

§ 206.27

24 CFR Ch. II (4-1-19 Edition)

(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