractors. One commenter stated that in many cases, these loans are required to bring the property into compliance for a HECM.

HUD Response: Existing policy does not consider funds paid to third parties for construction and rehab to be ''cash to the borrower''. As long as documentation is provided to show that loan proceeds in excess of $500 were paid to a contractor, the seasoning requirement in § 206.36 is considered satisfied.

Comment: HUD should clarify the current interpretation by wholesale lenders concerning such loan proceeds passing through the bank account of the borrower.

HUD Response: If documentation is provided to show that the loan proceeds in excess of $500 were paid to a third party, funds that were received by the borrower and paid through the borrower's bank account satisfies the seasoning requirement in § 206.36.

Comment: Rather than allowing the Commissioner to impose additional seasoning requirements through notice and comment, the seasoning requirements under Mortgagee Letter 2014–21 should remain the same and be incorporated into the regulations.

HUD Response: As stated in the proposed rule and retained in the final rule in § 206.36, the seasoning requirements that may be established by the Commissioner will not prohibit the payoff of non-HECM liens 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.

Comment: HUD should allow for greater flexibility for paying off existing mortgages by imposing a 1.75 percent upfront MIP cap rather than a 2.5 percent cap or by increasing the percentage allowable from 42 percent to 52 percent with a 60 percent cap on distributions.

HUD Response: HUD will take these comments under consideration when implementing future policy guidance.

11. Financial Assessment

Comment: The introduction of non-property related expenses is outside the scope of the financial assessment. One commenter stated that a senior will pay the property taxes when given a choice between paying the property taxes or paying off a credit card.

HUD Response: It is critical to evaluate the willingness (credit history) and financial capacity of the borrower in order to determine whether the HECM loan is a sustainable solution for the borrower in order to reduce defaults and manage risk to the MMIF.

Comment: Proof of on-time property taxes and insurance payments should not be required. The commenter stated that those who have a history of less-than-stellar credit, even if they pass the Financial Assessment, should be considered for a LESA.

HUD Response: Current regulations in § 206.205 require that if the borrower does not meet the Financial Assessment requirements that a Fully- or Partially-Funded LESA is required. And all HECM borrowers have the option to voluntarily request a LESA for payment of taxes and insurance or voluntarily request the mortgagee to pay taxes and insurance out of the HECM proceeds if a LESA is not required.

Comment: Willingness is the primary cause of tax and insurance defaults.

HUD Response: HUD rejects this comment and recognizes the majority of its borrowers demonstrate a willingness to pay their property charges in a timely manner. HUD's guidance, as provided in the revised HECM Financial Assessment and Property Charge Guide attached to Mortgagee Letter 2016–10, includes instructions for reviewing and evaluating the applicant's credit history, including tax and insurance payment history, and extenuating circumstances of prospective borrowers to determine whether the HECM loan is a sustainable solution and whether a LESA must be required.

Comment: Borrowers with a certain minimum credit score should be exempt from the income assessment.

HUD Response: HUD is receptive to adding FICO Scores to the Financial Assessment process; however, at this time, sufficient performance data is not available to support the implementation of FICO score criteria for HECMs. HUD is now collecting FICO information on HECM borrowers and will, over time, evaluate how that may be incorporated in the Financial Assessment process.

Comment: Additional compensating factors should be taken into consideration at the discretion of the direct endorsement underwriter, just as in traditional mortgages.

HUD Response: HUD does not allow additional compensating factors to be taken into consideration of the direct endorsement underwriter on forward mortgages and does not intend to adopt this recommendation for the HECM program.

Comment: HUD should audit recent financial assessments to determine how much documentation is unnecessary. One commenter stated that many guideline requirements are beyond risk management and ambiguous, and suggested that HUD could establish quarterly meetings with industry underwriters and sales leaders for a path toward closing good loans with limited documentation.

HUD Response: HUD continues to closely monitor performance of the HECM portfolio and will update guidance on the Financial Assessment as needed.

Comment: HUD should wait to implement further changes to the financial assessment, since the impact of the changes that took effect in April 2015 are not yet fully understood.

HUD Response: The proposed rule does not include any changes to the Financial Assessment requirements. HUD continues to closely monitor the performance of the HECM portfolio and will update guidance on the Financial Assessment as needed.

Comment: HUD should allow seniors to pay off revolving debt at closing from proceeds in order to qualify under the financial assessment rules, particularly since this can be done with forward mortgages.

HUD Response: In this final rule, HUD has included use of HECM proceeds to be used to pay-off unsecured debt, as defined by the Commissioner through **Federal Register** notice, as a mandatory obligation.

Comment: The financial assessment guidelines are overly restricting access to the HECM program. One commenter stated that a LESA eliminates some concern regarding residual income, since a person with a full LESA is covered with regards to tax and insurance. Another commenter stated that the Financial Assessment guidelines apply HUD practices designed for younger, employment-aged consumers and should be more closely correlated to the actual situation of aging homeowners over time. The commenter suggested that the rule should recognize the evolving nature of the Financial Assessment protocol and require further review to expand the population of low-risk senior homeowners who are eligible to participate in the HECM program. Another commenter stated that even borrowers with excellent credit are forced to go through many underwriting conditions that would not be required for an FHA forward mortgage. Another commenter stated that the process of obtaining a HECM has become unnecessarily documentation-intensive and rigid with respect to the specific documentation format.

HUD Response: As stated in § 206.37(b)(1), the financial capacity of the borrower must be evaluated to determine whether the HECM is a sustainable solution for the borrower. HUD has always required full documentation for borrowers on all its mortgage programs, except for streamlined refinances. Providing specific documentation requirements ensures consistency and these requirements may vary from forward mortgages because of the different profile of the programs and the borrowers. However, a significant amount of the required financial assessment documentation reflects standard documentation criteria for real estate secured loans. The need to require additional cash flow and projected financial documentation on HECMs reflects the unique structure of this type of mortgage and borrower. HUD appreciates the recommendation and will take it under consideration for future policy guidance.

Comment: The requirement to use the prior year's tax bill amount multiplied by 1.04 or an amount set by the Commissioner through notice is unnecessary as the LESA formula already has a 1.2 times multiplier to the annual taxes and insurance.

HUD Response: When the mortgagee requires the payment of taxes and flood and hazard insurance at closing, or the borrower requests that their property charges are paid at closing, and a new tax bill has not been issued or is unavailable, the 1.04 multiplier is used to calculate the projected amount of taxes and insurance to be disbursed during the first 12 months. The 1.2 multiplier is used for the LESA and takes into account expected increases in property taxes and hazard and flood insurance over the life expectancy of the youngest mortgagor.

Comment: HUD should clarify that Financial Assessment underwriting should not include utility payments in the expenses of HECM borrowers.

HUD Response: Utility payments, using the residual income formula in the Financial Assessment Guide, is a requirement and HUD does not intend to change this policy at this time.

13. Disclosure, Verification, & Certifications

Comment: HUD should clarify, in guidance if not in the regulations, that borrowers will not be required to grant the agent specified power of attorney with the ability to access HECM funds. Some commenters stated that some borrowers will not know someone trustworthy enough for that purpose. Another commenter suggested that HUD should restrict this person's role to that of a ''trusted contact'' person. One commenter stated that HUD should clarify that the designation of an additional contact is optional on the part of HECM borrowers.

HUD Response: It was not HUD's intent to have all borrowers designate an agent with the authority to make financial decisions or withdraw funds. It is HUD's intent that HECM borrowers be requested to designate a point of contact that mortgagees would be required to use in the event a problem arises or in the event of the borrower's death or incapacitation. Accordingly, HUD has revised § 206.40(c) to clarify that the contact person is not acting as an agent and that the mortgagee will be required to request the designation, but that the borrower is not required to designate such a contact person.

Comment: HUD should require borrowers to provide a trusted contact at the time of loan origination, who would be notified in the event HUD could not establish contact with the borrower. The commenter stated that a failure to respond by the borrower would result in a notification sent to the trusted contact.

HUD Response: HUD has revised § 206.40(c) to clarify that the contact person will not be an ''agent'' and that the mortgagee will only request that the borrower designate such a contact person that mortgagees would be required to use if they cannot reach the borrower directly in the event a problem arises or in the event of the borrower's death or incapacitation.

Comment: The servicer should verify the agent's information annually when the borrower's certification of residency is obtained, to ensure that the information is up-to-date.

HUD Response: In § 206.211(a), the proposed rule includes the borrower designation of alternate individual as part of the annual certification.

Comment: The requirement to collect an alternative point of contact for notifications from the mortgagee should be required at the time of loan origination and updated annually.

HUD Response: HUD has revised § 206.40(c) to clarify the mortgagee shall request but not require the borrower to designate an alternative individual at origination. In section 206.211(a), the proposed rule includes the borrower designation of alternate individual as part of the annual certification.

Comment: HUD should make certain revisions to the Eligible Non-Borrowing Spouse Certification. The commenter stated that the certification should affirm that the NBS does not have, and is not aware of, any claims against the mortgagee. The commenter also stated that the certification should affirm that the NBS agrees to execute documentation reasonably requested in order to toll the running of any applicable statute of limitation after the borrower passes away but the NBS remains in the property during a deferral period. The commenter finally stated that similar changes should be made to the certifications issued under FHA Info, prior to the issuance of Mortgagee Letter 2016–05 for HECMs subject to the Mortgagee Letter and the MOE Assignment election.

HUD Response: HUD will take these comments under consideration when implementing related policy through guidance. Additionally, FHA reminds mortgagees that the model loan document provided must be adapted by the lenders to local and state requirements that preserve first lien status.

Comment: HUD should allow mortgagees to amend the HECM loan documents to revise the recitals in the security instrument to make clear that the non-borrowing spouse is not a borrower. The commenter also stated that the repair rider and other riders should be indicated as secured items in the initial recitals of the HECM mortgages.

HUD Response: HUD will take these comments under consideration when implementing related policy through guidance. Additionally, FHA reminds mortgagees that the model loan document provided must be adapted by the lenders to local and state requirements that preserve first lien status.

Comment: HUD should add a seventh Qualifying Attribute that the non-borrowing spouse must agree to execute certain documentation in order to toll the running of any applicable statute of limitation during a deferral period.

HUD Response: HUD will take these comments under consideration when implementing related policy through future rulemaking or policy guidance. Additionally, FHA reminds mortgagees that the model loan document provided must be adapted by the lenders to local and state requirements that preserve first lien status.

Comment: HUD should consider defining the due and payable date as the later of when the Eligible NBS no longer meets all of the Qualifying Attributes or when the borrower dies, in those cases where there is an Eligible NBS present. The commenter stated that this language could be used by mortgagees in states that do not allow the tolling of a statute of limitations.

HUD Response: HUD will take these comments under consideration for future rulemaking. Additionally, HUD reminds mortgagees that the model loan document provided must be adapted to local and state requirements that preserve first lien status.

14. Monetary Investment for HECM for Purchase

Comment: Like most other loan products, there should only be a restriction to payment of those items that are reasonable and customary. Many commenters stated that seller contribution rules for the HECM for Purchase program should be the same as those in the FHA forward market. Some commenters stated that further restrictions result in the senior borrowers having more of a cost burden than similar borrowers using FHA's forward mortgage program as well as conventional and VA mortgage borrowers. One commenter stated that HECM buyers are currently unnecessarily burdened with paying for transfer tax, owner's title insurance, and some escrow fees, whereas forward mortgage buyers have these expenses paid by a third party. Another commenter stated that these restrictions cause seniors to pay more than what they would if they chose a forward mortgage, especially with new construction. One commenter stated that not allowing for customary transaction charges normally paid by the seller can create confusing market irregularities when a HECM is used to purchase a new home. The commenter also stated that some HECM rules are in direct conflict with state law.

HUD Response: In addition to allowing seller payment of fees required by State or Local tax laws and a Home Warranty Policy, the final rule has been revised to allow fees customarily paid by a seller in the subject property locality to be a permissible interested party contribution. The final rule also retains the proposed rule language to grant flexibility to the Commissioner to consider additional permissible interested party contributions through notice for comment, and will take these comments under consideration in possibly issuing such a future notice.

Comment: The amount of closing costs that other parties can pay should be expanded to further support the use of the HECM for Purchase program. Some commenters stated that it does not make sense to prevent other parties from helping to cover other borrower costs, when these practices are perfectly acceptable for all other types of mortgage transactions. Some commenters stated that HUD should allow lenders credit for buyer closing costs up to 3 percent. Other commenters suggested that the rule be changed to allow the seller to pay 3 to 6 percent of closing costs, similar to the forward side. Another commenter stated that the lender should be able to pay closing costs without limitation, other than the counseling fee. Commenters stated that the practice of prohibiting sellers from paying customary fees or closing costs is unfair to reverse mortgage borrowers. Another commenter stated that if HUD allows the same closing costs to be paid by the seller as are allowed in a traditional FHA loan, HECM for Purchase loans will skyrocket in popularity and greatly benefit the senior real estate market. One commenter stated that even a 2 percent allowable concession would put the consumer into a better cost structure. Another commenter recommended that HUD exclude lender closing cost credits, adjustments, and discounts from the definition of ''interested party'' contributions.

HUD Response: In addition to allowing seller payment of fees required by State or Local tax laws and Home Warranty Policy, the final rule has been revised to allow fees customarily paid by a seller in the subject property locality to be a permissible interested party contribution. The final rule also retains the proposed rule language to grant flexibility to the Commissioner to consider additional permissible interested party contributions through notice for comment, and will take these comments under consideration in possibly issuing such a future notice.

Comment: HUD should specify what it means by ''typical'' and ''required by state law.''

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance.

Comment: HUD should allow the seller to pay for the buyer's closing costs and thereby increase the popularity of HECM for Purchase loans. The commenter stated that many borrowers would use a HECM for Purchase loan that they do not intend to live in for the long-term, which would be a great loan for the MMIF.

HUD Response: In addition to the allowing seller payment of fees required by State or Local tax laws and Home Warranty Policy, the final rule was revised to allow fees and charges customarily paid by a seller in the subject property locality to be included as a permissible interested party contribution. HUD will continue to explore responsible lending practices and protections for the benefit for this protected class.

Comment: Continuing the ban on closing costs is a good idea for new construction but not for resales.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance.

Comment: HUD should find a way to relieve all closing costs if the borrower agrees to dedicate at least part of the funds toward life and/or annuity products which have prematurity distribution clauses.

HUD Response: Section 255(o) of the National Housing Act prohibits prospective borrowers from being required to purchase additional products, such as annuities as a requirement or condition of HECM eligibility. Currently, closing costs associated with a HECM are limited to certain items such as, but not limited to, MIP, mortgagee's title insurance, hazard and/or flood insurance, loan origination fees, the discharge of all liens against the property which serves as collateral for the HECM, and other reasonable and customary amounts, but not more than the amount actually paid by the mortgagee.

Comment: HUD should clarify that lender-paid broker fees that are disclosed as a "credit" on the HUD–1 for RESPA purposes are not lender credits for purposes of the HECM for Purchase program. The commenter stated HUD should clarify that although lender-paid mortgage broker fees are reflected as a "credit" on line 802 of the HUD–1, such fees paid by lenders to mortgage brokers are not a credit for purposes of the HECM for Purchase program.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance.

15. Eligible Properties

Comment: HUD should require the Certificate of Occupancy as a closing condition rather than for purposes of an application. Another commenter stated that HUD should remove the requirement for a certificate of occupancy to be issued prior to application. The commenter stated that the rule as proposed would restrict consumer access to the HECM for Purchase program. One commenter stated that the builder may not be able to afford to complete the home, and then have the buyer apply for the HECM and wait another 3–6 weeks to close.

HUD Response: The timing for taking the initial loan application will be addressed in future policy guidance rather than this final rule.

Comment: Requiring the certificate of occupancy to be completed on new construction before the HECM can be originated is very burdensome for seniors. Some commenters suggested that the HECM regulations should follow standard FHA rules for forward mortgages wherein the case number and application may ensue upon 90 percent of property completion with the Certificate of Occupancy obtained prior to closing. The commenter, and others, stated that this would enable seniors to compete for new construction homes in 55-and-over communities and energy efficient properties. Another commenter suggested that HUD should allow for an order of a case number and appraisal any time after the home is 50 percent complete. Another commenter stated that newly-built senior housing that is more accommodative to aging independently is a major national demographic trend.

HUD Response: HUD appreciates the comments concerning the timing for collecting habitability documentation and will take it under consideration for future policy guidance.

Comment: As an alternative, HUD should allow for a "temporary" or "conditional" Certificate of Occupancy to be accepted at application. The commenter suggested that the conditional or temporary issues to be addressed would be sod, landscaping, or perhaps an unfinished driveway.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance.

Comment: HUD should clarify that the leasehold period is based on the life of the borrower rather than the life of the mortgagor.

HUD Response: The NHA requires that the leasehold period must be under a lease for not less than 99 years that is renewable, or under 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. The leasehold period cannot be based on the life of the borrower as the NHA requires that it be based on the life of the mortgagor.

Comment: The proposal to add a new flood insurance mandate "to the extent required by the Commissioner" is vague and unnecessary. One commenter stated that the proposed rule does not contain any description of the criteria the Commissioner would use to make the determination as to whether flood insurance was required. The commenter also stated that federal law and the flood insurance program were already designed to protect mortgagees and the federal government from the risk of property loss due to floods. Another commenter stated that HUD should make it clear that flood insurance is not required unless required under the National Flood Act because the property is in a flood zone.

HUD Response: These requirements are not new additions to the HECM program. They were previously listed in the regulations at 24 CFR part 203 and incorporated into the HECM program by reference. This rule simply moves the regulations into part 206 in order to reduce the number of cross-references. HUD intends to retain these regulatory requirements.

Comment: Section 206.45(c)(1)(ii) should be deleted or paragraph (1) should be edited by adding a paragraph break after the first comma of § 206.45(c)(1)(ii). The commenter stated that, without a paragraph break, it is unclear whether the phrase "if flood insurance under the National Flood Insurance Program (NFIP) is available" applies only to paragraph (ii) or paragraph (i) as well.

HUD Response: The final rule has been revised to clarify the flood insurance requirements.

Comment: HUD should remove its inclusion of collateral "subsequently erected" as it relates to hazard insurance requirements because risk can be effectively mitigated through insurance requirements for the collateral used to secure the loan at the time of origination. One commenter stated that the ability for the servicers to monitor collateral that has been subsequently erected by the borrower is impractical and would require periodic inspections of the property at an added cost to the borrower. Another commenter requested that the requirement be to protect the collateralized value at the time of origination.

HUD Response: These requirements are not new additions to the HECM program. They were previously listed in the regulations at 24 CFR part 203 and incorporated into the HECM program by reference. This rule simply moves the regulations into part 206 in order to reduce the number of cross-references. HUD intends to retain these regulatory requirements.

16. Repair Work

Comment: HUD should clarify that repair administration fees need not be listed on the HUD Settlement Statement at closing.

HUD Response: The HUD–1 Settlement Statement is under the purview of the CFPB and is a statement of actual charges and adjustments paid by the borrower and the seller, if applicable, to be given to the parties in connection with the settlement.

Comment: HUD should permit the mortgagees to establish a set-aside range between 150 and 200 percent of the estimated cost of repairs. The commenter stated that when an appraiser makes repair estimates, it would be more beneficial to have up to 200 percent of the estimated cost set aside, whereas if a qualified contractor makes the repair estimates, 150 percent should suffice.

HUD Response: HUD currently requires the repair set aside to be established in an amount equal to 150% of the estimated cost of repairs when such required repairs do not exceed 15% of the MCA. The 150% limit provides a sufficient range of flexibility; however, borrowers are also permitted to add additional funds to the Repair Set Aside, but the funds cannot be drawn until the repairs are completed.

17. ''Spot Approval'' Exception for Condominiums

Comment: The ''spot approval'' exception should be reinstated for expired approvals. One commenter stated that in some cases, the ''spot approval'' exception is the only way in which some elderly homeowners can stay in their condominium unit when the property management does not get the entire project FHA approved. One commenter stated that without access to FHA, seniors who live in a non-certified condominium project are cut off from a major potential source of needed cash to pay bills and support their retirement years. The commenter asked whether there is still an opportunity to reconsider maintaining the spot approval exception and whether there are alternatives to the spot approval. Another commenter suggested that if the spot approval process is not reinstated, the approval process for condominiums needs to be completely revamped because in some markets, it is impossible to get a condominium FHA approved. One commenter stated that many condominium developments do not fully understand FHA approval and that homeowners are afraid to speak up to say that a HECM would improve their financial circumstances so that they would be able to continue to stay in the development. Another commenter asked whether spot approvals could be allowed for HECMs only, as the previous spot approval process was poorly handled and abused frequently. The commenter stated that condominiums provide an attractive, low-maintenance option for seniors. Another commenter requested that HUD re-visit, update, and remedy the spot approval process for single-family FHA-insured loans, including HECMs.

HUD Response: HECMs are subject to existing HUD Condominium eligibility and approval processes as published in ML 2016–15, ML 2016–13, ML 2015–27, and ML 2012–18. This final rule updates the existing HECM regulations regarding spot loans to comply with condominium guidelines that were implemented under HERA via the mortgagee letters referenced above. HUD appreciates the recommendation and will take it under consideration for future rulemaking and policy guidance.

18. Eligible HECM for Purchase Sales

Comment: Ninety days after acquisition is too long to require the seller to wait in order to re-sell the property. One commenter stated that 75 days is plenty of time to fix up a house, get an offer, and close, and that a seller could sell to conventional and VA loan customers earlier.

HUD Response: This requirement does not represent a change in the regulations. This rule simply restates the requirements of part 203 that were previously incorporated into part 206 through cross-references.

19. MIP

Comment: The MIP is too high. One commenter stated that the elevated upfront MIP will often alienate a senior due to cost and suggested, alternatively, that the upfront MIP could be added to the balance similar to the FHA forward mortgage process. Another commenter suggested that the refund of MIP be permitted on a sliding scale or prorated basis during the first few years of the loan.

HUD Response: It has been HUD's longstanding practice to allow borrowers to finance the initial MIP charge. In response to the sliding scale or proration suggestion, once a mortgage is insured, HUD's longstanding policy has been to require termination of the mortgage without refunding initial MIP. This practice will continue. The limited circumstances for warranting a refund of initial MIP are outlined in paragraph 7–13 of HUD Handbook 4235.1.

Comment: HUD should change the upfront MIP structure for all HECMs. Several comments proposed a tiered MIP structure tied to the percent of Principal Limit disbursed during the first 12 months of the HECM. One commenter suggested a .01 percent upfront MIP for initial draws up to 25 percent, a half-percent upfront MIP for initial draws between 26 and 50 percent, two and half percent upfront MIP for initial draws between 51 and 75 percent, and a three and a half percent upfront MIP for initial draws between 76 and 100 percent. Another commenter suggested that any initial draw under 50 percent would be charged a half-percent upfront MIP; an initial draw between 50 and 60 percent would be charged a one percent upfront MIP; an initial draw between 60 and 70 percent would be charged one and a half percent upfront MIP; etc.

HUD Response: HUD will take these comments under consideration when implementing related policy through guidance.

Comment: The initial MIP should be refundable for a HECM terminated in the first twelve months due to the death of the borrower(s).

HUD Response: Once a mortgage is insured, HUD's longstanding policy has been to require termination of the mortgage without refunding initial MIP.

Comment: HUD should review the legislative history and authority regarding HUD's ability to increase the MIP and re-consider proposing this change at another time.

HUD Response: This final rule updates the existing HECM regulations to include statutory MIP requirements that were implemented under Public Law 111–229 on August 11, 2010, that amended subparagraph (B) of section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)(B)).

Comment: The consumer should only be credited with 100 percent of the initial MIP if they are too short to close; otherwise, a fixed amount or percentage should be credited. The commenter stated that lenders that normally credit 100 percent have the servicing rights so they will recoup this credit on the back end, but some other loan officers cannot offer the same deal and are disadvantaged.

HUD Response: HUD requires the payment of initial MIP as a condition of endorsement. HUD is responsible for oversight and management of the HECM portfolio, not competitive pricing. HUD encourages and supports a borrower's decision to look for the best financing option that will meet their individual short- and long-term needs.

Comment: HUD should refrain from changing the time period of 10 days to remit payment of initial MIP to the Commissioner. The commenter stated that there are occasional cases in which the commenter is unaware of an error with the MIP payment, and 5 days would not be sufficient time to resolve the issue and remit payment before incurring a late charge.

HUD Response: FHA is not changing the 15-day requirement to remit initial MIP to the Secretary. However, the final rule retains the requirement to assess a late charge when MIP is remitted more than 5 days after the payment date as described in § 206.111(a).

20. Insurance of Mortgage

Comment: HUD should use the principal limit on the deed instead of 150 percent of the maximum claim amount. The commenter explained that using a deeded amount of 150 percent of the maximum claim amount causes reverse mortgage borrowers in certain states to pay approximately 260 percent of the tax they should owe. The commenter stated that these states charge an intangible tax or deed/ mortgage tax on the deeded amount of the loan.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance.

21. Commissioner Authorized to Make Payments

Comment: If the regulations permit the Commissioner to require or not require a subordinate mortgage through notice, HUD should clarify how this change will affect the claims process.

HUD Response: The proposed rule provides flexibility for the Commissioner to consider future policy changes. HUD appreciates the recommendation and will take it under consideration for future policy guidance.

22. Acquisition and Sale of Property

Comment: Acquiring appraisals in the currently strong real estate market typically takes 45–60 days, so the proposed 30-day time frame is not realistic. One commenter asked what happens when the appraisal is not performed within 30 days of application if the delay is a result of borrower action or inaction. Another commenter stated that the longer appraisal turnaround time can be attributed to the market, weather, review of title prior to appraisal, borrower illness, borrower-created delays, or the rural location of a property.

HUD Response: HUD's longstanding policy has been to use 30 days as the appraisal timeframe. However, should there be any issues due to market conditions making appraisers unavailable, the mortgagee as always may request an extension, which HUD, in its discretion, may grant.

Comment: HUD should revise the proposed language to state that a servicing mortgagee must have a valid appraisal in place at the time of the foreclosure sale date based on HUD's current definition of a valid appraisal.

HUD Response: HUD will issue guidance subsequent to the publication of the final rule in which it will clarify the use of a valid appraisal for establishing the bid amount at a foreclosure sale.

Comment: HUD should provide additional clarity regarding the effective date for the correction involving the appraisal date following the borrower's death instead of the foreclosure sale. The commenter stated that HUD and participating lenders may have disbursed excessive funds as a result of multiple appraisal orders and subsequent curtailments due to the previous drafting error. Some commenters suggested that this drafting error correction should be retroactive in order to protect servicing mortgagees for missing the timeline.

HUD Response: This final rule does not and cannot amend insurance contracts for HECM loans.

Comment: HUD should differentiate the type of ''value'' requested in reference to the term, ''appraised value.'' The commenter highly recommended, in the case of a foreclosure sale, for the appraisal to include an estimate of the property's market value and liquidation value.

HUD Response: HUD intends to retain its longstanding practice of requiring the ''as is'' appraised value.

Comment: HUD should clarify that appraisals for pending property sales should be ordered from a HUD-rostered appraiser within 30 days according to the uniform standards, while in cases of foreclosure, appraisals should be received within 30 days prior to the expected foreclosure sale.

HUD Response: Section 206.125(b) of the final rule was revised to provide the Commissioner with the flexibility to have the property appraised by an appraiser on the FHA Roster or other qualified individual. HUD will publish guidance subsequent to the publication of the final rule in which it can clarify the use of a valid appraisal for establishing the bid amount at a foreclosure sale.

Comment: Picky appraisal conditions are infuriating appraisers to the point that they are refusing to accept the orders.

HUD Response: HUD appreciates the comment and will take it under consideration for future policy guidance.

Comment: HUD should tighten appraiser eligibility standards. The commenter suggested that HUD consider a requirement for FHA appraisers to demonstrate verifiable education on FHA appraisal requirements, as authorized by the Housing and Economic Recovery Act of 2008.

HUD Response: Regulations of appraiser requirements are outside the scope of this proposed rule, but HUD appreciates the comment and will take it under consideration.

Comment: There is currently a significant undersupply of appraisers. One commenter suggested that the requirements to become an appraiser should be revised. Another commenter stated that the undersupply is causing borrowers to pay above-market rates and that the wait times are beginning to increase beyond one month in certain areas. The commenter suggested that some funds should be placed into attracting talent into the appraiser pool.

HUD Response: Regulations of appraiser requirements are outside the scope of this proposed rule, but HUD appreciates the comment and will take it under consideration.

Comment: For the Cash for Keys program, the amount should be consistent with Mortgagee Letter 2016–03, up to a maximum of $3,000.

HUD Response: HUD will take these comments under consideration when implementing related policy through guidance.

Comment: HUD should allow for the Cash for Keys option in lieu of evictions and not merely deed-in-lieu transactions.

HUD Response: HUD has adopted this change in the final rule and will make Cash for Keys available after foreclosure to bona fide tenants only. A *bona fide tenant* means a tenant of the property who is not a mortgagor, borrower, a spouse or child of a mortgagor or borrower, or any other member of a mortgagor's or borrower's family. The incentive to have the borrower or person with legal right to dispose of the property provide a deed-in-lieu would be negated if they were aware that they could force the mortgagee to foreclose, allowing them to remain in the property longer and still be paid a Cash for Keys incentive.

Comment: Cash for Keys should not only be available during the first six months following the due date. The commenter stated that there may be circumstances in which a property cannot be transferred within this time frame, but a deed-in-lieu of foreclosure would still be an attractive option for both parties.

HUD Response: Deeds in lieu are offered as a means to save the time it takes to foreclose, particularly in states with long foreclosure timeframes and to limit the expenses HUD reimburses in eventual claims. As indicated in the preamble to the proposed rule, 9 months allows a borrower or other party with the legal right to dispose of the property 6 full months to sell the property and then 3 additional months for the mortgagee to obtain a title search and get the deed signed, provided that title is clear. Allowing a deed in lieu to occur after that time does not represent the time or cost savings intended by a deed in lieu.

Comment: Nine months is not sufficient time to allow the borrower to attempt to sell the property under the time frame for a deed-in-lieu of foreclosure following the time at which the HECM becomes due and payable. The commenters stated that deed-in-lieu of foreclosure transactions should be allowed up until the foreclosure sale date. The commenters also stated that probate proceedings can make it difficult for the heirs to sell the property within nine months.

HUD Response: Deeds in lieu are offered as a means to save the time it takes to foreclose, particularly in states with long foreclosure timeframes and to limit the expenses HUD reimburses in eventual claims. As indicated in the preamble to the proposed rule, 9 months allows a borrower or other party with the legal right to dispose of the property 6 full months to sell the property and then 3 additional months for the mortgagee to obtain a title search and get the deed signed, provided that title is clear. Allowing a deed in lieu to occur at any time up until the foreclosure sale date does not represent the time or cost savings intended by a deed in lieu.

Comment: Sixty days is not sufficient for notice to be provided to HUD regarding the mortgage becoming due and payable. One commenter stated that death cannot always be discovered within this timeframe, which results in servicers facing significant curtailment risk due to their inability to provide such timely notice. The commenter suggested as an alternative to require mortgagees to report notice of the passing of the last surviving borrower within ten days of receiving notification of the borrower's death following reasonable diligence in monitoring the loan portfolio. Another commenter recommended notification within 60 days of the servicer discovering and confirming the title was conveyed and that no HECM borrower remains on title. One commenter recommended that the required timeline should begin when the servicer knew or reasonably should have known of the death.

HUD Response: The timeframes in the proposed rule for the due date did not change, with the exception of adding the end of a deferral period. However, the final rule codifies in § 206.125 the guidance issued in ML 2015–10, and HUD believes these are acceptable timeframes.

Comment: The proposal to base the foreclosure on the due date conflicts with ML 2015–10 and should remain as is.

HUD Response: HUD believes the initiation of foreclosure is more appropriately aligned with the due date, *i.e.,* the date of notice to HUD that the borrower has died or conveyed title to the property or the date HUD grants due and payable permission. Basing the foreclosure initiation date on when notice is made to the borrower poses increased risk to the MMIF because it allows mortgagees to delay the process unnecessarily by simply withholding the required notice and thereby increasing eventual claim expenses.

23. Payment of Claim

Comment: As in Mortgagee Letter 2016–03, HUD should require servicers to exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property pending varying state procedures. The commenter stated that the process associated with the foreclosure of a property with HECM financing can be lengthy and that the two-year reimbursement period would put both the MMIF and servicer at risk.

HUD Response: HUD has taken public comments into consideration and has replaced the two-year reimbursement period in § 206.129(d)(3) with a limit of two-thirds of total advances for the allowable expenses outlined in this section.

Comment: HUD should remove the proposed two-year limitation on insurance claim reimbursements for property charge advances. One commenter stated that if this limitation were applied to existing HECMs, the number of HECM foreclosures would increase as servicers called the loans due and payable as the two-year limit was reached. The commenter also stated that this result would conflict with HUD guidance allowing the deferral of due and payable status for low-balance arrearages and "At Risk" borrowers. Another commenter stated that the process can be delayed by factors outside of a servicer's control, such as a tax and insurance default and a repayment plan, new tax and insurance disbursements, and default/foreclosure timelines.

HUD Response: HUD has taken public comments into consideration and has replaced the two-year reimbursement period in § 206.129(d)(3) with a limit of two-thirds of total advances for the allowable expenses outlined in this section.

Comment: Regarding the regulations addressing the amount of payment when the borrower sells the property, HUD should include provisions for loans assigned prior to the effective date of the rule that are or are not in due and payable status. The commenter stated that for such loans that are due and payable, the claim amount should be based on the outstanding loan balance as of the due date and should include the allowance for items to capture the costs of title, foreclosure costs, and costs associated with the acquisition of the property.

HUD Response: The language in the final rule has been revised to clearly define what is reimbursable where the borrower sells the property, pre and post due and payable, based on the effective date of the final rule.

Question 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?

Comment: Debenture interest should be curtailed on a pro rata basis, but curtailing expenses could create an incorrect incentive on the part of servicers to refrain from expending such amounts, which would perhaps impact recoveries and place the MMIF at risk.

HUD Response: The regulations do not remove the requirement for mortgagees to protect the lien interest or to preserve and protect the property.

HUD is exploring options to ensure mortgagees meet required timeframes. There is great risk to the FHA MMIF when mortgagees fail to timely prosecute foreclosures or take other required actions.

Comment: Debenture interest should be paid from the date of notification to HUD. The commenter stated that servicers must demonstrate reasonable diligence in monitoring for death but should not be penalized for issues related to reporting bureaus.

HUD Response: HUD believes without this time frame; mortgagees will have little incentive to move the HECM to termination in a timely manner. In addition, HUD believes mortgagees have resources to identify the borrower's death, but because there may be an expense related to such resources, the mortgagees prefer not to subscribe to them. HUD contends that 60 days is sufficient time to identify a borrower's death through available resources, and move the HECM toward its logical conclusion.

Comment: The debenture interest rate should continue to be based on the endorsement date rather than the date on which the default on the mortgage occurred.

HUD Response: HUD did not propose changing the date upon which the debenture interest rate is based. It only proposed to restate the requirements of part 203 that are applicable to the HECM program instead of cross-referencing to part 203, which includes the debenture interest calculations.

24. First Lien Status

Comment: As a result of this rule change, lenders and servicers in super lien states will do a more thorough job of monitoring HOA payments to ensure that the liens do not occur in the first place. The commenter stated that this rule change would allow homeowner associations to receive the funds they are owed sooner.

HUD Response: HUD appreciates the comment.

Comment: The proposed rule change on the lien priority for homeowners' associations and condominiums disregards the laws of 21 states and the District of Columbia. Commenters noted that allowing homeowners' association and condominium ''super liens'' to take precedence over HECM liens would probably render such properties un-loanable. Some commenters stated that the proposed changes would effectively eliminate a condominium or house purchase in those states by anyone planning to finance with a HECM for Purchase. One commenter stated that condominiums provide a maintenance-free lifestyle that is especially popular with the HECM customer base. Another commenter estimated that there would be about a sixteen percent loss of volume as a result of this rule change. One commenter stated that this change may cause further restrictions to financing options for senior homeowners living in low maintenance condominiums. Commenters stated that the rule change exposes community association homeowners and residents, including senior citizens, to risk of higher housing costs and unjust financial burdens. One commenter stated that these state association lien priority laws intend to prevent the unjust enrichment of lenders at the expense of community association homeowners that occurred during the Great Recession. Another commenter stated that the proposed rule may disqualify more than 4 million senior citizens living in condominiums. One commenter stated that removing the HECM option for homeowners and potential homeowners in these markets would have dire consequences on the senior population, the economic stability in those markets, and a negative impact on the MMIF due to the reduction of HECM loans. Another commenter stated that the difficulty surrounding assignment of loans in such markets could result in an inadvertent curtailment or cessation of HECM mortgage origination and servicing. One commenter stated that seniors move into condominiums without considering a HECM, and then find out later that this is not an option.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens for the final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HUD should prohibit HOA liens of record at the time of assignment, and not afterwards. The commenter stated that servicing mortgagees have no way to determine whether HOA dues are past due, and a lien from past due HOA dues may only be reflected on a title report ordered as part of or prior to an assignment.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: The non-payment of HOA/COA fees is already a condition of default for HECMs. The commenter encouraged HUD to share data regarding the extent of HOA defaults to help advocates better understand the scope of this issue.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: Instead of threatening seniors' ability to take advantage of the HECM program in certain states, HUD should focus on ensuring compliance from the lending community with program rules and guidelines concerning foreclosure, property preservation, and title conveyance. The commenter stated that the proposed rule threatens pro-homeowner, pro-consumer state statutes by excluding senior citizens from the HECM program in these states.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HUD's proposal will likely have a disproportionate, negative impact on female HECM borrowers residing in condominiums in association lien priority jurisdictions.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HUD does not justify this rule change by indicating any losses HUD may have suffered insuring reverse mortgages due to state law association lien priority.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HUD should include in the LESA any association assessments in states that recognize association lien priority. One commenter suggested requiring a set-aside for 6 months' worth of fees for borrowers in those markets that have super lien laws. Another commenter stated that HUD should explore whether HOA dues should be included as part of the required set-aside, as well as what the impact would be on low-income households.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: The different treatment of utility charges and condominium or HOA fees results in irrational discrimination against owners in such associations. The commenter stated that if a nonpayment of utilities would result in a lien, then HUD will reimburse the lender for advancing the payment as a property charge. However, the commenter stated, if the utilities are centrally metered and paid for by a condominium association or HOA and reimbursed through assessments, then HUD would not have to reimburse the lender for advancing payments.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HUD should clarify its position and procedures under circumstances where state laws limit a mortgage's first lien status.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HOA dues should be considered property charges and treated like taxes and insurances with regard to default and repayment plans in the super lien states in which delinquent HOA dues may become a superior lien to the HECM. Commenters stated that the consumer should be allowed to repay any advances made on these liens, just like any other property charge. One commenter stated that this would protect HUD's lien position and the MMIF, and provide loss mitigation options to HECM borrowers.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HUD should expressly prohibit the extinguishment of HECM mortgage lien interests by HOA super liens. Commenters stated that HUD has successfully relied on the Constitution's Supremacy Clause to bar HOA foreclosure sales from extinguishing first liens deeds of trust in Nevada when they are insured through HUD.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

Comment: HUD should clarify that this requirement would not apply to existing HECM loans where HUD has issued a commitment to insure.

HUD Response: HUD has removed the language referring to homeowners' association liens and condo association liens in this final rule. However, HUD reminds mortgagees that in order for a HECM to be eligible for loan assignment, the mortgage must be a valid, legally enforceable first lien and title to the property securing the mortgage must be good and marketable. In the event that HUD discovers later that good and marketable title is lacking due to a lien, HUD may require repurchase.

25. Effect of Noncompliance With Regulations

Comment: The proposed new section 206.137 would violate the basic precept in the National Housing Act that mortgage insurance on an FHA loan is incontestable in the hands of the holder. The commenter stated that this provision would cause a problem with loans being pooled or sold in the secondary market, as almost all HECM loans are.

HUD Response: Section 206.137 does not represent a change in the regulations. This rule incorporates this provision from 24 CFR part 203 into part 206, whereas it had previously been incorporated by cross-reference.

26. Final Payment

Comment: HUD needs to process all past due HECM supplemental claims and streamline the process for paying such claims in the future within a time period less than that proposed in new section § 206.144.

HUD Response: Section 206.144 does not represent a change in the regulations. This rule incorporates this provision from 24 CFR part 203 into part 206, whereas it had previously been incorporated by cross-reference.

27. Providing Information

Comment: HUD should expand its requirement to provide the borrower with a single statement at the end of each month to include additional *documentation that will help to modernize the HECM program.* The commenter suggested that the borrower be provided with visual charts and diagrams depicting the loan status, analysis tools for borrowers to explore changing the disbursement plan, online banking methods to review account statement data, and account statement formats that comply with the Plain Writing Act. Another commenter stated that specific contact information for HECM experts with the mortgagee or servicer should be included on the monthly statement.

HUD Response: HUD does not intend to prescribe a burdensome process for providing monthly statements. However, HUD does not restrict mortgagees from offering any additional information through the monthly statement. Additionally, servicers' monthly statements already include a phone number for borrowers to contact a HECM representative.

Comment: Mortgagees should be required to provide borrowers with a dedicated phone number they can call and speak to employees on a team specifically trained to address inquiries concerning HECM mortgages.

HUD Response: The final rule, as did the proposed rule, states that the borrower may speak to the employee or employees specifically designated by the mortgagee or its servicer to address inquiries concerning mortgages insured under this part. Since the part in question is 24 CFR part 206, which deals solely with the HECM program, the language in the rule already addresses the commenter's concern.

Comment: HUD should retain the requirement that the mortgagee provide a single point of contact for HECM loan inquiries. The commenter stated that as seniors can be targets for fraud or elder abuse, providing a consistent point of contact can provide borrowers with a level of comfort when dealing with their reverse mortgage company.

HUD Response: With the growth of the HECM portfolio, the staffing turnover within the mortgage industry, and the challenges a borrower can face if their single point of contact is away from the office when needed, it is no longer feasible for borrowers to be provided the name of a single person with whom they may speak. HUD feels that having a group of mortgagee staff specializing in HECMs available to borrowers gives borrowers more opportunity to speak to someone who can assist them. HUD is adamant, however, that borrowers must be able to reach a live person when calling a mortgagee and not have to rely on voice mail and a return call.

28. Life Expectancy Set-Asides

Comment: HUD should allow the life expectancy set-aside to be re-evaluated after closing in order to use the correct property tax amount for that year rather than the previous year's amount.

HUD Response: Currently, HUD requires the servicing mortgagee to disburse payments based on the actual property tax and insurance amounts for that year.

Comment: Lenders should have the ability to change the first-year set-aside to $0, as pre-closing charges are being paid from the loan proceeds.

HUD Response: Currently, HUD permits the mortgagee to require, or when requested by the borrower, to disburse funds for payment of taxes and insurance at closing, when such property charges are coming due within 30–45 days following closing. Payment of taxes and insurance by the Mortgagee usually requires multiple disbursements by the lender over the initial disbursement period depending on due dates for tax and insurance payments, thus, it is not feasible to omit the first year of Life Expectancy Set Aside payments.

Comment: The borrower's election to have the servicer pay taxes and insurance by drawing from a line of credit or withholding funds from monthly tenure payments should not be irreversible and should be available to borrowers at any time during the HECM. One commenter stated that few borrowers would elect this option without such flexibility.

HUD Response: HUD appreciates the recommendation and has added language that provides the Commissioner with the authority to issue a **Federal Register** Notice to expand the property charge payment options at a future date.

Comment: HUD should eliminate the lifetime and partial LESA and implement a three-year tax and insurance reserve set-aside. The commenter stated that LESAs can amount to hundreds of thousands of dollars or even exceed the entire amount of the potential HECM, particularly in higher property tax areas.

HUD Response: HUD explored various options to address its property charge default risk, including shorter periods. After careful consideration and review, the LESA provided the most security for allowing the borrower to age in place and comply with the terms and conditions of the mortgage.

Comment: Partially-funded LESAs should be paid directly to the tax authority or insurance company. The commenter stated that disbursement to the borrower introduces additional risk that property charges will not be paid.

HUD Response: HUD explored various options to address its property charge default risk, including identifying prospective borrowers who have shown a willingness to pay their financial obligations but fall short of having the means to make the payment. The Partially-Funded LESA fills the gap for allowing the borrower to be responsible for such payments. Additionally, tax payments cannot be paid on a partial basis and would be operationally infeasible.

Comment: Thirty days is an insufficient time frame for a borrower to respond to the mortgagee's notification of a missed property charge payment. The commenter stated that thirty days is a short time to respond to the mortgagee's request regarding the non-payment, especially when there is a delay in the mortgagee's processing or mailing of the initial notice. The commenter suggested that the time period be extended to 90 days.

HUD Response: This provision simply codifies what has been implemented through ML 2015–10. HUD believes the timeframe is sufficient for a borrower to have contacted the mortgagee to express their willingness to repay the funds due.

Comment: HUD should provide a time frame or guidance concerning how the mortgagee is to determine the borrower is unwilling or unable to repay the mortgagee for funds advanced to pay property charges outside of a LESA.

HUD Response: ML 2015–11 provides the availability of loss mitigation options for a mortgagee to work with the borrower.

29. Allowable Charges and Fees After Endorsement

Comment: What is the goal of allowing a servicing charge to be included in the mortgage Note rate?

HUD Response: The option for allowing a servicing charge which is included in the mortgage Note Rate provides flexibility for the lender to cover servicing costs in a manner that is consistent with mortgage industry practices if a Servicing Fee Set Aside is not established. In addition, allowing the servicing charge to be included in the Note Rate provides the borrower access to more funds from which to draw against since such funds are not being withheld in the Servicing Fee Set Aside.

Question 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?

Comment: HUD should not allow this charge. The commenter stated that the charge would infuriate and confuse the borrower, as well as complicating the loan and contributing to the headline that reverse mortgages are too expensive.

HUD Response: Servicing fee charges are an allowable fee that has been a part of the HECM program since inception. Servicing fees provide compensation to servicers for servicing the HECM loan.

Comment: HUD should increase the dollar amounts for allowable servicing fees based on the Consumer Price Index from the last servicing fee adjustment in 1998. The commenter stated that reverse mortgage borrowers usually require more time spent on servicing-related issues as compared to forward mortgage borrowers. The commenter also justified a raise in servicing fees based on the increase in servicing policy requirements implemented since 1998.

HUD Response: HUD will take these comments under consideration when implementing related policy through guidance.

Comment: There is no reason for the annual adjustable and fixed rate loans to have a different dollar amount servicing fee than the monthly adjustable HECMs. The commenter stated that all of these products have the same servicing requirements. *HUD Response:* Adjustable rate loans require additional support for future draws and payment plan changes.

Question 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?

Comment: There is no reason to separate the servicing fee from the lender margin. The commenter stated that on a fixed rate loan, the lender always has the option of charging a higher interest rate to cover increased servicing costs, and on an adjustable rate loan, the margin can be increased to cover rising servicing costs.

HUD Response: The Note rate includes the lender's margin and may also include a servicing fee as stated in § 206.207(b).

Comment: The basis range is acceptable as currently prescribed and adjustments to this range should be made by the Government National Mortgage Association (GNMA).

HUD Response: The current prescribed range is in accordance with GNMA servicing parameters.

30. Housing Counseling

Comment: HUD should include continuing education requirements so that counselors keep up-to-date on the ongoing changes in the HECM program. The commenter noted that some clients have indicated counselors have discouraged them from using a HECM and that the counselors seem unaware of the usefulness of a HECM ARM as a financial planning tool.

HUD Response: All counseling sessions are required to cover all the potential risk for a HECM, including property charges, ineligible NBS, etc. The rule would not change those existing counseling requirements in these areas. One of the primary purposes of HECM counseling is to provide education on all aspects of HECMs from an objective third party. The current HECM counselor roster rule requires that counselors take continuing education every 2 years and retake the HECM counselor test every 3 years. This ensures that counselors stay current with program requirements.

Comment: Counseling should be mandatory for all seniors considering FHA loans. The commenter stated that it is unconscionable for seniors to receive a forward 20–30-year loan and not receive counseling on the option of a HECM loan. *HUD Response:* Counseling by a counselor on the HECM roster is statutorily required. Given the unique nature of a HECM loan, the requirement for counseling is a critical consumer protection for an ''at risk'' population.

Comment: Borrowers are not very well-prepared for the multiple downside risks inherent in reverse mortgages. One commenter stated that many borrowers are told by unscrupulous loan brokers that there are no further obligations to fulfill once they receive the HECM, and that current counseling is ineffective at correcting those misrepresentations. The commenter suggested that HUD study this counseling problem and adjust counseling requirements accordingly. Another commenter stated that the counselors should have training and additional responsibility to inform the borrower whether a reverse mortgage is right for the borrower. Alternatively, the commenter stated, the counselor should be required to inform the borrower that they should seek financial or legal advice to understand the suitability and consequences of the HECM.

HUD Response: HUD disagrees with these comments. HUD believes HECM Roster Counselors are qualified and fully capable, based on their training and continuing education, to thoroughly educate clients on reverse mortgages. Furthermore, HECM Roster Counselors must follow a strict protocol when providing counseling to potential HECM Borrowers. The protocol, found in Appendix 2 of HUD Handbook 7610.1, Rev.5, requires HECM Counselors to educate clients on the financial implications of obtaining a HECM, the effect of obtaining a HECM or other reverse mortgage product on public benefits and on borrower and non-borrower spouse post-closing obligations for items, including, but not limited to, repairs, payment of taxes and insurance and loan re-payment when the loan becomes due and payable.

HUD believes that the proper role of a HECM Counselor is to educate clients on the features of reverse mortgages and on the appropriateness of a reverse mortgage or other financial options to meet the client's needs. HUD further believes that it is not the role of the HECM Counselor to advise the client whether to proceed with a reverse mortgage, or which reverse mortgage product to use, but to provide guidance and resources to enable the client to make an informed decision. HUD disagrees that HECM Counselors should be required to inform clients that they should seek financial or legal advice to understand the suitability and consequences of the HECM. As with forward mortgages, it is the consumers' decision whether or not to seek financial or legal advice before entering into a loan transaction.

Comment: Counselors should not explicitly tell borrowers to shop for loans or that they can get certain terms such as a zero origination fee. One commenter stated that the role of the counselor should be strictly limited to providing counseling on how the program works and not to give the borrower advice.

HUD Response: A thorough HECM counseling session includes a presentation of all the alternatives to a HECM. Counselors may recommend that the borrower shop around for better priced products as part of such a session, but are not permitted to direct a client to any specific lender or provide lender price comparisons.

Comment: HUD should clarify to what ''electronic database'' the counselor needs to upload the counseling certificate. One commenter asked whether an electronically uploaded certificate would waive the requirement for an original borrower signature on the counseling certificate. Another commenter asked for clarification on this point. The commenter also stated that HUD should give seniors and mortgagees the option to receive a hard copy of the counseling certificate.

HUD Response: Upon further consideration to require HECM counselors to upload the certificate to an ''electronic database,'' HUD is no longer pursuing this option as it would impose a financial burden upon borrowers to send a signed and dated copy of the certificate back to the counselor and difficult for the counselor to manage the process.

Comment: Non-borrowing spouses should not have an additional counseling component. The commenter stated that such a requirement would cause an unnecessary increase of fees as well as delay time to begin the HECM financing process. The commenter also stated that HUD would need to address the problem of educating all HECM counselors and updating the information they provide to borrowers and non-borrowing spouses.

HUD Response: Non-borrowing spouses have been required to receive counseling since 2009. HECM counselors make every effort to counsel both borrowers and non-borrowing spouses jointly unless extenuating circumstances exist that prevent this. This is part of the guidance to counselors in the HECM protocol. HECM counselors are also encouraged to include family members in a counseling session. The clients have the ultimate decision as to who to include in these sessions, and this may include legal counsel, financial advisors, etc.

Comment: HUD should clarify that mortgagees may denote on the HECM mandated counseling disclosure that the borrower is required to undergo face-to-face counseling or be counseled by a counselor or counseling agency that is ''domiciled'' within a particular state. The commenter also suggested that HUD indicate which counseling agencies can provide such face-to-face counseling or is domiciled within a state. The commenter stated that several states have face-to-face counseling requirements or requirements that the senior be counseled by a counselor or counseling agency that is ''domiciled'' in a particular state.

HUD Response: HUD will consider this recommendation as part of the current HECM counseling protocol revisions.

Comment: HUD should require information about suitability to be provided to prospective borrowers prior to the counseling session. One commenter suggested that HUD refer to California Civil Code Section 1923.5 as a guide for providing the potential borrower such information.

HUD Response: HUD will consider these suggestions as part of the current HECM counseling protocol revisions.

Comment: Counseling should be in-person or face-to-face electronically and should be digitally recorded and broken up into two sessions. The commenter also suggested that the counseling should include all members of the household in a discussion on inter-family loans and provide clear information on where to turn for help if the borrower later has problems with the reverse mortgage.

HUD Response: HUD will consider these suggestions as part of the current HECM counseling protocol revisions.

Comment: HUD should not restrict financial professionals from helping borrowers seek professional money management advice. The commenter stated that HUD should not ask the homeowner if they plan to use the HECM proceeds to purchase life or annuity products. The commenter also stated that almost all HECM lenders are trying to tie the product more closely with the financial and estate planning communities.

HUD Response: The language in the rule is consistent with the statutory requirement in § 255(d)(11) of the NHA.

31. Maximum Closing Costs Allowed on Sale of Property

Question 1: Is 11 percent a reasonable cap? HUD 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.

Comment: The maximum closing costs allowed should be based on a sliding scale so that the expenses are limited to the greater of $15,000 or 11 percent of the sales price of the property. The commenter stated that strictly limiting such charges to 11 percent for properties that sell for small dollar amounts may not even cover the actual expenses incurred by the mortgagee.

HUD Response: The final rule now states that closing costs shall not exceed the greater of: (a) 11 percent of the sales price; or (b) a fixed dollar amount as determined by the Commissioner. The amount as determined by the Commissioner will be issued through **Federal Register** notice.

Comment: The schedule of allowable costs under the 11 percent cap should include lien payoff, cleaning, and repairs. The commenter stated that the economics of a HECM short sale often lead to property maintenance issues. The commenter also stated that allowable closing costs need to be clearly communicated to servicers.

HUD Response: Due to the non-recourse nature of HECM loans, short sales represent a risk to the FHA MMIF through claims. Furthermore, short sales do not allow the borrower or seller to retain any funds and the sales price is based on the ''as is'' appraised value. Therefore, it is not necessary for the borrower to make extensive repairs.

Comment: This amount is unworkable for lower balance home values, unless there is a tiered approach. One commenter stated that this limitation can result in a shortage of closing costs when selling lower value homes because many of the costs are fixed and unrelated to the sale price of the property.

HUD Response: The final rule states that closing costs shall not exceed the greater of: (a) 11 percent of the sales price; or (b) a fixed dollar amount as determined by the Commissioner. The amount as determined by the Commissioner will be issued through **Federal Register** notice.

Question 2: Should HUD implement a tiered approach to the maximum percent of closing costs in relation to 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?

Comment: HUD should adopt a tiered approach to take into account that 11 percent may not be sufficient for lower balance home values. One commenter stated that a greater percentage should be assigned to lower sales prices.

HUD Response: The final rule now states that closing costs shall not exceed the greater of: (a) 11 percent of the sales price; or (b) a fixed dollar amount as determined by the Commissioner. The amount as determined by the Commissioner will be issued through **Federal Register** notice.

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

Comment: HUD should set a minimum dollar amount for lower balance home values.

HUD Response: The final rule now states that closing costs shall not exceed the greater of: (a) 11 percent of the sales price; or (b) a fixed dollar amount as determined by the Commissioner. The amount as determined by the Commissioner will be issued through **Federal Register** notice.

Comment: A fixed closing costs dollar amount limitation in line with customary costs would be more appropriate if closing costs are to be capped. The commenter volunteered to work with HUD to establish customary costs based on the commenter's data and experience.

HUD Response: The final rule now states that closing costs shall not exceed the greater of: (a) 11 percent of the sales price; or (b) a fixed dollar amount as determined by the Commissioner. The amount as determined by the Commissioner will be issued through **Federal Register** notice.

32. Non-Borrowing Spouse Communication

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

Comment: HUD should create a written guide for the heirs that is to be delivered by the servicer with the initial letter of repayment. The commenter opined that it would be very beneficial for all parties, including FHA's MMIF, if a standard guide was created to outline the steps the heirs should be taking, and that it would result in faster repayment, more participation in the Cash for Keys initiative, and fewer foreclosures. The commenter suggested alternatively that the guide could be created by a group chosen by NRMLA.

HUD Response: HUD will take this suggestion under consideration for future policy guidance.

Comment: Many servicers are not properly communicating about how someone can qualify as an Eligible Non-Borrowing Spouse. Commenters stated that servicers provide conflicting and inaccurate information, reject paperwork for unexplained reasons, and lose paperwork. One commenter suggested that HUD develop a standardized letter to contact non-borrowing spouses or heirs that is written in simple, clear language.

HUD Response: HUD expects mortgagees to comply with the regulatory requirements of § 206.125(a)(2), which specifies the information required to be provided to the borrower's estate or heirs. HUD does not intend to develop a standardized letter.

Comment: Heirs have had great difficulty getting information from the servicer about options and steps required at the time of loan repayment.

HUD Response: HUD has clarified in the final rule that mortgagees must request that HECM borrowers designate a point of contact that mortgagees would be required to use in the event a problem arises or in the event of the borrower's death or incapacitation. Accordingly, HUD has revised § 206.40(c) to clarify that the contact person is not acting as an agent and that the mortgagee will be required to request the designation, but that the borrower is not required to designate such a contact person.

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

Comment: HUD should encourage servicers to request that borrowers designate family members or others who are authorized to speak with them about a loan on behalf of a borrower or following the death of a borrower.

HUD Response: HUD has clarified in the final rule that mortgagees must request that HECM borrowers designate a point of contact that mortgagees would be required to use in the event a problem arises or in the event of the borrower's death or incapacitation. Accordingly, HUD has revised § 206.40(c) to clarify that the contact person is not acting as an agent and that the mortgagee will be required to request the designation, but that the borrower is not required to designate such a contact person. The mortgagee shall communicate with an alternate individual if one has been designated by the borrower.

Comment: HUD should produce and require collateral material regarding what happens when the loan is due and payable. The commenter stated that the material should be available to the non-borrowing spouse and the borrower's heirs, and should be available on HUD's Web site.

HUD Response: HUD will take this suggestion under consideration for future policy guidance.

Comment: HUD should create a template certification packet for all servicers to use for surviving non-borrowing spouse situations.

HUD Response: HUD certification language requirements for NBS are contained in ML 14–07 and ML 15–02.

Comment: HUD should require servicers to provide at least the loan balance and standard information about options for repayment to anyone who can prove an heir interest in the property, or who is an executor of the estate. The commenter stated that the borrower should also be encouraged to designate who should have access to detailed information about the account.

HUD Response: HUD has clarified in the final rule that mortgagees must request that HECM borrowers designate an alternate individual that mortgagees would be required to use in the event a problem arises or in the event of the borrower's death or incapacitation. Accordingly, HUD has revised § 206.40(c) to clarify that the alternate individual is not acting as an agent and that the mortgagee will be required to request the designation, but that the borrower is not required to designate such an individual. If the borrower has designated an alternate individual, mortgagees would be required to contact the designated individual if they cannot reach the borrower directly in the event a problem arises or in the event of the borrower's death or incapacitation. HUD currently has procedures for communicating with the borrower's estate upon the death of the last borrower.

33. Benefits & Costs

Comment: The estimated $1.9 billion cut in endorsements is very conservative if the changes to the HECM program are made as proposed. The commenter stated that the impact on endorsement volume of the financial assessment is not yet fully understood. The commenter also stated that the post-closing inspection requirement and including utilities as a property charge will drive away many of the affluent borrowers that are more common after the establishment of the financial assessment. The commenter also pointed to the super lien issue as a change that could cause an immediate drop in endorsement volume of $1.9 billion on its own.

HUD Response: FHA appreciates your comments and will defer implementing this policy to allow further research and analysis to be conducted.

Comment: The RIA fails to quantify how disqualification of otherwise eligible HECM borrowers residing in community associations in association lien priority jurisdictions balances HUD's duty to protect taxpayers and ensure access to credit. The commenter stated that HUD did not demonstrate it considered less damaging but effective policy alternatives than their proposal on first lien status in the 22 jurisdictions with association lien priority statutes from the HECM program.

HUD Response: HUD appreciates your comments and will defer implementing this policy to allow further research and analysis to be conducted.

34. Mortgagee Letter 2015–11

Comment: HUD should add an additional factor under the critical circumstances for the ''at risk'' loss mitigation option: a diagnosis of Alzheimer's or other dementia of family member receiving care at the residence.

Comment: HUD should extend the repayment period for property charge advances and extend the foreclosure time frames for ''at risk'' homeowners.

HUD Response: These two comments reference a mortgagee letter outside the scope of this proposed rule. The proposed rule states, and the final rule continues to state, at § 206.205(e)(2)(ii) that ''the mortgagee may provide any permissible loss mitigation made available by the Commissioner through notice.'' Specific discretionary loss mitigation options are provided through mortgagee letters, not the regulations, and HUD will consider these comments in the development of such future policy guidance.

35. Other Comments & Suggestions

Comment: The limit on HECMs should be raised from $625,000. One commenter stated that, due to the strong housing recovery, many housing markets have average appraised values well over $625,000, and this limit unduly discriminates against seniors, so the cap should be raised to $1 million. Another commenter suggested that the cap should be raised to $1.5 million, or at the least, should be indexed to inflation.

HUD Response: HUD is unable to adopt this suggestion because HECM mortgage limits must comply with current statutory requirements. The private sector has the ability to develop a market for larger reverse mortgages.

Comment: There should be a new program using a fixed 5.06 percent that will pay off all current liens on the property up to 80 percent of the appraisal value regardless of the age of the youngest borrower. The current loan programs do not properly cover upside-down borrowers.

HUD Response: HUD continues to evaluate and monitor risks to the program and the MMIF. The current principal limit factors have been set to ensure the HECM program remains financially sound and viable for current and future senior borrowers.

Comment: HUD should work towards reducing costs and improving the image of its HECM program. One commenter stated that HUD should start a public relations campaign to highlight the features and benefits of the program, just as it does for forward loans. The commenter also suggested that HUD respond to all the false and misleading comments made about the HECM program. Another commenter stated that HUD needs to improve consumer awareness by confirming safeguards and offering free education.

HUD Response: In addition to the required counseling for prospective HECM borrowers, HUD provides various online resources for prospective borrowers, HECM counselors, and HECM lenders.

Comment: HUD should explain why bridge loans are allowed with forward loans but not with reverse mortgages.

HUD Response: HUD does not have restrictions on the use of bridge loans for the HECM program. However, § 206.32 states that in order for a mortgage to be eligible for a HECM, 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 § 206.27(b) and any future Repair Set Aside established pursuant to § 206.19(f)(1).

Comment: HUD should clarify what constitutes ''sufficient inquiry'' for the purposes under § 206.43. The commenter also asked for clarification that the mortgagee does not violate HUD regulations if the mortgagee does not make disbursements directly to the estate planning firm if it is determined that the borrower may have engaged such an estate planning firm.

HUD Response: HUD will clarify the meaning of ''sufficient inquiry'' through guidance.

Comment: The IRS should make a positive ruling to allow the carry-forward status of the accrued interest and MIP against retirement income.

HUD Response: The rulings of the IRS are outside of the scope of this rule and HUD's authority in general.

Comment: HUD should emphasize the value of placing the property in a living trust with a durable power of attorney. The commenter stated that many borrowers may become incapacitated, resulting in default, and that the servicer would be unable to discuss home retention or workout options without anyone having legal authority.

HUD Response: Trusts are currently eligible under the HECM program, but the homeowner has the responsibility for identifying the proper legal measures that can be taken to oversee their personal affairs if the homeowner becomes incapacitated.

Comment: HUD should examine the Property Assessed Clean Energy (PACE) program to determine if there is potential for default so that immediate notification can be sent to the borrowers warning them not to attach these liens to their properties. The commenter stated that PACE liens appear to be superior to HECMs and that property taxes may double or triple after the placement of the liens.

HUD Response: This recommendation is outside the scope of this rule. HUD's recent guidance on the PACE program (ML 2016–11) states that properties with PACE obligations are not eligible for an FHA-insured HECM loan.

Comment: For all regulations and mortgagee letters, HUD should create accompanying template documents which all lenders and servicers are required to use. The commenter stated that such consistent and clear guidance would make it easier for HUD to have oversight, regulatory control, and enforcement capability.

HUD Response: HUD does not provide templates for every regulation and mortgagee letter because various state laws govern specific information that must be provided and because minor changes would require HUD to reissue multiple templates. Instead, HUD prescribes what information must be communicated and allows servicers to apply their business practices in creating the letters.

Comment: HUD should create or task a unit such as the National Servicing Center to help individual consumers understand their rights and options, provide immediate response to consumers with urgent issues such as foreclosure, and act as liaison between consumer and servicer when necessary.

HUD Response: This comment falls outside the scope of the proposed rule, but HUD believes that the National Servicing Center already provides many of these services to HECM borrowers.

Comment: HUD should put a moratorium on all tax and insurance defaults until HUD has a structure and system in place to review and enforce consumer protections to ensure defaults are compliant with consumer protection regulations and valid.

HUD Response: This is outside the scope of the proposed rule.

Comment: HUD should not allow changes by the servicer to the HECM contract.

HUD Response: This is outside the scope of the proposed rule.

Comment: Force-placed insurance premiums should not be a default trigger.

HUD Response: Regulations at § 206.27(b) require the borrower to pay property charges, including insurance. A borrower's failure to obtain insurance causes the mortgagee to force-place insurance. A default occurs where there are no HECM funds to pay for insurance and a borrower fails to reimburse the mortgagee for the funds advanced to pay these charges.

Comment: There is concern over state law developments that purport to impose duties or limitations upon HECM servicers. The commenter stated that these state laws are viewed as inconsistent with HECM regulations and guidelines, conflicting with generally accepted servicing principles, and having the potential effect of harming consumers and property values.

HUD Response: HUD provides requirements that mortgagees must comply with to file for claim benefits. It is the mortgagee's responsibility to comply with both federal and state requirements in order to obtain claim benefits.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed have been approved 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.

Regulatory Planning and Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by OMB in accordance with the requirements of the order. This rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866.

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 in one place all the regulatory policy related to the HECM program. Prior to this rule, mortgagees had to deduce the current program requirements by determining which HECM regulations in 24 CFR part 206 were superseded by HERA and RMSA mortgagee letters.

Regulatory Flexibility Act

The Regulatory Flexibility Act (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 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 in 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 contained in the rule may result in mortgagees incurring additional costs. However, as detailed in the regulatory impact analysis for the rule, these costs are not estimated to rise to the level of having a significant impact on a substantial number of small entities. Moreover, HUD has attempted to mitigate the economic impacts of these provisions. One example is the requirement that all mortgagees 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. Another example is the limitation on insurance claim reimbursement for the mortgagee's payment of certain property charges. Rather than limiting this reimbursement based on the timing of the property charges, requiring mortgagees to track when each property charge occurred, HUD is limiting the reimbursement to two-thirds of all property charges, consistent with how mortgagees are reimbursed for foreclosure costs.

FHA believes that these policies are reasonable and provide mitigating features so that the FHA-approved mortgagees, large and small, will not be adversely affected by these policies.

Accordingly, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made at the proposed rule state in accordance with HUD regulations in 24 CFR part 50, which implemented section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and 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 FONSI 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, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does 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 amends 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

Authority: 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.

Bona fide tenant means a tenant of the property who is not a mortgagor, borrower, a spouse or child of a mortgagor or borrower, or any other member of a mortgagor's or borrower's family.

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 who is currently active on FHA's HECM Counselor Roster and who 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 to 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, and any other special assessments that may be levied by municipalities or state law.

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), (c), 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)(i)(B), 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.

(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 average mortgage interest 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 two percentage points from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of two percentage points 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.* 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.

(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 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.

(v) The borrower shall notify the mortgagee at loan closing of the 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 borrower shall notify the mortgagee at loan closing of the 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;

(13) Required pay-off of debt not secured by the property, as defined by the Commissioner through **Federal Register** notice; and

(14) 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;

(10) Required pay-off of debt not secured by the property, as defined by the Commissioner through **Federal Register** notice; and

(11) 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 the 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 in existence at the time of origination 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 in existence at the time of origination 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); 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 the borrower provides legal documentation, in a manner acceptable to the Commissioner, evidencing release of the borrower's financial obligation to satisfy the existing HECM.

(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 prior to the HECM closing 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 HECM closing.

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

(c) *Home Equity Lines of Credit.* The borrower may pay off, at closing, a Home Equity Line of Credit (HELOC) that does not meet seasoning requirements from borrower funds, the HECM funds, or a combination of HECM funds and borrower funds, as long as the draw from HECM funds does not exceed the percentage approved by the Commissioner under the authority of § 206.25(a).

§ 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) Regulation B (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 alternate individual.* At the time of origination, the mortgagee shall request that the borrower designate an alternate individual for the purpose of communicating with the mortgagee if the mortgagee has not been able to reach the borrower. The designation of the alternate individual is at the discretion of the borrower. If the mortgagee is unable to make contact or communicate with the borrower for any reason, including death or incapacitation, the mortgagee shall communicate with the alternate individual, if one has been designated by the borrower.

§ 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 section 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 borrower shall provide the mortgagee with a physical copy of the certificate.

§ 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 any disclosures required by law. 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;

(ii) Fees customarily paid by a seller in the subject property locality; and

(iii) 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 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) During such time as the mortgage is insured, the borrower and mortgagee shall be obligated, by a special condition to be included in the mortgage commitment, to obtain and to maintain National Flood Insurance Program (NFIP) flood insurance coverage on the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) if NFIP flood insurance is available with respect to the property improvements 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.

(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 24 CFR 203.41 or 24 CFR 234.66 and this part, 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.

(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).

(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) of this section.

(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 MMIF.

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 when one of the conditions stated in the mortgage, as required by § 206.27(c)(2), has occurred.

(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. Closing costs shall not exceed the greater of: 11 percent of the sales price; or a fixed dollar amount as determined by the Commissioner through **Federal Register** notice. 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 is begun, 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, or other appraiser acceptable to, and identified by, the Commissioner through **Federal Register** notice, 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. The Commissioner may, through **Federal Register** notice, identify other acceptable types of valuation for establishing the value of HECMs for the purpose of sale.

(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. Such a bid by any party other than the mortgagee, for the full loan balance and all associated expenses, will result in a full payoff of the loan and no claim for insurance benefits being presented to FHA.

(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 filed for recording 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.

(4) The Commissioner may provide financial incentive, in an amount to be determined by the Commissioner, to be paid by the mortgagee and reimbursed through a subsequent claim when a bona fide tenant vacates the property prior to an eviction being initiated by the mortgagee.

§ 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 foreclosure sale date where the mortgagee is the successful bidder, the mortgagee shall apply for the insurance benefit not later than 30 days after the end of the six-month period, substituting the appraised value, using a valid appraisal, 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 insurance benefits within 15 days after the date the assignment of the mortgage to the Commissioner is filed for recording. 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 September 19, 2017, 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 September 19, 2017, 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 and shall be included in determining the limit on the claim amount.

(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 and payable 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 and payable 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)(3)(i) through (xiv) of this section. For HECMs with Case Numbers assigned on or after September 19, 2017, the inclusion of items listed in paragraphs (d)(3)(i), (ii), and (iii) of this section shall be limited to two-thirds of advances made by the mortgagee on such expenses.

(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 and payable 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 terms 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 and payable 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) or § 206.125(g)(4);

(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. Closing costs shall not exceed the greater of: 11 percent of the sales price; or a fixed dollar amount as determined by the Commissioner through **Federal Register** notice; 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 September 19, 2017,* 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 paragraphs (d)(3)(i)—(vii) and (d)(3)(xii) 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 September 19, 2017, 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 September 19, 2017,* 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 September 19, 2017, 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 and payable 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 and payable 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 September 19, 2017, 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 mortgagor 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, 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. 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 1024.33(b)(4); 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 1024.33(b)(4); 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, and homeowners' association fees.

(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.* (i) 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)(i)(B) or (C) of this section cannot be cancelled by the borrower:

(A) Borrower is responsible for the independent payment of all property charges;

(B) Borrower elects to have a Fully-Funded LESA for the payment of property charges identified in paragraph (a)(2) of this section; or

(C) For adjustable interest rate HECMs only, borrower elects to have the mortgagee pay property charges listed in paragraph (a)(2) of this section which would have otherwise been required to be paid by the borrower, in accordance with paragraph (d) of this section.

(ii) Through **Federal Register** notice, the Commissioner may establish an incentive for voluntarily electing a LESA under paragraph (b)(2)(i)(B) 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 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. Through **Federal Register** notice, the Commissioner may expand the borrower's options for property charge payment 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 service 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 a fixed monthly charge for servicing activities of the mortgagee or servicer, 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 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 an alternate individual as specified in § 206.40 to receive copies of the notifications from the mortgagee, and who the mortgagee shall 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 section 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: January 12, 2017.

Nani A. Coloretti,

Deputy Secretary.

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