

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 resale 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

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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.