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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER II--OFFICE OF ASSISTANT SECRETARY FOR HOUSING--FEDERAL HOUSING
COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 206--HOME EQUITY CONVERSION MORTGAGE INSURANCE--Table of Contents

Subpart A--General

Sec. 206.1 Purpose.

The purposes of the Home Equity Conversion Mortgage 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'').

[61 FR 49032, Sept. 17, 1996]

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Subpart A--General

Sec. 206.3 Definitions.

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

Contract of insurance. (See 24 CFR 203.251(j)).

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

Estate planning service firm means an individual or entity that is not a mortgagee approved under part 202 of this chapter or a housing counseling agency approved under Sec. 206.41 and that charges a fee that is:

(1) Contingent on the homeowner obtaining a mortgage loan under this part, except the origination fee authorized by Sec. 206.31 or a fee specifically authorized by the Secretary; or

(2) For information that homeowners must receive under Sec. 206.41, except a fee by:

(i) A housing counseling agency approved under Sec. 206.41; 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 an elderly homeowner's access to mortgages covered by this part, except where the fee is for services specifically authorized by the Secretary.

Expected average mortgage interest rate means the mortgage interest rate used to calculate future payments to the mortgagor and is established when the mortgage interest rate is established. For fixed rate mortgages, it is the fixed mortgage interest rate. For adjustable rate mortgages, it is the sum of the mortgagee's margin plus the weekly

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average yield for U.S. Treasury Securities adjusted to a constant maturity of 10 years. The mortgagee's margin is defined as the initial mortgage interest rate minus the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. The mortgagee's margin is the same margin used to determine periodic adjustments to the interest rate.

Insured mortgage means a mortgage, which has been insured as evidenced by the issuance of a mortgage insurance certificate.

Maximum claim amount means the lesser of the appraised value of the property or maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum dollar amount for the area must be as of the date the Direct Endorsement or Lender Insurance underwriter receives the appraisal report. Closing costs must not be taken into account in determining appraised value.

MIP. (See 24 CFR 203.251(k)).

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. The term mortgage also includes the credit instrument, or note, secured by the lien, and the loan agreement between the mortgagor, the mortgagee and the Secretary.

Mortgagee. (See section 255(b)(2) of NHA).

Mortgagor means each original borrower under a mortgage. The term does not include successors or assigns of a borrower.

Principal limit means the maximum disbursement that could be received in any month under a mortgage, assuming that no other

disbursements are made, taking into account the age of the youngest mortgagor, the mortgage interest rate, and the maximum claim amount. Mortgagors over the age of 95 will be treated as though they are 95 for

purposes of calculating the principal limit. The principal limit is used to calculate payments to a mortgagor. It is calculated for the first month that a mortgage could be outstanding using factors provided by the Secretary. 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 one-half percent per annum, if the mortgage was executed on or after May 1, 1997. If the mortgage was executed before May 1, 1997, the principal limit increases each month at a rate equal to one-twelfth of the expected average mortgage interest rate plus one-twelfth of one-half percent per annum. The principal limit may decrease because of insurance or condemnation proceeds applied to the mortgage balance under Sec. 209.209(b) of this chapter.

Principal residence means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time.

Secretary. (See 24 CFR 5.100).

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 59 FR 50464, Oct. 3, 1994; 60 FR 42759, Aug. 16, 1995; 61 FR 36266, July 9, 1996; 61 FR 49032, Sept. 17, 1996; 62 FR 12953, Mar. 19, 1997; 62 FR 30227, June 2, 1997; 64 FR 2987, Jan. 19, 1999]

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Subpart A--General

Sec. 206.7 Effect of amendments.

The regulations in this part may be amended by the Secretary 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 mortgagor and all terms and conditions of the mortgage,

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or the Secretary has made a commitment to insure. Such amendments will

not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where the Secretary makes payments to the mortgagor.

[62 FR 30227, June 2, 1997]

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Subpart A--General

Sec. 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 mortgagor and all other loan advances permitted by the mortgage for any purpose including loan advances for interest, taxes and special assessments, premiums for hazard or mortgage insurance, servicing 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 Secretary 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).

[61 FR 49033, Sept. 17, 1996]

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Subpart B--Eligibility; Endorsement

Sec. 206.9 Eligible mortgagees.

(a) Statutory requirements. (See section 255(b)(3) of 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 Sec. 202.9 of this chapter, is eligible to apply for insurance. A mortgagee approved under Secs. 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.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 57 FR 58350, Dec. 9, 1992; 60 FR 42759, Aug. 16, 1995; 61 FR 36266, July 9, 1996; 61 FR 49033, Sept. 17, 1996; 62 FR 20088, Apr. 24, 1997]

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Sec. 206.15 Insurance.

Mortgages originated under this part must be endorsed through the Direct Endorsement program under Sec. 203.5 of this chapter, or insured through the Lender Insurance program under Sec. 203.6 of this chapter, except as provided in Secs. 203.1 or 203.4 of this chapter. The mortgagee must submit the information as described in Sec. 203.255 (b) or (f) of this chapter, as applicable; the certificate of housing counselling as described in Sec. 206.41; a copy of the title insurance commitment satisfactory to the Secretary (or other acceptable title evidence if the Secretary has determined not to require title insurance under Sec. 206.45(a)); the mortgagee's election of either the assignment or shared premium option under Sec. 206.17; and any other documentation required by the Secretary. Section 203.255 (c), (d), (e), and (f) of this chapter, pertaining to the processes for Direct Endorsement and Lender Insurance, apply to mortgages under this part. If the mortgagee has complied with the requirements of Secs. 203.3, 203.4, 203.5, 203.6, and 203.255 of this chapter (as applicable), and the requirements of this part, and the mortgage is determined to be eligible, the Secretary

will either endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate or will electronically acknowledge that the mortgage has been insured. The mortgagee under the Lender Insurance program shall execute for the Secretary the loan agreement included in the term ``mortgage'' as defined in Sec. 206.3.

[62 FR 30227, June 2, 1997]

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Subpart B--Eligibility; Endorsement

Sec. 206.17 General.

(a) Payment options. A mortgage shall initially provide for the tenure payment option (Sec. 206.19(a)), the term payment option (Sec. 206.19(b)), or the line of credit payment option (Sec. 206.19(c)), or a combination as provided in Sec. 206.25(d), subject to later change in accordance with Sec. 206.26.

(b) Interest rate. A mortgage shall provide for either fixed or adjustable interest rates in accordance with Sec. 206.21.

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

[54 FR 24833, June 9, 1989, as amended at 61 FR 36266, July 9, 1996]

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Subpart B--Eligibility; Endorsement

Sec. 206.19 Payment options.

(a) Term payment option. Under the term payment option, equal monthly payments are made by the mortgagee to the mortgagor for a fixed term of months chosen by the mortgagor, unless the mortgage is prepaid in full or becomes due and payable earlier under Sec. 206.27(c).

(b) Tenure payment option. Under the tenure payment option, equal monthly payments are made by the mortgagee to the mortgagor as long as the property is the principal residence of the mortgagor, unless the mortgage is prepaid in full or becomes due and payable under Sec. 206.27(c).

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

(d) Principal limit set asides. (1) Under the term or tenure options, the mortgagee shall, if requested by the mortgagor, set aside a portion of the principal limit to be drawn down as a line of credit.

(2) When repairs required by Sec. 206.47 will be completed after closing, the mortgagee shall set aside a portion of the principal limit equal to 150% of the Secretary's estimated cost of repairs, plus the repair administration fee.

(3) When required by Sec. 206.205(f), the mortgagee shall set aside a portion of the principal limit for payment of property charges consisting of taxes, ground rents, flood and hazard insurance premiums and assessments.

(4) When servicing charges will be made as permitted by Sec. 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 Sec. 206.25(c).

(e) Interest accrual and repayment. The interest charged on the mortgage balance shall be added to the mortgage balance monthly as provided in the mortgage. Under all payment options, repayment of the mortgage balance including monthly MIP and interest is deferred until the mortgage becomes due and payable in full under Sec. 206.27(c).

(f) Payments limited by lien amount. No payments shall be made under any of the payment options, notwithstanding anything to the contrary in this section or in Sec. 206.25, in an amount which shall cause the mortgage 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.

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Subpart B--Eligibility; Endorsement

Sec. 206.21 Interest rate.

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

(b) Adjustable interest rate. An initial interest rate is agreed upon by the mortgagor and mortgagee. The interest rate shall be adjusted in one of two ways depending on the option selected by the mortgagor. Whenever an interest rate is adjusted, the new interest rate applies to the entire mortgage 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.

(1) A mortgagee offering an adjustable interest rate shall offer a mortgage that limits the frequency and magnitude of rate increases and decreases as provided in Sec. 203.49(a), (c) and

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(e) of this chapter, except that reference to mortgagor's first debt service payment in Sec. 203.49(c) shall mean closing, and references in Sec. 203.49(e)(1) to one percentage point shall mean two percentage points.

(2) If a mortgage meeting the requirements of paragraph (b)(1) of this 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, corresponding to an index as provided in Sec. 203.49(a) and (e)(2), and which sets a maximum interest rate that can be charged without limiting monthly or annual increases or decreases. The first adjustment must occur on the first day of the second full month after closing.

(c) Pre-loan Disclosure. (1) At the time the mortgagee provides the mortgagor with a loan application, a mortgagee also shall provide a mortgagor with a written explanation of any 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 226 (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 mortgagor of the following:

- (1) The current index amount;
- (2) The date of publication of the index; and
- (3) The new interest rate.

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[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42760, Aug. 16, 1995]

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Sec. 206.23 Shared appreciation.

(a) Additional interest based on net appreciated value. Any mortgage for which the mortgagee has chosen the shared premium option (Sec. 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 mortgagor 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 mortgage 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 mortgagor,

but excluding any liens) and multiplying by the appreciation margin.

(2) If the mortgage 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 mortgage balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(3) If the mortgage 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 Secretary.

(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 mortgage balance at the beginning of the twelve

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month period prior to sale or prepayment plus the payments to or on behalf of the mortgagor (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 mortgagor with a loan application for a mortgage with shared appreciation, the mortgagee shall disclose to the mortgagor the principal limit, payments and interest rate which are applicable to a comparable mortgage offered by the mortgagee without shared appreciation.

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Sec. 206.25 Calculation of payments.

(a) Initial payment. At closing an initial payment shall be made by the mortgagee in an amount equal to the sum of initial MIP under Sec. 206.105(a) if not paid in cash by the mortgagor, fees and charges allowed under Sec. 206.31(a) if not paid in cash by the mortgagor, and any additional payment requested by the mortgagor. The total initial payment, plus any amount set aside for repairs after closing under Sec. 206.47, for property charges under Sec. 206.205(f), or for servicing charges under Sec. 206.207(b), shall not exceed the principal limit.

(b) Monthly payments--term option. (1) Using factors provided by the Secretary, the mortgagee shall calculate the monthly payment so that the sum of paragraphs (b)(1)(i) or (b)(1)(ii) of this section added to paragraphs (b)(1)(iii), (b)(1)(iv), (b)(1)(v) and (b)(1)(vi) of this section shall be equal to the principal limit at the end of the payment term:

(i) An initial payment under paragraph (a) of this section plus any initial servicing charge set aside under Sec. 206.19(d); or

(ii) The mortgage balance at the time of a change in payments option in accordance with Sec. 206.26, plus any remaining servicing charge set aside under Sec. 206.19(d); and

(iii) The portion of the principal limit set aside as a line of credit including any set asides for repairs and first year property charges under Sec. 206.19(d); and

(iv) All monthly payments due through the payment term, including funds withheld for payment of property charges under Sec. 206.205; and

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

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

(2) If the mortgage has an adjustable interest rate, the mortgagee shall make all monthly payments through the payment term even if the mortgage balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected average mortgage interest rate.

(c) Monthly payments--tenure option. Monthly payments under the tenure payment option shall be calculated as if the number of months in the payment term equals 100 minus the age of the youngest mortgagor multiplied by 12, but payments shall continue until the mortgage becomes due and payable under Sec. 206.27(c).

(d) Line of credit separately or with monthly payments. If the mortgagor 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 Sec. 206.19(d), an amount equal to the line of credit (including any portion of the principal limit set aside for repairs or property charges under Sec. 206.19(d)), 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 Sec. 206.3. A payment under the line of credit may not exceed the difference between the current amount of the principal limit for the line of credit and the portion of the mortgage balance, including accrued interest and MIP, attributable to draws on the line of credit.

(e) Payment of MIP and interest. At the end of each month, interest accrued during the month shall be added to the mortgage balance. Monthly MIP shall be added to the mortgage balance when paid to the Secretary.

(f) Mortgagee late charge. The mortgagee shall pay a late charge to the mortgagor for any late payment. If the mortgagee does not mail or electronically transfer a scheduled monthly payment to the mortgagor on the first business day of the month or make a line of credit payment 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 mortgagor for that month or as a result of that request. For each additional day that the mortgagor does not receive payment, the mortgagee shall pay interest at the mortgage interest rate on the late payment. In no event shall the total late charge exceed five hundred dollars. Any late charge shall be paid from the mortgagee's funds and shall not be added to the mortgage balance.

(g) 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.

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Sec. 206.26 Change in payment option.

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

(b) Change due to initial repairs. (1) If initial repairs after closing under Sec. 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 and inform the mortgagor of the sum available to be drawn.

(2) If repairs after closing under Sec. 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 payments shall be recalculated for use as a line of credit in accordance with Sec. 206.25.

(3) 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 payments except as needed to pay for repairs required by the mortgage.

(c) Other changes. As long as the mortgage balance is less than the principal limit, a mortgagor may request a change from any payment option to another or a payment of any amount (not to exceed the difference between the principal limit and the sum of the mortgage balance and any set asides for repairs or servicing charges). A mortgage will continue to bear interest at a fixed or adjustable interest rate as agreed between the mortgagee and the mortgagor at loan origination. The mortgagee shall recalculate any future monthly payments in accordance with Sec. 206.25.

(d) Fee for change in payment. The mortgagee may charge a fee, not to exceed an amount determined by the Secretary, whenever payments are recalculated.

(e) Limitations. The Secretary may prescribe a limitation on the frequency of payment changes, a minimum notice period that a mortgagor must provide with a request under paragraph (c) of this section, or other limitations on changes by the mortgagor.

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Sec. 206.27 Mortgage provisions.

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

(b) Provisions. The mortgage shall explain how payments will be made to the mortgagor, how interest will be charged and when the mortgage will be due and payable. It shall also contain provisions designed to ensure compliance with this part and provisions on the following

additional matters:

(1) Payments by the mortgagee under the term or tenure payment options shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor on the first business day of each month beginning

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with the first month after closing. Payments under the line of credit payment option shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor within five business days after the mortgagee has received a written request for payment by the mortgagor.

(2) The mortgagor shall maintain hazard insurance on the property in an amount acceptable to the Secretary and the mortgagee.

(3) The mortgagor 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 any second mortgage held by the Secretary.

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

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

(6) The mortgagor must pay taxes, hazard insurance premiums, ground rents and assessments in a timely manner, except to the extent such property charges are paid by the mortgagee in accordance with Sec. 206.205.

(7) The mortgagor shall be charged for the payment of monthly MIP.

(8) The mortgagor shall have no personal liability for payment of the mortgage 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 mortgagor if the mortgage is foreclosed.

(9) If the mortgage is assigned to the Secretary under Sec. 206.121(b), the mortgagor shall not be liable for any difference between the insurance benefits paid to the mortgagee and the mortgage balance including accrued interest, owed by the mortgagor 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 mortgagor shall agree to execute any additional documents required by the mortgagee and approved by the Secretary 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 mortgage balance will be due and payable in full if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor, or a mortgagor conveys all or his or her title in the property and no other mortgagor retains title to the property. For purposes of the preceding sentence, a mortgagor retains title in the property if the mortgagor continues to hold title to any part of the property in fee simple, as a leasehold interest as set forth in Sec. 206.45(a), or as a life estate.

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

(i) The property ceases to be the principal residence of a mortgagor for reasons other than death and the property is not the principal

residence of at least one other mortgagor;

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

(iii) An obligation of the mortgagor under the mortgage is not performed.

(d) Second mortgage to Secretary. Unless otherwise provided by the Secretary, a second mortgage to secure any payments by the Secretary as provided in Sec. 206.121(c) must be given to the Secretary before a Mortgage Insurance Certificate is issued for the mortgage.

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[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42760, Aug. 16, 1995; 61 FR 49033, Sept. 17, 1996]

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Sec. 206.29 Initial disbursement of mortgage proceeds.

Mortgage proceeds may not be disbursed at the initial disbursement or after closing (upon expiration of the 3-day rescission period under 12 CFR part 226, if applicable) except:

(a) Disbursements to the mortgagor, a relative or legal representative of the mortgagor, or a trustee for benefit of the mortgagor;

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(b) Disbursements for the initial MIP under Sec. 206.105(a);

(c) Fees that the mortgagee is authorized to collect under Sec. 206.31;

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

(e) An annuity premium, if the premium was disclosed as part of the total cost of the mortgage under the disclosures required by 12 CFR part 226; and

(f) Funds required to pay contractors who performed repairs as a condition of closing, in accordance with standard FHA requirements for repairs required by appraisers.

[64 FR 2987, Jan. 19, 1999]

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Sec. 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 of the mortgage loan:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan: Provided, that the Secretary may establish limitations on the amount of any such charge which can be included in the mortgage loan.

(2) 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 mortgagor;

(iv) Title examination;

(v) Mortgagee's title insurance;

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

(vii) Such other charges as may be authorized by the Secretary.

(b) Repair administration fee. If the property requires repairs after closing in order to meet HUD requirements, the mortgagee may collect a fee as compensation for administrative duties relating to repair work pursuant to Sec. 206.47(c), 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 mortgage balance.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

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Sec. 206.32 No outstanding unpaid obligations.

In order for a mortgage to be eligible under this part, a mortgagor must establish to the satisfaction of the mortgagee that:

(a) After the initial payment of loan proceeds under Sec. 206.25(a), there will be no outstanding or unpaid obligations incurred by the mortgagor in connection with the mortgage transaction, except for repairs to the property required under Sec. 206.47 and mortgage servicing charges permitted under Sec. 206.207(b); and

(b) The initial payment will not be used for any payment to or on behalf of an estate planning service firm.

[64 FR 2988, Jan. 19, 1999]

Eligible Mortgagors

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Sec. 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the mortgagee submits the application for insurance.

[61 FR 49033, Sept. 17, 1996]

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Sec. 206.35 Title held by mortgagor.

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.

[54 FR 24833, June 9, 1989, as amended at 61 FR 49033, Sept. 17, 1996]

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Sec. 206.37 Credit standing.

Each mortgagor must have a general credit standing satisfactory to the Secretary.

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Sec. 206.39 Principal residence.

The property must be the principal residence of each mortgagor at closing. For purposes of this section, the property will be considered to be the principal residence of any mortgagor who is temporarily or permanently in a health care institution as long as the property is the principal residence of at least one other mortgagor who is not in a health care institution.

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Sec. 206.40 Disclosure and verification of Social Security and Employer Identification Numbers.

The mortgagor 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.

[60 FR 42760, Aug. 16, 1995]

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[60 FR 42760, Aug. 16, 1995]

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Sec. 206.41 Counseling.

(a) List provided. At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names and addresses of housing counseling agencies which have been approved by the Secretary as responsible and able to provide the information described in paragraph (b) of this section. The mortgagor must receive counseling.

(b) Information to be provided. A counselor must discuss with the mortgagor:

(1) The information required by section 255(f) of the National Housing Act;

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

(3) If such a contract has been signed under Sec. 206.41(b)(2), 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.

(c) Certificate. The counselor will provide the mortgagor with a certificate stating that the mortgagor has received counseling. The mortgagor shall provide the mortgagee with a copy of the certificate.

(Approved by the Office of Management and Budget under control number 2528-0133)

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Sec. 206.43 Information to mortgagor.

(a) Disclosure of costs of obtaining mortgage. The mortgagee must ensure that the mortgagor has received full disclosure of all costs of obtaining the mortgage. The mortgagee must ask the mortgagor about any costs or other obligations that the mortgagor has incurred to obtain the mortgage, as defined by the Secretary, in addition to providing the Good Faith Estimate required by Sec. 3500.7 of this title. The mortgagee must clearly state to the mortgagor which charges are required to obtain the mortgage and which are not required to obtain the mortgage.

(b) Lump sum disbursement. (1) If the mortgagor requests that at least 25% of the principal limit amount (after deducting amounts excluded in the following sentence) be disbursed at closing to the mortgagor (or as otherwise permitted by Sec. 206.29), the mortgagee must make sufficient inquiry at closing to confirm that the mortgagor 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 Sec. 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 Sec. 206.105(a) or fees and charges allowed under Sec. 206.31(a) paid by the mortgagee from mortgage proceeds instead of by the mortgagor in cash; and

(ii) Amounts set aside under Sec. 206.47 for repairs, under Sec. 206.205(f) for property charges, or Sec. 206.207(b).

[64 FR 2988, Jan. 19, 1999]

Eligible Properties

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Sec. 206.45 Eligible properties.

(a) Title. A mortgage must be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a

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lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor. The mortgagee shall obtain a mortgagee's title insurance policy satisfactory to the Secretary. If the Secretary determines that title insurance for reverse mortgages is not available for reasonable rates in a State, then the Secretary 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 Secretary shall determine. A condominium unit designed for one-family occupancy shall also be an eligible property.

(c) Flood insurance and property location. The provisions of Sec. 203.16a of this chapter pertaining to flood insurance and Sec. 203.40 of this chapter pertaining to the location of the property are incorporated by reference.

(d) Lead-based paint poisoning prevention. If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, Sec. 200.810(d) of this chapter shall apply unless the mortgagor certifies that no child who is less than six years of age resides or is expected to reside in the dwelling.

(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.

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[54 FR 24833, June 9, 1989, as amended at 60 FR 42760, Aug. 16, 1995; 60 FR 66476, Dec. 21, 1995; 61 FR 36266, July 9, 1996; 61 FR 49033, Sept. 17, 1996; 63 FR 17656, Apr. 9, 1998]

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

(c) Flood insurance and property location. The provisions of Sec. 203.16a of this chapter pertaining to flood insurance and

Sec. 203.40 of this chapter pertaining to the location of the property are incorporated by reference.

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Sec. 206.47 Property standards; repair work.

(a) Need for repairs. Properties must meet the applicable property standards of the Secretary in order to be eligible. Properties which do not meet the property standards 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 Secretary 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 Secretary concerning payment for the repairs.

(c) Role of mortgagee. The mortgagee shall cause one or more inspections of the property to be made by an inspector approved by the Secretary in order to ensure that the repair work is satisfactory, and prior to the release of funds for the repairs. 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.

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(b) Assurance that repairs are made. The mortgage may be closed before the repair work is completed if the Secretary 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 Secretary concerning payment for the repairs.

(c) Role of mortgagee. The mortgagee shall cause one or more inspections of the property to be made by an inspector approved by the Secretary in order to ensure that the repair work is satisfactory, and prior to the release of funds for the repairs. 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.

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Sec. 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 Secretary, except as provided in Sec. 234.26(i) of

this chapter.

[61 FR 26984, May 29, 1996]

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Sec. 206.101 Sale, assignment and pledge of insured mortgages.

Sale, Assignment and Pledge

The provisions of Secs. 203.430 through 203.435 of this chapter shall be applicable to mortgages eligible for insurance under this part.

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Sec. 206.102 General Insurance Fund.

Mortgages insured under this part shall be obligations of the

General Insurance Fund.

[60 FR 42761, Aug. 16, 1995]

Mortgage Insurance Premiums

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Sec. 206.103 Payment of MIP.

The payment of any MIP under this subpart shall be made to the Secretary by the mortgagee in cash, until the contract of insurance is terminated.

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Subpart C--Contract Rights and Obligations

Sec. 206.105 Amount of MIP.

(a) Initial MIP. The mortgagee shall pay to the Secretary an initial MIP of two percent of the maximum claim amount.

(b) Monthly MIP. Monthly MIP will accrue daily on the mortgage balance at a rate equivalent to one-half of one percent per annum and shall be added to the mortgage balance when paid to the Secretary.

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Sec. 206.116 Refunds.

No amount of the initial MIP shall be refundable.

[60 FR 42761, Aug. 16, 1995]

HUD Responsibility to Mortgagors

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Sec. 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary may hold a second mortgage to secure repayment by the mortgagor under Sec. 206.27(d) or may accept assignment of the first mortgage.

[61 FR 49033, Sept. 17, 1996]

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Sec. 206.121 Secretary authorized to make payments.

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

(b) Reimbursement or assignment. The Secretary may demand that within 30 days from the demand, the mortgagee reimburse the Secretary, with interest from the date of payment by the Secretary, or assign the insured mortgage to the Secretary. 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 Secretary shall pay an insurance claim as provided in Sec. 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 Sec. 206.133(c).

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

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will not be due and payable until the second mortgage is due and payable.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42761, Aug. 16, 1995; 61 FR 49034, Sept. 17, 1996; 61 FR 67931, Dec. 26, 1996]

Claim Procedure

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Sec. 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 Sec. 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 Secretary;

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

(3) The mortgagor sells the property for less than the mortgage balance and the mortgagee releases the mortgage of record to facilitate

the sale, as provided in Sec. 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 Sec. 206.125(g) for an amount which does not satisfy the mortgage balance or fails to sell the property as provided in Sec. 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 mortgage balance, as provided in Sec. 206.125(e).

(b) Expanded definition of mortgagor. The term mortgagor as used in this subpart shall have the same meaning as stated in Sec. 206.3, except that in reference to a sale by the mortgagor, the term shall also mean the mortgagor's estate or personal representative.

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Sec. 206.125 Acquisition and sale of the property.

(a) Initial action by the mortgagee. (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in Sec. 206.27(c)(1), or one of the conditions stated in Sec. 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable, unless the mortgage is due and payable by reason of the mortgagor's death. The mortgagee shall require the mortgagor to (i) pay the mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least 95% of the appraised value as determined under Sec. 206.125(b), with the net proceeds of the sale to be applied towards the mortgage balance; or (iii) provide the mortgagee with a deed in lieu of foreclosure. The mortgagor shall have 30 days in which to comply with the preceding

sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor 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 mortgagor to pay any costs that the mortgagee incurred to reinstate the mortgagor, including foreclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the mortgage balance. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the mortgagor 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.

(b) Appraisal. The mortgagee shall obtain an appraisal of the property no later than 30 days after the mortgagor is notified that the mortgage is due and payable, or no later than 30 days after the mortgagee becomes aware of

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the mortgagor's death, or upon the mortgagor's request in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale. The appraisal shall be at the mortgagor'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 mortgagor.

(c) Sale by mortgagor. Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the lesser of the mortgage balance or the appraised value (determined under Sec. 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for at least the lesser of the mortgage balance or five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the second mortgage required under Sec. 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Secretary under Sec. 206.27(e)) 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 giving notice to the mortgagor that the mortgage is due and payable, or six months from the date of the mortgagor's death if applicable, or within such additional time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of the foreclosure within six months from the date of the notice to the mortgagor that the mortgage is due and payable, 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 must give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings, and must 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 Secretary to constitute ``reasonable diligence'' for each State is made available to mortgagees.

(4) The mortgagee shall bid at the foreclosure sale an amount equal to the appraised value of the property.

(e) Other bidders at foreclosure sale. If a party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of sale shall be applied to the mortgage balance.

(f) Deed in lieu of foreclosure. (1) 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 mortgagor if the mortgagee is able to obtain good and marketable title from the mortgagor.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the mortgagor 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. Repairs shall not exceed those required by local law and, in cases where the sale is made with a mortgage insured by the Secretary or guaranteed by the Secretary of Veterans Affairs, those necessary to meet the objectives of the property standards required for mortgages insured by the Secretary. No other repairs shall be made without the specific advance approval of the Secretary. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law or the requirements of the Secretary of HUD or the Secretary of Veterans Affairs if the sale of the property is financed with a mortgage insured by the Secretary of HUD

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or guaranteed, insured or taken by the Secretary of Veterans Affairs.

(3) The mortgagee shall not enter into a contract for the preservation, repair or sale of the property with any officer, employee, 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.

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Sec. 206.127 Application for insurance benefits.

(a) Mortgagee acquires title. (1) The mortgagee shall apply for the payment of the insurance benefits within 15 days after the sale of the property by the mortgagee. Application shall be made by notifying the Secretary of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal of the property to be made. Within 15 days of receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a) of this section, substituting the appraised value for the sale price. The mortgagee shall bear the cost of the appraisal.

(b) Party other than the mortgagee acquires title. The mortgagee shall apply for the payment of the insurance benefits within 15 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Secretary of the sale of the property and the sale price.

(c) Mortgagee assigns the mortgage. The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Secretary. The application for the payment of the insurance benefits shall include the items listed in Sec. 203.351(a) of this chapter and the certification required under Sec. 203.353 of this chapter.

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Sec. 206.129 Payment of claim.

(a) General. If the claim for the payment of the insurance benefits is acceptable to the Secretary, payment shall be made in cash in the amount determined under this section.

(b) Limit on claim amount. In no case may the claim paid under this subpart exceed the maximum claim amount. The interest allowance provided in paragraphs (d)(2)(iii), (e)(2) and (f)(2) of this section shall not be included in determining the limit on the claim amount.

(c) Shared appreciation mortgages. The terms mortgage 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) The amount of the claim shall be computed by (i) totalling the mortgage balance, (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which has not been added to the mortgage balance as of the due date (defined in the following sentence), and allowances for items set forth in paragraph (d)(2) of this section, and (ii) subtracting from that total the amount for which the property was sold (or the appraised value determined under Sec. 206.127(a)) and the items set forth in paragraph (d)(3) of this section. Due date means the date when the mortgagee notifies the Secretary under Sec. 206.27(c)(1) that the mortgage became due and payable, or, if applicable, the date the Secretary granted approval under Sec. 206.27(c)(2) for the mortgage to become due and payable.

(2) The claim shall include the following items:

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(i) Items listed in Sec. 203.402 (a), (b), (c), (d), (e), (g), (j), and (s), and Sec. 204.322(l) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or \$75, whichever is the greater. For mortgages insured after March 1, 1997, HUD may reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as HUD shall prescribe.

(iii) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the

mortgagee fails to meet any one of the applicable requirements of Secs. 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Secretary (or within such further time as the Secretary 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. The provisions of Secs. 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

(iv) Costs of any appraisal obtained under Secs. 206.125 or 206.127, provided that the appraisal was obtained after the mortgage became due and payable and that the mortgagee is not otherwise reimbursed for such costs.

(v) 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 Secretary, 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 Secretary 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, on sales of properties acquired by the Commissioner pursuant to Secs. 203.295 through 203.426 of this chapter.

(vi) A certification that the property is undamaged in accordance with Sec. 203.380 of this chapter.

(3) There shall be deducted from the amount computed in paragraph (d)(1)(i) of this section:

(i) The items listed in Sec. 203.403 of this chapter; and

(ii) Any adjustment for damage or neglect to the property pursuant to Secs. 203.377, 203.378, and 203.379 of this chapter.

(e) Amount of payment--assigned mortgages. This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Secretary under Sec. 206.107(a)(1) or Sec. 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under Sec. 206.107(a)(1), the amount of payment shall be computed by subtracting from the mortgage balance on the date of assignment the items set forth in Sec. 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to Secs. 203.377, 203.378 and 203.379 of this chapter.

(2) The claim shall also include:

(i) Reimbursement for such costs and attorney's fees as the Secretary finds were properly incurred in connection with the assignment of the mortgage to the Secretary, and

(ii) An amount equivalent to the interest allowance which will have been earned from the date the mortgage was assigned to the Secretary 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 Sec. 206.127(c), or Sec. 206.131 if applicable, within the specified time and in a manner satisfactory to the Secretary (or within such further time as the secretary 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 Secs. 203.405

through 203.411 of this chapter pertaining to debentures are incorporated by reference.

(3) When a mortgagee assigns a mortgage under Sec. 206.121(b) after demand by the Secretary, 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 (i) totalling the payments made by the mortgagee to the mortgagor or for the benefit of the mortgagor (including MIP), and subtracting from the total (ii) the items set forth in Sec. 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to Secs. 203.378 and 203.379 of this chapter. The claim shall also be reduced by an amount determined by the Secretary to reimburse the Secretary 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 Secretary, the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Secretary. The claim shall not include accrued interest whether or not it has been included in the mortgage balance.

(f) Amount of payment-mortgagor sells the property. This paragraph describes the amount of payment if the mortgagor sells the property to one other than the mortgagee for less than the mortgage balance, and the mortgagee releases the mortgage to facilitate the sale.

(1) The amount of the claim shall be computed by (i) totalling the mortgage balance (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which has not been added to the mortgage balance on the date the deed is recorded, and allowances for items set forth in paragraphs (d)(2)(i) and (iv) of this section as applicable, and subtracting from the total (ii) the net proceeds of the sale paid to the mortgagee and the items set forth in paragraph (d)(3) of this section.

(2) 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, except that when the mortgagee fails to meet any of the applicable requirements of Secs. 206.125 and 206.127 of this subpart within the specified time (or within such further time as the Secretary may approve in writing), and in a manner satisfactory to the Secretary, 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 Secs. 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

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Condominiums

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Sec. 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 Secretary, 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 Sec. 234.270 (a) and (b) of this chapter concerning the condition of the multifamily structure in which the property is located shall be

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applicable to mortgages insured under this part which are assigned to the Secretary.

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Termination of Insurance Contract

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Sec. 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. 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 Secretary that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(c) Mortgagee fails to make payments. If the mortgagee fails to make the payments to the mortgagor as required under the mortgage, and does not reimburse the Secretary or assign the mortgage to the Secretary within 30 days from the demand by the Secretary for reimbursement or assignment, the contract of insurance shall automatically terminate. The Secretary 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 Sec. 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 Sec. 206.113.

(d) Notice of termination. The mortgagee shall give written notice to the Secretary 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 Secretary to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Secretary shall make certain that the mortgagor is aware of the consequences which could arise out of the voluntary termination of the contract of insurance. The provisions of Sec. 203.295 of this chapter concerning voluntary termination shall apply when a contract of insurance under this part is voluntarily terminated.

(f) Effect of termination. When the insurance contract is terminated, the mortgagee shall pay the monthly MIP which has accrued for the current month and which has not yet been paid to the Secretary, but the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated except as otherwise provided in this part.

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Subpart D--Servicing Responsibilities

Sec. 206.201 Mortgage servicing generally; sanctions.

(a) General. This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. 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 HUD mortgagee approval.

(b) Importance of timely payments. The paramount servicing responsibility is the need 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 part 24 (Debarment, Suspension and Limited Denial of Participation), and part 25 (Mortgagee Review Board).

(c) Responsibility for servicing. The provisions of Sec. 203.502 of this chapter pertaining to the responsibility for servicing shall apply to mortgages insured under this part, except that references in that section to payments by a mortgagor shall mean payments to the mortgagor.

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Sec. 206.203 Providing information.

(a) Annual statement. The mortgagee shall provide to the mortgagor an annual statement regarding the activity of the mortgage for each calendar year. The statement shall summarize the total principal amount for the year which has been paid to the mortgagor under the mortgage, the MIP paid to the Secretary and charged to the mortgagor, the total amount of deferred interest added to the mortgage balance, the total mortgage balance and the current principal limit. If the mortgagor has elected to have the mortgagee pay property charges pursuant to Sec. 206.205, the mortgagee shall include an accounting of all payments for property charges for the year. The statement shall be provided to the mortgagor no later than January 31 for each preceding year until the mortgage is paid in full by the mortgagor.

(b) Line of credit and payment change statements. The mortgagee shall provide the mortgagor with a statement of the account every time it makes a line of credit payment. The mortgagee shall provide the mortgagor with a new payment plan every time it recalculates monthly payments.

(c) Servicing. The provisions of Sec. 203.508 (a) and (b) of this chapter pertaining to loan information to mortgagors shall also be applicable to mortgages insured under this part. The mortgagee, as part of the information required under Sec. 203.508(b) of this chapter, shall provide the mortgagor with the name of the mortgagee's employee who has been specifically designated to respond to inquiries concerning mortgages insured under this part. Such information shall be provided annually and whenever the servicer or the designated employee changes.

(Approved by the Office of Management and Budget under control number 2528-0133)

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Sec. 206.205 Property charges.

(a) General. The mortgagor shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner and shall provide evidence of payment to the mortgagee as required in the mortgage.

(b) Election. A mortgagor may elect to require the mortgagee to pay property charges by withholding funds from monthly payments due to the mortgagor or by charging such funds to a line of credit. The mortgagor may make or rescind such an election at any time. If the sum of the mortgage balance and any unused set asides for repairs and servicing charges has reached the principal limit or the mortgage funds are otherwise insufficient to pay the property charges, the mortgagor shall pay such items as provided in paragraph (a) of this section, even though the mortgagor elected payment to be made by the mortgagee.

(c) Mortgagor's failure to make payments. If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account. If a pattern of missed payments occurs, the mortgagee may establish procedures to pay the property charges from the mortgagor's funds as if the mortgagor elected to have the mortgagee pay the property charges under this section.

(d) Assignment of mortgage to the Secretary. If the insured first mortgage is assigned to the Secretary under Sec. 206.107(a)(1) or Sec. 206.121(a), or if payments are made through the second mortgage under Sec. 206.121(c), the Secretary is not required to assume the mortgagee's responsibility under paragraph (b) of this section, despite the election by the mortgagor.

(e) Mortgagee's responsibilities. (1) Funds withheld from payments due to the mortgagor for property charges under paragraph (b) 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 mortgage

balance.

(2) It is the mortgagee's responsibility to make disbursements for property charges before bills become delinquent. Mortgagees must 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

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charged to the mortgagor unless it can be shown that the penalty was the direct result of the mortgagor's error or omission. Early payment of a bill to take advantage of a discount should be made whenever it is to the mortgagor's benefit.

(3) 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 mortgagor 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 mortgagor and added to the mortgage balance. Any shortage shall be corrected through increasing the monthly withholding as provided in paragraph (e)(4) of this section. If amounts withheld are insufficient to pay a property charge before it is delinquent, and the mortgagor could request a payment equal to the shortage under Sec. 206.26(c), then the mortgagee shall pay the full property charge and treat payment of the shortage as a payment requested by the mortgagor under Sec. 206.26(c).

(4) 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 mortgagor. Each monthly withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(f) Set aside for first year property charges. If the mortgagor elects to require the mortgagee to pay property charges and to receive payments under the term or tenure payment option, then the mortgagee shall set aside at closing a portion of the principal limit that will be sufficient to pay such items for the period beginning in the last date on which each such charge would have been paid under the normal lending practices of the mortgagee and local custom (if each such date constitutes prudent lending practice), and ending in the due date of the first monthly payment to the mortgagor.

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Sec. 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 mortgagor after insurance endorsement by adding them to the mortgage balance, but only for: items listed in Sec. 203.552(a)(6), (9), (11), (13) and (14) of this chapter; items authorized by the Secretary under Sec. 203.552(a)(12) of this chapter, or as provided at Sec. 206.26(d); or charges and fees related to additional documents described in Sec. 206.27(b)(10) and related title search costs.

(b) Servicing charges. The mortgagee may collect a fixed monthly charge for servicing activities of the mortgagee or servicer if (1) the charge is authorized by the Secretary, (2) the charge is disclosed as required by Sec. 206.43 to the mortgagor in a manner acceptable to the Secretary at the time the mortgagee provides the mortgagor with a loan application, (3) amounts to pay the charge are set aside as a portion of the principal limit, and (4) the charge is payable only from the set aside.

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Sec. 206.209 Prepayment.

(a) No charge or penalty. The mortgagor may prepay a mortgage in full or in part without charge or penalty at any time, regardless of any limitations on 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 mortgage balance shall be reduced by the amount of

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the proceeds not applied to restoration or repair of the damaged property.

[61 FR 49034, Sept. 17, 1996]

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Sec. 206.211 Annual determination of principal residence.

At least once during each calendar year, the mortgagee shall determine whether or not the property is the principal residence of at least one mortgagor. The mortgagee shall require each mortgagor to make an annual certification of his or her principal residence, and the mortgagee may rely on the certification unless it has information indicating that the certification may be false.

