

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR-4667-P-01]

RIN 2502-AH63

Home Equity Conversion Mortgage (HECM) Program; Insurance for Mortgages To Refinance Existing HECMs

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for the Home Equity Conversion Mortgage (HECM) Program to implement the recent amendments made by section 201(a) of the American Homeownership and Economic Opportunity Act of 2000. The HECM Program enables older homeowners to withdraw some of the equity in their home in the form of payments for life, a fixed term, or at intervals through a line of credit. Section 201(a) authorizes HUD to offer mortgage insurance for refinancing of existing HECMs, and provides consumer safeguards for such refinancings.

DATES: *Comments Due Date:* July 5, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000; telephone (202) 708-2121 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Equity Conversion Mortgage (HECM) Program helps

homeowners 62 years of age or older, who have paid off their mortgages or have small mortgage balances, to stay in their homes while using some of their equity. The program enables these homeowners to get financing with a Federal Housing Administration (FHA) insured reverse mortgage—a mortgage that converts equity into income. The FHA insures HECM loans to protect lenders against loss. Such a loss could occur if amounts withdrawn exceed equity when the property is sold. The statutory authority for the HECM Program is section 255 of the National Housing Act (12 U.S.C. 1715z-20) (the NHA). HUD's implementing regulations are located at 24 CFR part 206 (entitled "Home Equity Conversion Mortgage Insurance"). More information on the HECM Program can be found at HUD's website at www.hud.gov/buying/reverse.cfm.

Section 201 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569, 114 Stat. 2944, 2948, approved December 27, 2000) makes several changes to the HECM Program. Among other amendments, section 201(a) adds a new section 255(k) to the NHA (the existing subsection (k), concerning funding for counseling and consumer education, was redesignated as subsection (m)). New section 255(k) authorizes FHA to offer mortgage insurance for refinancing existing HECMs, and establishes several requirements concerning such refinancings for the protection of homeowners and to expedite the refinancing process. For example, the statute establishes an "anti-churning" disclosure requirement for HECM refinancings, and authorizes the waiver of the HECM counseling requirements under certain circumstances. Expedited procedures for refinancing will enable elderly homeowners to quickly take advantage of declining interest rates and increasing home prices in particular areas.

In addition to the statutory changes concerning HECM refinancings, section 201 also made amendments to the HECM Program regarding housing cooperatives (section 201(b)) and the waiver of up-front premiums for mortgages to fund long-term care insurance (section 201(c)). These statutory changes are not implemented by this proposed rule, but may be the subject of future HUD rulemaking.

II. This Proposed Rule

A. General

This proposed rule would implement new section 255(k) of the NHA.

Specifically, the proposed rule would create a new § 206.53, which contains the requirements applicable for a refinanced HECM to be eligible for mortgage insurance. Section 206.53 would provide that HUD may, upon application by a mortgagee, insure any mortgage (that meets the HECM Program requirements) given to refinance an existing HECM. Except as otherwise provided in § 206.53, all of the requirements in 24 CFR part 206 would apply to HECM refinancings.

B. Anti-Churning Disclosure

New section 255(k)(2) of the NHA establishes an "anti-churning" disclosure requirement, which is designed to ensure that homeowners are made aware of the costs associated with a HECM refinancing. The anti-churning disclosure must be provided to borrowers in addition to the disclosures already required under § 206.43 of the existing HECM regulations.

The proposed rule would implement the anti-churning disclosure requirement in paragraph (c) of § 206.53. New § 206.53(c) would require that the mortgagee provide to the mortgagor, in addition to the other required disclosures for the HECM Program, a good faith estimate of:

1. The total cost of the refinancing to the mortgagor (the proposed rule defines the term "total cost of the refinancing" to mean the sum of the allowable charges and fees permitted under § 206.31 and the initial mortgage insurance premium (MIP) described in § 206.105(a)); and

2. The increase in the mortgagor's principal limit as measured by the estimated initial principal limit on the mortgage to be insured less the current principal limit on the HECM that is being refinanced. (The term "principal limit" is defined at § 206.3 of the existing HECM regulations and is not being changed by this proposed rule.)

New section 255(k)(2) of the NHA requires that HUD, through regulation, establish "an appropriate time period" for submission of the anti-churning disclosure. The proposed rule would implement this statutory directive by adopting the timing requirements applicable to the Good Faith Estimate required under the Real Estate Settlement Procedures Act (RESPA). The RESPA Good Faith Estimate is a required disclosure under the HECM Program (see § 206.43(a)). By conforming the timing of the new anti-churning disclosure to the existing RESPA disclosure, the proposed rule will minimize the administrative burden imposed on lenders, and help to

ensure that borrowers are provided with all required disclosures at a single time.

C. Waiver of Counseling Requirement

1. *General.* Because HECM borrowers can be vulnerable to fraudulent or predatory lending abuses, the HECM Program requires that a mortgagor receive reverse mortgage housing counseling from a HUD-approved housing counseling agency as a condition for obtaining HECM financing (see § 206.41). However, the mortgagor who is refinancing a HECM would previously have received the required counseling when obtaining FHA insured mortgage financing for the initial HECM. Accordingly, new section 255(k)(3) of the NHA provides that such mortgagors may elect to forego housing counseling if certain requirements are satisfied. The new statute establishes three conditions that must be met in order to waive the housing counseling requirement:

- a. The mortgagor has received the anti-churning disclosure;
- b. The increase in the mortgagor's principal limit (as described in the anti-churning disclosure) exceeds the total cost of the refinancing by an amount established by HUD; and
- c. The time between the closing on the original HECM and the application for refinancing does not exceed 5 years.

2. *Second condition for waiver of the housing counseling requirement.* HUD proposes that the second condition for a waiver be satisfied if the increase in the mortgagor's principal limit exceeds five times the total cost of the refinancing. Housing counseling is an important component of HUD's efforts to protect borrowers participating in the HECM Program from predatory lending abuses. While no one set of abusive practices or terms characterizes a predatory mortgage loan, such loans frequently contain excessive, often hidden, fees. In establishing the amount required for the second waiver criterion, HUD has attempted to assure that mortgagors who may be subject to such predatory fees receive housing counseling. At the same time, HUD is cognizant of the statutory intent to waive a potentially duplicative requirement for HECM mortgagors who wish to refinance and who have already received counseling. Accordingly, HUD proposes to establish a high threshold for waiver of the housing counseling requirement. HUD believes that a refinanced HECM with an increase in the principal limit that does not exceed the proposed threshold is more likely to contain the excessive fees that frequently characterize predatory loans.

The amount necessary to satisfy the second condition for a waiver would not

be specified in the regulatory text. This amount may need to be updated on a periodic basis due to changes in the available financial data, or changes in the housing market. Codification of the threshold amount would require that HUD use rulemaking procedures each time the amount is revised. Rulemaking is a potentially lengthy process that may delay HUD's ability to quickly update this figure in response to rapidly changing circumstances. Accordingly, HUD proposes to announce any changes to the second waiver criterion through **Federal Register** notice. In order to provide HECM program participants with sufficient time to adjust to any such change, HUD will delay the effective date of the revision for a period of not less than 30-days following publication in the **Federal Register** notice. After consideration of the public comments on this proposed rule, HUD will announce the initial threshold amount in the preamble to the final rule.

3. *Third condition for waiver of the housing counseling requirement.* With regards to the third condition for waiver of the counseling requirement, HUD notes that the statutory language refers to the "original" HECM that is to be refinanced. Accordingly, a refinancing mortgagor would be required to receive housing counseling if more than 5 years have passed since closing on the mortgagor's first HECM, regardless of whether less than 5 years have passed since a previous refinancing.

D. Limit on Origination Fee

New section 255(k)(6) of the NHA permits HUD to "establish a limit on the origination fee that may be charged to a mortgagor" for a HECM refinancing. HUD proposes to adopt the existing limit on HECM origination fees for purposes of HECM refinancings. Specifically, the origination fee on a refinanced HECM would be limited to the greater of \$2,000 or two percent of the maximum claim amount on the refinanced reverse mortgage (see HUD Mortgagee Letter 00-10, issued on March 8, 2000). Although this proposed rule would adopt the existing HECM origination fee limits for HECM refinancings, different limits may be established for "original" HECMs and refinanced HECMs at a later date. As with the current origination fee limits for the HECM Program, the limits for HECM refinancings would not be specified in the regulatory text.

The proposed rule would also revise § 206.31(a)(1) of the existing HECM regulations (which concerns origination fees) to clarify that the origination fee may be fully financed with the mortgage. Further, any origination fee

limit shall include any fees paid to correspondent mortgagees approved by the Secretary. HUD also proposes to adopt a new process for revising the origination fee limits for the HECM Program (this procedure would apply to both HECM financing and refinancings). Specifically, HUD will announce any changes to the origination fee limits through publication of a **Federal Register** notice. Further, in order to provide program participants with sufficient time to adjust to any such change, HUD will delay the effective date of the revision for a period of not less than 30-days following publication in the **Federal Register**.

E. Reduction of Up-Front HECM Mortgage Insurance Premium

For a refinancing mortgage, new section 255(k)(4) of the NHA authorizes HUD to reduce the amount of the initial MIP otherwise collected on a HECM (equal to 2 percent of the maximum claim amount—see § 206.105(a)). Section 255(k)(4) requires that any such reduction be based on the results of a statutorily mandated actuarial study to determine the adequacy of the insurance premiums collected for HECM refinancings. Further, the statute requires that HUD conduct the actuarial study no later than 180 days after enactment of the American Homeownership and Economic Opportunity Act of 2000. The required actuarial study is currently under development. As provided by the statute, HUD may, based on the findings of the study, determine that a reduction in the initial MIP for HECM refinancings is appropriate. HUD will implement any such reduction through a proposed rule and will provide the public with an opportunity to comment on the proposed MIP reduction.

III. Justification for Reduced Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. Section 201(a)(2) of the American Homeownership and Economic Opportunity Act of 2000 requires that HUD's final regulations implementing new section 255(k) of the NHA take effect no later than 180 days after enactment. The reduced 30 day comment period is necessary to help ensure that the final rule is effective by the statutory deadline date, and to provide sufficient time for compliance with all applicable rulemaking requirements (such as the statutory 15-

day prepublication Congressional review requirements and the 30-day delayed effective date requirements of section 7(o) of the Department of HUD Act (42 U.S.C. 3535(d)).

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory

action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Information Collection Requirements

The information collection requirements contained in § 206.53(c)

have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
206.53(c) anti-churning disclosure	4,000	1	.5	2,000

Total Reporting and Recordkeeping Burden: 2,000 hours.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4667) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and Ethelene Washington, Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 7th Street, SW., Room 9114, Washington, DC 20410.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

The proposed regulatory amendments are not discretionary, but are mandated by statute. These amendments

authorizes FHA mortgage insurance for HECM refinancings, and provide consumer safeguards for such refinancings. The amendments would impose minimal, if any, economic costs on small lenders and other participants in the HECM Program. For example, the origination fee limits that would be established under this proposed rule for HECM refinancings do not impose any economic burden on lenders (the same fee limits are already applicable original financing under the HECM Program). The anti-churning disclosure (although a new information collection requirement) also does not add new costs or impose additional economic burdens on lenders.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance Number for the HECM program is 14.871.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 206 as follows:

**PART 206—HOME EQUITY
CONVERSION MORTGAGE
INSURANCE**

1. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

2. Revise § 206.31(a)(1) to read as follows:

§ 206.31 Allowable charges and fees.

(a) * * *

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan, which may be fully financed with the mortgage. The Secretary may establish limitations on the amount of any such charge. Any limitation on the origination fee shall include any fees paid to correspondent mortgagees approved by the Secretary. HUD will publish any such limit in the **Federal**

Register at least 30-days before the limitation takes effect.

* * * * *

3. Add § 206.53 under a new undesignated heading “REFINANCING OF EXISTING HOME EQUITY CONVERSION MORTGAGES” to read as follows:

§ 206.53 Refinancings.

(a) *General.* This section implements section 255(k) of NHA. Except as otherwise provided in this section, all requirements applicable to the insurance of home equity conversion mortgages under this part apply to the insurance of refinancings under this section. HUD may, upon application by a mortgagee, insure any mortgage given to refinance an existing home equity conversion mortgage presently insured under this part.

(b) *Definition of “total cost of the refinancing.”* For purposes of paragraphs (c) and (d) 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).

(c) *Anti-churning disclosure.* (1) *Contents of anti-churning disclosure.* In addition to the disclosures required under § 206.43, the mortgagee shall provide to the mortgagor a good faith estimate of:

(i) The total cost of the refinancing to the mortgagor; and

(ii) The increase in the mortgagor’s principal limit as measured by the estimated initial principal limit on the mortgage to be insured less the current

principal limit on the home equity conversion mortgage that is being refinanced under this section.

(2) *Timing of anti-churning disclosure.* The mortgagee shall provide the anti-churning disclosure concurrently with the Good Faith Estimate required under § 3500.7 of this title.

(d) *Waiver of counseling requirement.* The mortgagor may elect not to receive counseling under § 206.41, but only if:

(1) The mortgagor has received the anti-churning disclosure required under paragraph (c) of this section.

(2) The increase in the mortgagor’s principal limit (as provided in the anti-churning disclosure) exceeds the total cost of the refinancing by an amount established by the Secretary through **Federal Register** notice. HUD 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.

(3) The time between the date of the closing on the original home equity conversion mortgage and the date of the application for refinancing under this section does not exceed 5 years (even if less than five years have passed since a previous refinancing under this section).

Dated: April 19, 2001.

Mel Martinez,

Secretary.

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