

CHAPTER 13. HOME EQUITY CONVERSION MORTGAGES - (HECMS)

13-1 GENERAL. The Housing and Community Development Act of 1987 established a Federal mortgage insurance program, Section 255 of the National Housing Act, to insure home equity conversion mortgages.

13-2 PURPOSE OF THE PROGRAM. The program insures what are commonly referred to as reverse mortgages, and is designed to enable elderly homeowners to convert equity in their homes to monthly streams of income or a line of credit.

13-3 CHARACTERISTICS OF THE MORTGAGE.

- A. Loan Proceeds. In a home equity conversion mortgage (HECM) "or reverse mortgage" loan proceeds are paid out according to a payment plan selected by the mortgagor.
- B. Repayment Of The Mortgage. A reverse mortgage is repaid in one payment, after the death of the mortgagor or when the mortgagor no longer occupies the property as a principal residence.
- C. Maturity date. The mortgage has neither a fixed maturity date nor a fixed mortgage amount.
- D. Mortgagee Unable To Make Payments. If the mortgagee is unable to make payments to the mortgagor, HUD will assume responsibility for making payments until the mortgagee is able to resume the payments. If the mortgagee will not be able to make any future payments, HUD will make payments for the remainder of the mortgage.
- E. Mortgage Proceeds Paid By Mortgagee And/Or HUD. The mortgage proceeds paid by the mortgagee and/or HUD will be secured by first and second mortgages on the property. These liens will allow the mortgagee and HUD to recover any losses up to the value of the property when the mortgagor dies, or no longer maintains the property as a principal residence.

13-19/94

4330.1 REV-5

F. Eligibility Requirements. Eligible mortgagors are persons 62 years of age or older and should own their homes free and clear or with liens not exceeding the principal limit. Eligible properties are one unit dwellings, including

condominiums.

13-4MORTGAGEE CONTACT PERSON. The mortgagee must designate a contact person, who is knowledgeable about servicing reverse mortgages and to handle inquiries from mortgagors receiving payments. The mortgagee is responsible for providing the name of the contact person to all mortgagors annually and whenever the contact person changes.

13-5MONTHLY PAYMENTS. The mortgagee is responsible for making payments to the mortgagor according to the payment plan selected at closing by the mortgagor.

13-6TYPES OF PAYMENT PLANS. The mortgagor has the choice of receiving the mortgage proceeds through five basic payment plans.

A.Tenure. The mortgagor will receive equal monthly payments from the mortgagee for as long as he or she lives and continues to occupy the property as a principal residence.

B.Term. The mortgagor will receive equal monthly payments from the mortgagor for a fixed period of months selected by the mortgagor.

C.Line Of Credit. The mortgagor will receive the mortgage proceeds in unscheduled payments or in installments, at times and in amounts of the mortgagor's choosing, until the line of credit is exhausted.

D.Modified Tenure. The mortgagor may combine a line of credit with monthly payments for life, or for as long as the mortgagor continues to live in the home as a principal residence. In exchange for reduced monthly payments, the mortgagor will set aside a specified amount of money at closing for a line of credit, on which he or she can draw until the line of credit is exhausted.

9/9413-2

4330.1 REV-5

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E. Modified Term. The mortgagor may combine a line of credit with monthly payments for a fixed period of months selected by the mortgagor. In exchange for reduced monthly payments, the mortgagor will set aside a specified amount of money at closing for a line of credit, on which he or she can draw until the line of credit is exhausted.

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13-7 LINE OF CREDIT PAYMENTS.

A.Mortgagor Has Established A Line Of Credit. If the mortgagor has established a line of credit, including a line of credit with modified monthly payments, he or she may request a payment from the line of credit at any time during the life of the loan. The request need not be in writing to be considered official, however, the mortgagee may prescribe a form to use for written requests and require that the mortgagor use this form.

B.Payment Received By Mortgagor. The mortgagor may only receive a payment up to the net principal limit during the current month for the mortgage. If the line of credit is part of a modified monthly payment plan, the mortgagor may only receive a payment equal to the value of the line of credit for that month. If he or she wishes to receive a larger payment, the procedures for changing the payment plan outlined in Paragraph 13-10 must be followed.

C.Mortgagor Must Be Sent A Statement. The mortgagee must send the mortgagor a statement after each line of credit payment that indicates the amount available to the mortgagor from the line of credit (net principal limit for the line of credit) after deducting the payment to the mortgagor.

13-8METHOD OF PAYMENT. At closing, the mortgagor will have elected the method by which he or she will initially receive payments. The mortgagor can change the method of payment by notifying the mortgagee.

A.Electronic Funds Transfer (EFT). The payments can be electronically transferred to a savings or checking

13-39/94

4330.1 REV-5

account held jointly by all mortgagors, except as otherwise provided by joint instructions from all mortgagors (a power of attorney may constitute instructions).

B.Check By Mail. The payments can be made by mailing a check payable to all mortgagors named on the mortgage and note, or as otherwise provided by joint instructions from all mortgagors (a power of attorney may constitute instructions).

13-9 LATE CHARGES ON PAYMENTS.

A.Due Dates.

1.The mortgagee is obligated to make monthly payments to the mortgagor on the first business day of the month.

2.The mortgagee is obligated to make line of credit payments within five business days of receiving the request.

NOTE:Payments made via EFT must be made on these dates. Payments made through the mail must be postmarked by these dates.

B.Late Charges. The mortgagee must pay a late charge of ten percent of the amount of the payment due to the mortgagor if the payment is not made by the due date. For each additional day the payment is late, the mortgagee shall pay interest at the daily mortgage interest rate on the late payment. The entire late charge may not exceed \$500 on a single late payment.

1.The late charge can not be added to the mortgagor's outstanding balance.

2.The mortgagee should notify the Single Family Loan Management Branch of the local HUD Field Office having jurisdiction over the property as soon as a problem (e.g. computer failure) develops that

9/9413-4

4330.1 REV-5

would prevent the mortgagee from making payments on time. The mortgagee must also notify the mortgagor that it is seeking a waiver of late charges and will pay any late charges if the waiver is not granted. The Field Office may waive late charges if the problem is beyond the mortgagee's control and the mortgagee is not at fault for making the mortgagor's payment being late.

13-10CHANGING THE PAYMENT PLAN. Generally, the mortgagor may request to change the payment plan at any time during the life of the loan. The mortgagee may charge a fee, not to exceed \$20.00 for changing the mortgagor's payment plan.

A.When the mortgagor requests a change in his or her payment plan (i.e. changing payment options or the term of the payments), or the mortgagee must change the payment plan due to unexpected expenses (e.g. underestimated taxes and insurance or repair costs), the following action must occur:

1.The mortgagee must send to the mortgagor a written explanation of the terms of the new payment plan (Appendix 65) within five business days of receipt of the mortgagor's request. The mortgagor's request does not need to be in writing to be considered an official request.

2.The mortgagor must sign the written explanation and return it to the mortgagee.

3.Upon receiving the signed explanation of the payment plan, the mortgagee has five business days to complete the change and disburse any requested funds.

B.The Mortgagee Is Required To Change The Payment Plan. The mortgagee is required to change the payment plan whenever the mortgagor requests an unscheduled payment, and the mortgagor does not have a line of credit established or the line of credit is insufficient to cover the payment.

13-59/94

4330.1 REV-5

1.Payments from the mortgagor's line of credit do not constitute a change in the mortgagor's payment plan.

2.If a line of credit has not been established at closing and the mortgagor requests an unscheduled payment, the mortgagee should encourage the mortgagor to modify the payment plan by establishing a line of credit to prevent changing the payment plan for unscheduled payments in the future.

C.The Payment Plan Must Be Restarted. The mortgagee must change the payment plan when the payments are restarted on a monthly payment plan that has had payments suspended for a total of 6 months or more.

13-11COMPLETION OF REPAIRS. At closing, the mortgagor may have entered into an agreement to complete required repairs after closing. The provisions of this agreement are contained in the Repair Rider to the Loan Agreement that the mortgagor signed at closing.

A.The Mortgagee's Responsibility. The mortgagee is responsible for adhering to the provisions of the Repair Rider, which require the mortgagee to ensure that the repairs are completed before funds for repairs are disbursed.

B.Upon Completion Of The Required Repairs. When the required repairs are completed, the mortgagee will disburse jointly to the mortgagor and the contractor(s) funds equal to the cost of the repairs, and will add the amount of the payment to the outstanding balance.

C.Required Repairs Are Not Completed. If the required repairs are not completed by the date specified on the Repair Rider

(not to exceed 12 months from closing), the mortgagee, according to the Repair Rider, may discontinue or refuse to comply with requests for payments under the payment plan until the repairs are satisfactorily completed.

9/9413-6

4330.1 REV-5

D.The Mortgagor May Receive Payment For More Than Has Been Designated In His Or Her Line Of Credit According To The Repair Rider. The mortgagor may receive payment for 1 1/2 times the estimate of repairs to meet the actual cost of repairs. If the mortgagor does not have sufficient funds in the line of credit to cover the cost of repairs, the mortgagor may have to receive an unscheduled payment and have his or her payment plan changed.

E.Funds Designated For Repairs Are In Excess Of The Cost Of Repairs. If the funds designated for repairs are in excess of the cost of repairs, the mortgagee, after disbursing funds to pay for repairs, should send the mortgagor a notice which states the remaining funds available in the line of credit (net principal limit for line of credit). The mortgagee should encourage the mortgagor to maintain the line of credit after repairs have been completed to meet unexpected expenses.

13-12PAYMENTS FOR TAXES, INSURANCE, SPECIAL ASSESSMENTS, OR GROUND RENTS. During the origination of the mortgage, the mortgagor will have chosen to either pay these expenses or give the mortgagee the responsibility for making these payments.

A.Mortgagee Is Given Responsibility For Making Payments For Taxes And Insurance. If the mortgagor gives the mortgagee responsibility for making payments for taxes and insurance, the mortgagee must adhere to the following:

- 1.The mortgagee will not maintain an escrow account.
- 2.The mortgagee must set aside sufficient funds in the mortgagor's line of credit at closing to meet the first year's tax and insurance payments for which the mortgagor had not collected throughout the year.
- 3.If the mortgagor is receiving monthly payments, then the mortgagee should withhold a monthly amount for paying taxes and insurance from the

13-79/94

payments provided for under the mortgagor's payment plan. The mortgagee would add only the reduced monthly payment to the outstanding balance.

EXAMPLE:

If the scheduled payment due is \$525 per month and monthly estimate for tax and insurance withholding is \$150 then, the mortgagee would pay \$375 each month to the mortgagor and add it to the outstanding balance.

4.The actual payments for taxes and hazard insurance would be added to the outstanding balance when they are paid.

5.For monthly payment plans, the mortgagee must perform a withholding analysis annually, based upon actual tax and insurance costs. The mortgagee's estimate may only deviate by 10% from the previous year's actual disbursements. The mortgagee may not collect the standard two months additional withholding. Paragraph 2-7C should be referred to, except as noted below:

a.If the amount withheld from the mortgagor's monthly payments is insufficient to pay for taxes and insurance, the mortgagee should make the necessary payment, and request that the mortgagor pay the difference in cash or have the difference added to the outstanding balance.

b.If the mortgagor chooses to add the difference to his or her outstanding balance, the mortgagee may deduct the payment from the mortgagor's line of credit, or, if the mortgagor does not have a line of credit, redesign the mortgagor's payment plan because of the reduction in the mortgagor's principal limit. The mortgagor should also increase the withholding amount from future payments.

9/9413-8

4330.1 REV-5

c.If the amount withheld from the mortgagor's monthly payments is more than is necessary to make payments for taxes and insurance, the mortgagee must add the actual payment to the outstanding balance, and, depending on the mortgagor's

preference, pay to the mortgagor or add to the mortgagor's principal limit the excess amount. Any addition to the mortgagor's principal limit may require a change in the mortgagor's payment plan. The mortgagee should reduce the withholding amount from future payments.

6.If the mortgagor requests that the mortgagee discontinue withholding for taxes and insurance and desires to make these payments, the mortgagee must pay to the mortgagor the amounts withheld from monthly payments which have not been used to pay for taxes and insurance.

7.If the mortgagor has established a line of credit, the mortgagee should make payments for taxes and insurance when they are necessary, and add the amount of the payments to the outstanding balance. This procedure does not apply to a mortgagor who has established a line of credit as part of a modified monthly payment plan. The mortgagee must follow the procedures for withholding from monthly payments outlined above, unless the mortgagor chooses to have these payments made from the line of credit.

B.Mortgagor Chooses To Make Payments For Taxes And Insurance.
If the mortgagor chooses to make payments for taxes and insurance, the following must be adhered to:

1.He or she must provide proof of payment for each item to the mortgagee no later than 30 days before the penalty date.

2.If such proof is not provided by that due date, then the mortgagee should send to the mortgagor

13-99/94

4330.1 REV-5

a written request to make payments for these expenses, and provide proof of payment.

3.If the mortgagor does not respond to the written request in a timely manner, then the mortgagee must make payments for taxes and insurance, including late charges and penalties, if any, and add the amount of any payments to the outstanding balance.

4.If the mortgagee makes payments for the mortgagor and the mortgagor does not have a line of credit, the mortgagee must change the mortgagor's payment plan.

5.If the mortgagor's principal limit is insufficient to cover these payments, the mortgage may be due and payable.

6.The mortgagee may begin withholding monthly amounts from the mortgagor's payments for the purpose of paying taxes and insurance, if the mortgagor regularly fails to make these payments.

C.Tax Deferral Programs For Senior Citizens. The mortgagor is prohibited from participating in any real estate tax deferral program unless the lien created by this program is subordinate to the insured mortgage held by the mortgagee and the second mortgage held by HUD.

13-13INSURANCE COVERAGE. The mortgagor is required to purchase hazard insurance, but may instruct the mortgagee to purchase and make payments for this insurance.

A.The Hazard Insurance Must Cover 100% Of The Insurable Value Of Property Improvements At The Time Of Closing.

B.HUD And The Mortgagee May Determine Hazards Which Must Be Insured Against.

C.If The Mortgagor Chooses To Be Responsible For Obtaining Hazard Insurance, the mortgagor must provide a

9/9413-10

4330.1 REV-5

copy of the insurance policy to the mortgagee, and ensure that the policy is renewed upon expiration.

D.If The Property Is Located In An Area That Has Been Identified By FEMA As Having Special Flood Hazards, the mortgagor must maintain flood insurance on the property in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973 42 U.S.C. 4001 et seq.) and provide proof of this insurance to the mortgagee regularly.

13-14MONTHLY MIP. The mortgagee is responsible for remitting the mortgagor's payments for the monthly MIP. The mortgagee should calculate and make these payments according to the instructions in Chapter 7, HUD Handbook 4235.1 REV-1.

A.Assignment Insurance Option. Mortgagees that have chosen the assignment option must remit the entire premium to HUD each month. When payment is made, the mortgagee should add the payment to the mortgagor's outstanding balance.

B.Shared Premium Insurance Option. Mortgagees that have

chosen the shared premium insurance option remit only a percentage of the premium. The percentage of the MIP to be retained by the mortgagee is determined by a factor accompanying the factor for the principal limit (Appendix 66), based on the age of the youngest mortgagor and the expected rate. The mortgagee must still add the full amount of the premium to the mortgagor's outstanding balance.

13-15SERVICING FEE. The mortgagee may require the mortgagor to pay a fee for the servicing of this mortgage, if these expenses will not be covered by the interest collected under the mortgage interest rate.

A.Mortgagee Chooses To Assess A Servicing Fee. If the mortgagee chooses to assess a servicing fee, the fee is established at closing as a monthly figure and the amount necessary to pay this fee throughout the life of the loan is calculated and set aside from the principal limit at closing (Refer to Chapter 5, HUD Handbook 4235.1 REV-1 for calculations).

13-119/94

4330.1 REV-5

B.Mortgagee Adds Servicing Fee To The Mortgagor's Outstanding Balance Monthly. If the mortgagee adds the fee to the outstanding balance monthly, the mortgagee can not assess any other fees to cover the costs of servicing.

* C. Amount of Servicing Fee. The servicing fee that may be charged on annually adjustable loans may not exceed thirty dollars (\$30.00) per month. The servicing fee that may be charged on monthly adjustable loans is uncapped.

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13-16FEES AND CHARGES AFTER ENDORSEMENT. The mortgagee may require the mortgagor to pay fees and charges for services rendered after endorsement. Any fee must be reasonable and customary for that area of the country, and may not be more than an amount actually paid by the mortgagee for the service performed. The following fees and charges may be assessed and added to the outstanding balance:

A.Changing The Payment Plan the mortgagee may charge up to \$20.00 for changing the mortgagor's payment plan.

B.Substitution Of Hazard Insurance Policies when the mortgagor arranges for a change of insurance coverage at a time other than the normal time for renewing the hazard insurance policy.

C. Attorney And Trustee Fees may be charged when associated with a foreclosure.

D. Trustee And Recording Fees may be charged when associated with a loan satisfaction.

E. Property Inspections And Preservation Expenses as referred to in Paragraph 4-11.

F. Attorney Fees And Expenses when the mortgagee is made a party to litigation by reason of the mortgage (CFR 203.552(a)(13)). No attorney fee may be charged for the services of the mortgagee's staff attorney.

9/9413-12

4330.1 REV-5

13-17 CAPITALIZATION OF PAYMENTS AND INTEREST.

A. Payments. Any payments that are made to or on behalf of the mortgagor, including monthly or unscheduled payments, taxes, insurance and MIP payments, and any authorized fees charged to the mortgagor are added to the outstanding balance when these payments are made.

B. Interest. Interest on any payment made during a month accrues daily from the date after the payment is made. The interest, along with the interest that has accrued on the outstanding balance from the previous month, is not added to the outstanding balance until the end of the month.

EXAMPLE:

The outstanding balance at the beginning of the month is \$8,000. The mortgagee makes payments to the mortgagor of \$300 on the first day of a 30 day month, makes a \$250 insurance payment on the 12th of the month, and a \$400 tax payment on the 25th of the month. The mortgagee would then receive interest on the \$8,000 balance for 30 days, the \$300 payment for 29 days, interest on the \$250 payment for 18 days, and interest on the \$400 payment for 5 days. The accrued interest from the outstanding balance and the payments made that month, plus the payments themselves, would be added to the outstanding balance at the end of the month.

13-18 STATEMENTS TO THE MORTGAGOR.

A. The Mortgagee Must Provide The Mortgagor With An Annual Statement By January 31st Of Each Year. The statement must summarize the mortgagee's previous calendar year activity of the mortgage, providing:

1.A list of all payments made to the mortgagor, including monthly and unscheduled payments.

13-139/94

4330.1 REV-5

2.An itemized list of all payments made to and on behalf of the mortgagor, including MIP, taxes, insurance payments and servicing fees, if applicable.

3.The total amount of interest accrued for the year.

4.The outstanding balance at the end of the calendar year.

5.The mortgagor's principal limit and net principal limit.

6.The mortgagor's outstanding balance, principal limit and net principal limit for the line of credit, if applicable.

B.The Mortgagee Must Comply With Truth-in-Lending Act Requirements for periodic disclosures for Open-End Credit. For example, Regulation Z (12 CFR 226) implements the Truth-in-Lending Act and requires that the mortgagee furnish a periodic statement and an annual statement of billing rights, and that the mortgagee comply with the billing error resolution rules.

C.The Mortgagee Must Send To The Mortgagor A Statement After Each Line Of Credit Payment that includes the funds available in the line of credit (net principal limit for the mortgagor's line of credit).

13-19INTEREST RATE CHANGES FOR ADJUSTABLE RATE MORTGAGES. The mortgagee is required to notify the mortgagor of all changes to the interest rate on an adjustable rate mortgage. Appendix 67 contains a suggested form of Periodic Disclosure ARM Notice for a Reverse Mortgage.

A.The First Adjustment To The Interest Rate. If any adjustment is required it will occur between 12 and 18 months after the closing date on an annually adjusted reverse ARM. For monthly adjustable reverse ARMs, the initial change date may not be earlier than one month after the closing date nor later than six months after the closing date.

9/9413-14

4330.1 REV-5

B. At Closing The Mortgagee Must Choose A Calendar Date (e.g. June 1 for an annual adjustment, the 1st of the month for a monthly adjustment) as the change date (the date the interest rate changes).

C. In Adjusting The Interest Rate, The Mortgagee Must Use The One-year Treasury Rate In Effect 30 Exact Days Before The Change Date.

D. The Notice Of Interest Rate Change must be provided to the mortgagor at least 25 days before the first adjustment in the outstanding balance after the change date.

E. The Notice Of Interest Rate Change must advise the mortgagor of the following:

1. The new mortgage interest rate
2. The current index value
3. Publication date of index

13-20PREPAYMENTS. The mortgagor may prepay the mortgage in full or in part without penalty.

A. Disclosure Statements. Mortgagees shall provide to mortgagors at closing, as well as annually, a written Disclosure Statement of the amount outstanding on the loan and describe the requirements that the mortgagor must fulfill upon prepayment of the mortgage to prevent accrual of any interest on the mortgage after the date of prepayment.

1. At closing Disclosure Statement. Depending upon the type of payment plan the mortgagor has selected, the mortgagee shall provide to the mortgagor one of the following Disclosure Statements:

a. Term or Tenure Payments. For Payment Plans requiring Term or Tenure Payments, the mortgagee shall provide the mortgagor with the Disclosure Statement contained in Appendix 8A.

13-159/94

4330.1 REV-5

b.Line of Credit Payments. Under the line of credit option, the mortgagee shall provide the mortgagor with the Disclosure Statement contained in Appendix 8.

2.Annual Disclosure Statement (24 CFR 206.203). The mortgagee shall provide to the mortgagor an annual statement regarding the activities of the mortgage for each calendar 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. The statement shall include the following:

a.summarize the total principal amount for the year which has been paid to the mortgagor under the mortgage

b.the MIP paid to HUD and charged to the mortgagor

c.the total amount of deferred interest added to the mortgage balance

d.the total mortgage balance and the current principal limit

e.if the mortgagor has elected to have the mortgagee pay property charges (taxes, ground rents, flood and hazard insurance premiums, and assessments on accounting of all payments for property charges for the year.

B.Tenure Or Term Option. When payments are being made under the term or tenure option, a mortgage may be prepaid at any time and the provisions of (24 CFR 203.558 (a)(c), and (e)) shall be followed in handling a prepayment except that the term installment due date shall mean the date of payments to the mortgagor instead of payments by the mortgagor.

1.Mortgagors may, without penalty, prepay the mortgage in full on the first of any month in the mortgage term without giving the mortgagee any

9/9413-16

4330.1 REV-5

notice (oral or written) of intent, regardless of what the mortgage security instrument state.

2.If the prepayment is offered on other than an installment due date, the mortgagee has the option of:

a.refusing to accept the prepayment until the next installment due date (i.e., the first of the next month); or

b.requiring the payment of interest to the next installment due date but only if the mortgagee so advises the mortgagor in a form approved by HUD (See Appendix 8(C) for an acceptable sample) in response to the mortgagor's (or his/her agent's) inquiry or request for payoff amount from the mortgagor.

3.Any mortgagee that fails to meet the disclosure requirements stated in Paragraph 5-2C must forfeit the interest collected after the date the prepayment is received.

C.Line Of Credit Option. When payments are being made under the line of credit option, a mortgage may be prepaid after giving two weeks notice to the mortgagee. If the mortgagee accepts the prepayment without two weeks notice, interest may be charged on the prepaid amount for a two week period after the date of notice. Otherwise, no interest shall be charged on the prepaid amount after the date of prepayment.

D.The Mortgagor Prepays The Mortgage In Full. If the mortgagor prepays the mortgage in full, the mortgage is terminated.

NOTE:Payments that have ceased or are nearing cessation can be continued by a prepayment. This procedure may be useful to relatives of a mortgagor whose payments are scheduled to end. By prepaying a portion of the debt, the mortgagor's relatives can allow the mortgagor to continue receiving payments.

13-179/94

4330.1 REV-5

13-21Partial Prepayments. The mortgagor may choose to make a partial prepayment because his or her financial circumstances have improved and he or she wishes to preserve more of the equity in the property. Any change in subsequent payments to the mortgagor should be made only at the mortgagor's request.

A.Increase Monthly Payments. The mortgagor may choose to use a partial prepayment to increase monthly payments. By reducing the outstanding balance, the mortgagor increases the net principal limit available for calculating monthly payments.

B. Establish Or Increase A Line Of Credit. A mortgagor may choose to make a partial prepayment to set up or to increase a line of credit without altering existing monthly payments. By reducing the outstanding balance, the mortgagor increases the net principal limit. All or part of the increase in the net principal limit may be set aside for a line of credit.

C. Refinance The Mortgage. A mortgagor may choose to repay the entire outstanding balance in order to refinance the mortgage with a new reverse mortgage. If the new mortgage is an FHA reverse mortgage, the mortgagor will have to pay a new initial MIP and meet other eligibility criteria.

* D. Application of Partial Prepayment. Partial prepayments are to be applied first to the payment of the mortgage insurance premium balance, then to the servicing fee balance, interest balance and, finally, to principal. After those items have been satisfied, a borrower receiving monthly payments in combination with a line of credit may specify to which account a partial prepayment is to be applied:

1. Mortgagee may apply partial prepayment to an existing line of credit. If the mortgagor does not designate an account, the mortgagee may apply any partial prepayment to an existing line of credit.

9/9413-18

4330.1 REV-5

2. Mortgagee may create an existing line of credit. The mortgagee may also create a new line of credit in accordance with the Home Equity Conversion Loan Agreement, contained in Appendix 68, Paragraph 2.7.4.

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13-22 MORTGAGOR'S OCCUPANCY AND MAINTENANCE OF THE PROPERTY. Under the mortgage, the mortgagor is not required to repay the outstanding balance as long as the following conditions are met by at least one original mortgagor:

A. The Mortgagor Maintains The Property As A Principal Residence. The mortgagee must verify this fact as long as the debt on the mortgage is outstanding.

1. The mortgagee must have the mortgagor certify. The mortgagor must certify to his or her principal residence annually within 30 days before or after the

anniversary date of the first day of the first month after closing.

2.The mortgagee must provide a written certification. The mortgagee must provide a written certification for the mortgagor's signature, to the mortgagor annually. The certification must include the following warning above the signature line:

WARNING:"Section 1001 of Title 18 of the United States Code makes it a criminal offense to make a willfully false statement or misrepresentation to any department or agency of the United States government as to any matter within its jurisdiction".

3.The mortgagor must advise the mortgagee of absences from the property. The mortgagee must be advised of absences from the property in excess of two months to avoid determinations that the mortgagor's principal residence has changed.

B.The Mortgagor Does Not Sell The Property Or Convey Title To The Property.

13-199/94

4330.1 REV-5

C.The Mortgagor Is Not Out Of Occupancy Due To Physical And Mental Illness For More Than 12 Months.

D.The Mortgagor Maintains The Condition Of The Property. If aware of a deterioration in the property's condition, the mortgagee may:

1.Notify the mortgagor of the deficient condition of the property, indicating the required repairs for bringing the property up to an acceptable condition.

2.If the mortgagor fails to comply with this request within 60 days by beginning to correct the condition of the property, the mortgagee, with HUD's consent, may declare the mortgage due and payable.

E.The Mortgagor Otherwise Complies With The Terms Of The Mortgage (e.g. payment of taxes and insurance).

13-23USE OF COUNSELING AGENCIES. The mortgagee should refer situations where the conditions under the mortgage are not being met to a HUD-approved housing counseling agency in the area where the property is located, if a solution to the problem can not be found. The mortgagee is advised to refer the mortgagor to a

counseling agency before requesting HUD to declare a technical default on the mortgage.

13-24ASSIGNMENT INSURANCE OPTION. The mortgagee may select the assignment insurance option at closing.

A.The Mortgage May Be Assigned To HUD If:

1.The outstanding balance, including all payments made to or on behalf of the mortgagor, MIP and accrued interest, is equal to or greater than 98% of the maximum claim amount as reflected on Form HUD 59100, Mortgage Insurance Certificate, or

2.The mortgagor has requested a payment, either from a line of credit or from a change in the payment plan, which, when added to the outstanding balance, would equal or exceed 98% of the maximum claim amount.

9/9413-20

4330.1 REV-5

B.If The Mortgagee Chooses To Assign The Mortgage To HUD, The Following Conditions Must Be Met:

1.The mortgagee must be current in making the required payments to the mortgagor, and

2.The mortgagee must be current in making payments of (MIP including interest and late charges if any) and must continue making monthly payments until the assignment is recorded, and

3.The mortgage can not be due and payable due to:

a.the death of the mortgagor (with no surviving mortgagor maintaining the property as a principal residence), or

b.the mortgagor has sold the property (conveyed title) and no other mortgagor retains title in fee simple, under a lease for not less than 99 years which is renewable or under a lease having a remaining term of 50 years beyond the 100th birthday of the youngest mortgagor.

4.The mortgagee has not notified the HUD Field Office of any event that might cause the mortgage to be due and payable, or the mortgagee's request to declare the mortgage due and payable has been denied by the HUD Field Office.

C.Mortgagee Notifies HUD And Mortgagor Of Its Intention To Assign. When the mortgagee notifies HUD of its intention to assign the mortgage, it must provide the mortgagor with a notice advising that the mortgage will be assigned to HUD. The notice must also state the following:

1.An anticipated date of assignment and instruct the mortgagor to make any request for unscheduled or line of credit payments after that date to HUD;

2.That HUD will continue to withhold an amount from the payments to the mortgagor in order to pay for

13-219/94

4330.1 REV-5

taxes, if the mortgagee had been making these payments;

3.That HUD will not withhold payments for hazard insurance and that the mortgagor must maintain the insurance. The mortgagee must disburse to the mortgagor any funds withheld, but not spent on hazard insurance.

13-25NOTICE TO FIELD OFFICE OF INTENT TO ASSIGN. The mortgagee must notify the field Office having jurisdiction over the property when it is preparing to assign the mortgage to HUD and file a claim for insurance benefits. The Field Office must be notified at least 30 days but not more than 60 days, prior to the anticipated date of recording the assignment to HUD. When the mortgagee notifies HUD of its intent to assign the mortgage, it must submit the following:

A.The mortgagor's name, address, and FHA case number;

B.The mortgagor's checking or savings account number, name of financial institution, and any other necessary EFT information, if applicable;

C.The mortgagor's current payment plan, including the payment plan change that may have caused the assignment and any unscheduled payment to be made by HUD within five days;

D.The required withholding for taxes, if applicable, type and amount of any funds set aside, and any other responsibilities previously performed by the mortgagee;

E.A copy of the notice to the mortgagor concerning the assignment of the mortgage to HUD and including the anticipated date of recording the assignment;

F.A payment history for the mortgage which shows all payments

made by the mortgagee throughout the loan.

9/9413-22

4330.1 REV-5

G.Evidence of the mortgagee's most recent determination that the property is the principal residence of at least one mortgagor;

H.The title package on the property for the Field Office to review.

13-26PAYMENTS BEFORE MORTGAGE IS VOLUNTARILY ASSIGNED. The mortgagor may request a line of credit or unscheduled payment after the mortgagee has notified HUD of its intent to assign the mortgage.

A.Line Of Credit Payment. If the mortgagor requests a line of credit payment, the mortgagee may make the payment before the assignment is recorded if the outstanding balance after the payment is made, including any interest that will accrue and any payments made to or on behalf of the mortgagor (MIP, taxes and insurance, etc.) that will be added before the mortgage is assigned to HUD, does not exceed the maximum claim amount. Otherwise, the mortgagor should be referred to the HUD Field Office to receive payment.

B.Unscheduled Payment. If the mortgagor requests an unscheduled payment which would require a recalculation of payments, or requests a change in the payment plan, the mortgagee may make a payment change and disburse funds (not to exceed the maximum claim amount) if the mortgage assignment has not been recorded. The mortgagee should immediately submit the mortgagor's new payment plan to the HUD Field Office. Otherwise, the mortgagor should be referred to the HUD Field Office to receive payment.

13-27DEMAND ASSIGNMENT OF THE MORTGAGE. If the mortgagee fails to make the required payments under the first mortgage.

A.Mortgagor Contacts HUD Field Office. If the mortgagor notifies HUD that a payment was not received, the Field Office will contact the mortgagee to determine the reason for the non-payment.

13-239/94

4330.1 REV-5

B.Mortgagee Cannot Make The Required Payment. If HUD determines that the mortgagee cannot make the required payment, then HUD will make the payment.

C.HUD Must Issue A Written Demand Letter. After the payment is made, the Field Office will issue a written demand letter to the mortgagee stating that:

1.If the mortgagee plans to resume making payments under the mortgage, it must reimburse HUD for the amount of the total payment with interest from the date of the payment to the date reimbursement is received by HUD. An amount, date of payment and a per diem interest rate will be specified by HUD in the demand letter. Interest will be set at a rate in conformance with the Treasury Fiscal Requirements Manual.

2.If the mortgagee can not reimburse HUD or resume making payments under the mortgage, the mortgagee must assigned the mortgage to HUD within 30 days and the title submitted to the Field Office having jurisdiction over the property.

3.If the mortgagee fails to reimburse HUD or assign the mortgage within 30 days of the demand letter, the contract of mortgage insurance will be terminated.

13-28PAYOFFS AND DUE AND PAYABLE MORTGAGES. Generally, the mortgage debt will either be repaid by the mortgagor or the mortgagor's estate or by the mortgagee foreclosing on the property and using the proceeds from the sale of the property to pay off the outstanding balance.

13-29 PAYOFFS.

A.Sale Of Property By Mortgagor Or Mortgagor's Estate. The mortgagor or the mortgagor's estate may sell the property at any time for the lesser of:

1.The debt due under the mortgage, including the mortgagee's share of net appreciation, if applicable,
or

9/9413-24

4330.1 REV-5

2.The appraised value at the time of the sale, as determined by the HUD Office having jurisdiction over the property. The mortgagor may request an appraisal if he or she believes that the value of the property is less than the debt.

NOTE: The mortgage will be released of record and the net sales proceeds will be applied to the outstanding balance.

B. Contract For Sale Executed. If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for the lesser of 95% of the current appraised value or the outstanding balance. The mortgage will be released of record and the net sales proceeds will be applied to the outstanding balance.

C. Notification To HUD Of Termination Of Insurance. The mortgagee must notify HUD of the termination of the mortgage insurance contract within fifteen days of the date of any sale, if the net sales proceeds are sufficient to pay off the mortgage. Otherwise, the mortgagee should submit a claim for insurance benefits.

D. Shared Appreciation Mortgages. For shared appreciation mortgages, refer to Chapter 5, HUD Handbook 4235.1 REV-1 for instructions on calculating the mortgagee's dollar amount share of the property's appreciation.

E. Outstanding Balance Is Paid. The mortgagee must notify the Loan Management Branch of the HUD Office having jurisdiction over the property when the outstanding balance has been paid so that HUD may release the second mortgage from record.

13-30 CONDITIONS MAKING THE MORTGAGE DUE AND PAYABLE.

A. The Mortgage Is Due And Payable Without HUD Approval When:

1. All mortgagors have died, or

13-259/94

4330.1 REV-5

2. All mortgagors have sold or conveyed title to the property.

B. The Mortgage Is Due And Payable With HUD Approval When:

1. The property is no longer the principal residence of at least one mortgagor for reasons other than death.

2. No mortgagor maintains the property as a principal residence for a period exceeding 12 months because of physical or mental illness.

3. The property is in disrepair and the mortgagor has refused or is unable to repair the property.

4.The mortgagor violates any other covenants of the mortgage (e.g. timely payment of taxes and insurance) and has refused or is unable to comply with the violated conditions of the mortgage.

13-31 PROCEDURES FOR DECLARING THE MORTGAGE DUE AND PAYABLE.

A.Unnecessary Approval From HUD. If approval from HUD is not necessary to declare the mortgage is due and payable, the mortgagee may proceed with the procedures outlined in Paragraph 13-33.

B.Necessary Approval From HUD. If approval from HUD is necessary to declare the property due and payable, the mortgagee must submit a written request for such a declaration to the HUD Office which has jurisdiction over the property. A written request must contain evidence of the reasons for declaring the mortgage due and payable, such as:

1.Evidence that the property is no longer the principal residence of at least one mortgagor.

2.Evidence of damage to the property, such as substantial fire or flood, or municipal code enforcement notices, which has not been corrected

9/9413-26

4330.1 REV-5

in a reasonable period of time since the damage occurred.

3.Evidence that taxes or insurance have not been paid, or the absence of utility service.

4.Evidence that the mortgagor's principal limit is insufficient to cure any debts for taxes or insurance or any costs to have the property repaired.

5.Evidence that the mortgagor is not scheduled to return to the property after an absence of over 12 months due to physical or mental illness, such as written statements from the mortgagor, a relative or a health care provider.

C.Violations Should Be Rectified. The mortgagee should take whatever steps are necessary to rectify a violation of the mortgage covenants before submitting a request to HUD to declare the mortgage due and payable, including referral of the mortgagor to a housing counseling agency.

13-32HUD FIELD OFFICE EVALUATION. The Field Office shall evaluate the circumstances for declaring the mortgage due and payable based upon the evidence submitted by the mortgagee and acquired on its own.

A.Written Response To Mortgagee. The Field Office will respond in writing to the mortgagee within 30 days of receipt of the request either approving or disapproving the request for declaring the mortgage to be due and payable.

1. Specific reasons for a decision will be given in the letter.

2. The Field Office will review any request to reconsider a decision denying permission to declare the mortgage due and payable.

B. Field Office Determination. The Field Office must avoid declaring a mortgage due and payable where a

13-279/94

4330.1 REV-5

solution to a problem can be resolved. However, the Field Office may determine that the mortgage is due and payable if any of the following conditions exist:

1. The mortgagor must make payments for repairs or taxes and insurance, and the mortgagor's principal limit is insufficient to make these payments and the mortgagor is unable to make these payments otherwise.

2. The mortgagor has not occupied the property as a principal residence for over 12 months due to mental or physical illness, and there is not substantial reason to expect reoccupancy within 2 months.

3. The mortgagor is in violation of the mortgage covenants and refuses or is unable to comply with them.

13-33DISPOSITION OF DUE AND PAYABLE MORTGAGES. For a due and payable mortgage, the mortgagee must:

A. Issue A Repayment Notice. The mortgagor or the mortgagor's estate must be issued a repayment notice stating that the mortgage is due and payable. The notice must also provide the amount of the outstanding balance and the following instructions:

1. That the debt must be paid in full; or the property must be sold for the lesser of the debt, including shared appreciation, if any, or 95% of the appraised

value; or good marketable title to the property must be deeded to the mortgagee.

2. That the mortgagor or the mortgagor's estate may request an appraisal, at his or her own expense, if an estimate of the property's current value is desired.

3. That if none of the actions in paragraph A. 1. above are taken in 30 days, foreclosure will be initiated by the mortgagee within 3 months, but not less than 1 month.

9/9413-28

4330.1 REV-5

4. That, if applicable, the mortgagor can resolve the default through the appropriate means, such as reoccupancy, proof of adequate insurance, or payment of taxes or special assessments, etc.

5. That the mortgage will be released and no deficiency judgment will be taken if the property has no junior liens and is sold for at least 95% of the appraised value, with the net proceeds paid to the mortgagee, even if the debt is greater than the appraised value.

B. Payments Discontinued. Upon the issuance of the repayment notice, the mortgagor will not be able to receive payments from the mortgage as long as the mortgage remains due and payable. The mortgagee may make required payments for taxes and insurance, and add these payments to the mortgagor's outstanding balance. Monthly MIP and interest will continue to be added to the outstanding balance.

13-34 FORECLOSURE. If the mortgagor or the mortgagor's estate fails to repay the outstanding balance on a due and payable mortgage or if the mortgagor fails to deed the property to the mortgagee within the prescribed time, the mortgagee must begin foreclosure proceedings within 3 months. The Field Office may authorize the mortgagee to delay the beginning of foreclosure proceedings longer than 3 months if a sale by the mortgagor or the estate is in process. If the estate is making a reasonable effort to sell the property, these extensions should be granted in 3-month intervals with the entire period not to exceed 12 months (see sample extension letter to mortgage).

A. Notification To HUD. The mortgagee must notify the Loan Management Branch of the Field Office having jurisdiction over the property with 30 days of the initiation of foreclosure proceedings.

B. Order An Appraisal. The mortgagee must order an appraisal

if foreclosure proceedings are initiated.

C.Sale Of Property. If at any time prior to the foreclosure sale, the mortgagor or the mortgagor's

9/9413-29

4330.1 REV-5

estate sells the property (free of junior liens) for the lesser of the debt, including foreclosure costs actually incurred and the mortgagee's share of net appreciation, if applicable, or 95% of the current appraised value as determined by the Field Office having jurisdiction of the property, or offers a deed-in-lieu of foreclosure with good and marketable title, the mortgagee shall discontinue the foreclosure proceedings and accept the payoff.

D.Failure To Repay The Mortgage Debt. The mortgagee must continue the foreclosure proceedings as long as the mortgagor or his or her estate fails to repay the mortgage debt.

E.Foreclosure Sale. The mortgagee must bid the lesser of the debt or the current appraised value, as provided by the HUD Field Office, at the foreclosure sale.