

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 includ-

ing 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

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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

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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 de-

ferral 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 mort-

gage 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 mortgagee 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: