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Part V

Department of Housing and Urban Development

24 CFR Part 206

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

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 206

[Docket No. FR-4667-I-02]

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: Interim rule.

SUMMARY: On June 5, 2001, HUD published a proposed rule to implement certain statutory changes to the Home Equity Conversion Mortgage (HECM) Program made by section 201 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). 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. The statutory changes include authorization to offer mortgage insurance for refinancing of existing HECMs and providing consumers with safeguards for such refinancing. This interim rule follows publication of a June 5, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. In addition, this rule implements another statutory change to the HECM Program authorized by AHEOA and requests comments on this regulatory provision. Specifically, this rule provides for a reduced initial mortgage insurance premium (MIP) on a HECM refinancing.

DATES: *Effective Date:* April 26, 2004.

Comment Due Date: Comments on § 206.53(c) are due on May 24, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding § 206.53(c) to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Electronic comments may be submitted through Regulations.gov (<http://www.regulations.gov>). 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 8 a.m. and 5 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, 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). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On June 5, 2001 (66 FR 30278), HUD published a proposed rule for public comment to revise its regulations for the HECM Program. The 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, which is 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) (NHA). HUD's implementing regulations are located at 24 CFR part 206. More information on the HECM Program can be found on HUD's Web site at <http://www.hud.gov/buying/reverse.cfm>.

Section 201 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569, approved December 27, 2000) (AHEOA) made several changes to the HECM Program. Among other amendments, section 201(a) of AHEOA added a new section 255(k) to the NHA, which 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. These expedited procedures for refinancing will enable elderly homeowners to quickly take advantage of declining interest rates and increasing home prices in particular areas.

The purpose of the June 5, 2001, proposed rule was to implement these statutory provisions regarding refinancing. Specifically, HUD proposed to create a new § 206.53, which would

contain the requirements applicable for a refinanced HECM to be eligible for mortgage insurance. HUD also proposed to amend § 206.31 (which concerns the allowable fees and charges that may be collected in the origination of a HECM loan) to clarify the procedures and requirements regarding HECM origination fees. The preamble to the proposed rule provides more information on the proposed regulatory amendments to HUD's HECM regulations.

II. This Interim Rule; Significant Changes Made to June 5, 2001, Proposed Rule

This interim rule follows publication of the June 5, 2001, proposed rule and takes into consideration the public comments received on the proposed rule. The most significant differences between this interim rule and the June 5, 2001, proposed rule are as follows:

1. *Clarification of applicability of origination fee limit to loan correspondents and mortgage brokers.* The interim rule revises the proposed regulatory language regarding the payment of origination fees to loan correspondents and mortgage brokers. The interim rule more closely tracks the language of Mortgage Letter 00-10 (issued on March 8, 2000), which provided useful guidance on the role of loan correspondents and mortgage brokers in the HECM Program. Consistent with the Mortgage Letter, this interim rule clarifies that the HECM origination fee limit includes the full amount of any origination fee paid to both mortgage brokers and loan correspondents. The mortgagor is not permitted to pay any additional origination fee of any kind to a mortgage broker or loan correspondent. A mortgage broker's fee can be included as part of the origination fee only if the mortgage broker is engaged independently by the homeowner and if there is no financial interest between the mortgage broker and the mortgagee.

2. *Timing of anti-churning disclosure.* This interim rule provides that the anti-churning disclosure must be provided at the same time as the other disclosures required under § 206.43 of the HECM regulations.

III. Interim Regulatory Change Regarding Reduced Initial Mortgage Insurance Premium for HECM Refinancings and Request for Public Comment

In addition to the amendments proposed in the June 5, 2001, proposed rule, section 201 of AHEOA made several other changes to the HECM Program that were not part of the June

5, 2001, proposed rule. For example, section 201 added a new section 255(k)(4) of the NHA, which authorizes HUD to reduce the amount of the initial mortgage insurance premium (MIP) collected on a HECM refinancing. In response to public comments that requested that HUD exercise this statutory authority, HUD has established a reduced initial MIP for HECM refinancings in this interim rule. Specifically, § 206.53(c) of this rule provides that the initial MIP for a HECM refinancing may not exceed 2 percent of the increase in the maximum claim amount (*i.e.*, the difference between the maximum claim amount for the new HECM loan and the maximum claim amount for the existing HECM loan being refinanced). This regulatory provision will take effect, along with the other amendments being made by this interim rule, on April 26, 2004. However, in order to provide for public comments on the amount of the MIP, HUD is issuing this regulatory provision on an interim basis and is requesting comment for a period of 60 days on the amount of the initial MIP. With the exception of the reduced initial MIP provision, HUD will not consider comments submitted in response to other provisions of this interim rule. These provisions were contained in the June 5, 2001, proposed rule and, therefore, have already been the subject of public comments. A discussion of the significant issues raised by the public commenters on the June 5, 2001, proposed rule, and HUD's responses to these comments is located in section V of this preamble. HUD will issue a follow-up final rule addressing the significant issues raised by the public commenters on the reduction of the initial MIP.

IV. Announcement of the Second Criterion for Waiver of the HECM Housing Counseling Requirement

Section 255(k)(3) provides that mortgagors refinancing a HECM may elect to forego housing counseling if certain requirements are satisfied. The statute establishes three conditions that must be met in order to waive the housing counseling requirement: (1) The mortgagor has received the required anti-churning disclosure; (2) 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 (3) the time between the closing on the original HECM and the application for refinancing does not exceed 5 years.

In the June 5, 2001, proposed rule, HUD stated that the second condition

for waiver of the housing counseling requirement would be satisfied if the increase in the mortgagor's principal limit exceeds five times the total cost of the refinancing. The preamble also provided that, after consideration of the public comments received on the proposed rule, HUD would announce the threshold amount in the preamble to this interim rule. This interim rule announces that HUD is adopting the proposed threshold amount without change. A discussion of the public comments received on this matter is found in section V of this preamble.

As provided in the preamble to the proposed rule, the amount necessary to satisfy the second condition for a waiver will 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, which may delay HUD's ability to update this figure in response to changing conditions. Therefore, any changes to the second waiver criterion will be announced through a **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 any such revision for a period of not less than 30 days following publication in the **Federal Register**.

V. Discussion of the Public Comments Received on the June 5, 2001, Proposed Rule

The public comment period for the proposed rule closed on July 5, 2001. HUD received four comments on the proposed rule. Comments were received from a public interest group representing retired persons, a mortgage lender, and two national mortgage lending associations. Three of the commenters expressed support for the rule and HUD's codification of the provisions streamlining refinancing of HECM loans. All four commenters offered suggestions to further clarify and strengthen the rule in order to better serve the consumer. This section of the preamble presents a summary of the significant issues raised by the public commenters on the June 5, 2001, proposed rule and HUD's responses to these comments.

A. Comments Regarding Allowable Origination Fees and Charges (§ 206.31)

Comment: Initial MIP should be reduced for HECM refinancings. Two commenters suggested that HUD implement its statutory authority to

reduce the initial MIP for HECM refinancings. One of the commenters offered a suggestion on how such a limit should be implemented.

HUD Response. HUD agrees with the commenters and has revised the rule accordingly. Based upon the results of a Congressionally-mandated actuarial study, HUD has revised the proposed rule to provide for a reduced initial MIP for refinanced HECM loans. Section 206.53(c), provides that the initial MIP for a HECM refinancing may not exceed 2 percent of the increase in the maximum claim amount (*i.e.*, the difference between the maximum claim amount for the new HECM loan and the maximum claim amount for the existing HECM loan being refinanced). The maximum claim amount is based upon the value of the home, and property values have risen for almost all properties for which refinancing would be a viable option. As noted above, however, HUD is issuing this regulatory provision on an interim basis and is specifically requesting public comment on the amount of the reduced MIP.

HUD believes that the initial MIP limit announced in this rule will result in a lower initial MIP for a refinanced HECM loan than for a comparable "first" HECM loan secured by a similar property. The MIP limit is based upon the findings of a Congressionally-mandated actuarial study. Section 255(k)(4) of the NHA requires that any reduction to the initial MIP must be based upon the results of an actuarial study that analyzes the adequacy of the insurance premiums collected for HECM refinancings with respect to several statutorily mandated factors. HUD has completed the required study, which reviewed several possible changes to HECM insurance premiums using several analytical models. Among other factors, this study analyzed the potential effects on the FHA General Insurance Fund of establishing an initial MIP limit for HECM refinancings. The study concluded that this reduction to the initial MIP, although lowering the expected balance of the FHA General Insurance Fund, would not adversely impact the Fund and would be sufficient to maintain its soundness.

A copy of the actuarial study is available for public review between 8 a.m. and 5 p.m. weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Comment: HUD should establish a reduced origination fee for HECM refinancings. One commenter wrote that HUD's proposal to adopt the existing origination fee limits for HECM

refinancings would result in much higher fees than those paid by HECM borrowers on their original loans. The commenter noted that the existing fee limits for "original" HECMs are set at the greater of \$2,000 or 2 percent of the maximum claim amount (which is based on the property value). Since property values have risen for almost all loans where HECM refinancing is viable, the maximum origination fees for a refinancing will be higher than for the "original" HECM loan. The commenter wrote that while relatively high origination fees may be justified for "original" HECM loans, they are hard to justify for refinancings. According to the commenter, HUD allows higher fees for HECM loans than for "regular" mortgage loans because of factors such as greater marketing costs per closing, the need for more intensive lender interaction with consumers, and a higher consumer drop-out rate. The commenter wrote that these factors do not apply to most HECM refinancings. For example, the commenter wrote that pre-closing marketing costs are lower for HECM refinancings, since lenders can readily find refinancing candidates by analyzing their portfolios of closed HECM loans. Accordingly, the limit on origination fees for refinancing should be less than the comparable limit for "original" HECM loans.

HUD Response. HUD has not revised the rule in response to this comment. The insurance of refinancings authorized by this interim rule is a new feature of the HECM program, and HUD is not yet in a position to evaluate whether origination costs are lower for such refinancings. Accordingly, at this time, HUD is not prepared to reduce the amount of the origination fee for HECM refinancings. The fee will be the same as the fee for original HECM loans. HUD may consider a reduction of such fees at a later date, after it has had an opportunity to evaluate the operation and costs associated with HECM refinancings.

Comment: HUD should permit the borrower to avoid the cost of a new appraisal under certain circumstances. One commenter wrote that when the original appraisal yielded a value above the applicable FHA principal limit cap HUD should allow the borrower to avoid the cost of a new appraisal by relying on the original.

HUD Response. HUD has not revised the rule in response to this comment. One of the primary reasons an individual might consider refinancing is because the value of his/her property has increased. The best way to confirm such an increase in property value is through a new appraisal. Further, since

the condition of a property may also deteriorate over time, there is a concern that repair and maintenance issues may have an adverse impact on the value of some properties.

Comment: HUD should limit the fee for the re-issuance of title insurance and waive the flood certification fee for HECM refinancings. One commenter made this suggestion.

HUD Response. HUD has not adopted the suggestion made by the commenter. The goal of this rule is to lower the overall cost of refinancing HECM loans. It is expected that lenders will seek re-issue and re-certification rates for title policies and flood certifications when appropriate for their HECM refinance consumers.

B. Comments Regarding the Role of Mortgage Brokers and Loan Correspondents (§ 206.31)

Comment: Proposed rule may inappropriately limit correspondent mortgage compensation. One commenter objected to the proposed language of § 206.31(a)(1) providing that the HECM origination fee limits "shall include any fees paid to correspondent mortgagees." The commenter wrote that it has always been HUD's policy that, with respect to loans originated by correspondent mortgagees approved by the Secretary and sponsored by an FHA-approved mortgagee, the origination fee limit does not apply to any additional limited compensation the correspondent might receive from the mortgagee related to the loan-servicing rights. The commenter wrote that HUD already limits such additional compensation at § 206.207(b) of the HECM program regulations (which concerns servicing charges). Accordingly, the commenter recommended that HUD add an explanatory phrase to § 206.31(a)(1) clarifying that the HECM origination fee limit does not cover any loan-servicing charges provided to correspondents.

HUD Response. The commenter is correct that loan-servicing charges paid to a loan correspondent under the HECM program are not subject to the origination fee limit. As the commenter correctly noted, servicing charges are covered under § 206.207(b) of the HECM regulations. The purpose of the proposed regulatory language was not to revise HUD policy, but only to clarify that the origination fee charged to the HECM borrower must include the full amount of any fee paid to a loan correspondent related to the origination of the mortgage. This is consistent with HUD's existing policy regarding HECM origination fees, as described in Mortgagee Letter 00-10 (issued on March 8, 2000). HUD, however, agrees

that the proposed regulatory language was confusing. The interim rule revises this language to more closely track the language of Mortgagee Letter 00-10 for purposes of clarity and consistency with the guidance provided in the Mortgagee Letter. A copy of Mortgagee Letter 00-10 may be downloaded from the HUD Client Information and Policy System (HUDCLIPS) Web site at <http://www.hudclips.org>.

Comment: The proposed rule appears to undercut HUD's guidance on the role of mortgage brokers in the HECM program. Related to the preceding comment, two commenters wrote that the proposed language of § 206.31(a)(1) rule contradicted the guidance provided in Mortgagee Letter 00-10. The commenters wrote that the Mortgagee Letter provides that the HECM origination fee limit includes the full amount of any origination fee paid to both mortgage brokers and loan correspondents. The commenters wrote that, by only referring to loan correspondent fees, the third sentence of proposed § 206.31(a)(1) appears to undercut the guidance provided in Mortgagee Letter 00-10. According to the commenters, the proposed regulatory language could be interpreted to permit only loan correspondent mortgagees, and not also mortgage brokers, to receive fees within the origination fee cap. The commenters urged that § 206.31(a)(1) be revised to more closely track the language of the Mortgagee Letter, and explicitly provide that the origination fee shall include fees paid to mortgage brokers under the circumstances permitted by the Secretary.

HUD response. As noted in the response to the preceding comment, HUD agrees that the proposed regulatory language was confusing and has revised the language for purposes of clarity. The revised language more closely tracks the guidance provided in Mortgagee Letter 00-10, and clarifies that the HECM origination fee limit includes the full amount of any fee related to the origination of the HECM loan paid to a mortgage broker or loan correspondent.

C. Comment Regarding Procedures for HECM Refinancing (§ 206.53)

Comment: The proposed rule incorrectly assumes that a RESPA Good Faith Estimate must be provided in connection with a HECM loan. The proposed rule provides that the mortgagee must provide the anti-churning disclosure concurrently with the Good Faith Estimate required under RESPA. One commenter wrote that this provision incorrectly assumes that the RESPA Good Faith Estimate must be

provided in connection with a HECM loan. The commenter wrote that the source of the incorrect assumption is § 206.43(a) of the HECM program regulations, which refers to the RESPA Good Faith Estimate. The commenter noted that HUD's RESPA regulations at 24 CFR 3500.7 provide that "[i]n the case of a federally related mortgage loan involving an open-line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrowers with the disclosures required by 12 CFR 226.5b of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the [Good Faith Estimate] requirements of this section." According to the commenter, HECM loans are open-lines of credit under Regulation Z and, therefore, not subject to the RESPA Good Faith Estimate disclosure requirements.

HUD Response. HECM loans may be either open-end or closed-end lines of credit. The commenter is correct that the RESPA regulations provide that lenders and mortgage brokers may satisfy RESPA disclosure requirements for open-end lines of credit if they provide borrowers with the disclosures required under the Truth in Lending Act (TILA) and Regulation Z. Therefore, for HECM loans that are open-end lines of credit, lenders and mortgage brokers may satisfy RESPA disclosure requirements if they provide the disclosures required by TILA and Regulation Z. The RESPA Good Faith Estimate is only required for those HECM loans that are closed-end lines of credit. The lender is responsible for determining whether a particular HECM loan is an open-end or closed-end line of credit, and whether the RESPA or TILA and Regulation Z disclosure requirements are applicable to the transaction.

The references to the RESPA Good Faith Estimate contained in the existing HECM regulations and the June 5, 2001, proposed rule were not meant to modify or expand the scope of the RESPA disclosure requirements. Rather, these references were designed to remind program participants that their HECM loan might be subject to the Good Faith Estimate RESPA requirement. HUD agrees that the reference in the proposed rule regarding the timing of the anti-churning disclosure might be confusing and lead to the incorrect assumption that all HECM loans are subject to RESPA. Accordingly, this interim rule removes this reference to RESPA and simply provides that the anti-churning disclosure must be provided at the same time as the other disclosures required under § 206.43.

Comment: HUD should issue a Mortgagee Letter providing an illustration of how to calculate the total cost of refinancing as defined by the proposed rule and how it is used in determining whether the housing counseling requirement may be waived. One commenter made this suggestion. The commenter wrote that such an illustration would provide additional clarity and prevent varied interpretations of the rule.

HUD Response. HUD agrees that additional non-regulatory guidance might be helpful in clarifying the requirements of this interim rule and facilitating implementation of the regulatory requirements. HUD intends to issue a Mortgagee Letter in the near future providing such guidance, including the illustration suggested by the commenter.

Comment: HUD should reconsider the second criterion for waiver of the housing counseling requirement. Two commenters wrote that the proposed threshold of five times the total cost of refinancing would require a very large increase in the principal limit and, thus, may be unattainable by most HECM consumers. Both commenters advocated that HUD lower the amount necessary to satisfy the second criterion. One of the commenters recommended that HUD decrease the multiple from five times the total cost of refinancing to two times the total cost of refinancing. The commenter wrote that the lower threshold would still protect seniors from "churning" while at the same time providing a truly streamlined refinance option for borrowers that have already satisfied the housing counseling requirement with their original HECM loan.

HUD Response. HUD has not adopted these comments. In establishing the amount required for the second waiver criterion, HUD has attempted to assure that mortgagors who may be subject to predatory fees receive housing counseling. At the same time, HUD is aware 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 proposed to establish a relatively high threshold of five times the total cost of the refinancing. HUD continues to believe that a refinanced HECM with an increase in the principal limit that does not exceed this threshold is more likely to contain the excessive fees that frequently characterize predatory loans. However, HUD is cognizant that the threshold may need to be revised as a result of, among other factors, HUD's experience in administering the HECM

refinancing program, the availability of new financial data, or changes in the housing market. The interim rule continues to provide for a streamlined procedure for making such updates through **Federal Register** notice, rather than through the lengthier rulemaking process. 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 of the **Federal Register** notice.

D. Comment Regarding Method for Announcing Changes to Counseling Waiver Criterion and Origination Fee Limits

Comment: HUD should consider announcing changes to the second housing counseling waiver criterion and to the allowable origination fee on refinanced HECMs via Mortgagee Letter rather than through the Federal Register notice. One commenter made this suggestion. The commenter wrote that this would be less cumbersome and a more efficient method of implementing these changes.

HUD Response. HUD has not revised the rule in response to these comments. Notification through **Federal Register** notice is required to ensure that HECM program participants are provided with sufficient notice of any changes to the counseling waiver threshold and origination fee limits.

VI. Justification for Interim Rulemaking on Reduction of Initial MIP

As noted above in this preamble, this rule makes an interim change to the HECM regulations that was not part of the June 5, 2001, proposed rule. Specifically, § 206.53(c) implements the statutory authority provided to HUD by section 255(k) of the NHA to reduce the initial MIP for HECM refinancings. HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). For the following reasons, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this regulatory change in order to solicit prior public comments. Further, delaying the effectiveness of this change to solicit comment is unnecessary, since the

change will benefit consumers and have no adverse impact on lenders.

By reducing or eliminating the HECM initial MIP, the regulatory change will reduce the costs of obtaining a HECM loan, thereby better enabling older citizens to refinance their existing HECMs. Delaying implementation of the change to permit prior public comment would deny the benefits of these reduced costs to HECM consumers during the public comment period. Lenders involved in the origination and servicing of HECM loans will not be adversely affected by these changes, since the initial MIP is payable to HUD and not the lenders. As noted above, the actuarial study conducted by HUD to evaluate the adequacy of HECM insurance premiums concluded that the reduction to the initial MIP would not negatively impact the soundness of the FHA General Insurance Fund. Accordingly, the regulatory change will provide an immediate economic benefit to HECM consumers, while having minimal, if any, adverse economic effect on lenders or HUD.

This change is being issued for effect, along with the other amendments being made by this interim rule. However, in order to provide an opportunity for public comment, HUD is issuing this regulatory provision on an interim basis and is requesting public comments on the reduced MIP. HUD will be accepting comments on this issue for a 60-day period. HUD will issue a follow-up final rule addressing the significant issues raised by the public commenters on the reduction of the initial MIP.

VII. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "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 economically significant, as provided in section 3(f)(1) of the order). Any changes made to this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Information Collection Requirements

The information collection requirements contained in § 206.53 have been approved by OMB in accordance with the Paperwork Reduction Act of

1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0546. An agency 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 control number.

Unfunded Mandates Reform Act

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage 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. 4332). The Finding remains applicable to this interim rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim 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 amendments made by this interim rule will impose minimal, if any, economic costs on small lenders and other participants in the HECM Program. For example, the origination fee limits that will be established under this interim rule for HECM refinancing do not impose any economic burden on lenders (the same fee limits are already applicable to 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. Neither will lenders be adversely affected by the reductions in the initial MIP established by this interim rule, since the initial MIP is payable to HUD and not the lenders.

Notwithstanding HUD's determination that this rule will not

have a significant economic impact 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 interim 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, HUD amends 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. HUD will publish any such limit in the **Federal Register** at least 30 days before the limitation takes effect. The mortgagor is not permitted to pay any additional origination fee of any kind to a mortgage broker or loan correspondent. A mortgage broker's fee can be included as part of the origination fee only if the mortgage broker is engaged independently by the

homeowner and if there is no financial interest between the mortgage broker and the mortgagee.

* * * * *

■ 3. Add § 206.53 under a new undesignated center 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) and paragraph (c) of this section.

(c) *Initial MIP limit.* The initial MIP paid by the mortgagee pursuant to

§ 206.105(a) shall not exceed two percent of the increase in the maximum claim amount (*i.e.*, the difference between the maximum claim amount for the new home equity conversion mortgage and the maximum claim amount for the existing home equity conversion mortgage that is being refinanced).

(d) *Anti-churning disclosure—*(1) *Contents of anti-churning disclosure.* In addition to providing the required disclosures under § 206.43, the mortgagee shall provide to the mortgagor its best 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 disclosures required under § 206.43.

(e) *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 (d) 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 five years (even if less than five years have passed since a previous refinancing under this section).

Dated: January 30, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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