

CHAPTER 5

LOAN CLOSING AND INSURANCE

- 5-1 **LOAN CLOSING.** The conditions of the DE lender's approval (FHA's commitment if applicable) should be discussed with the borrower and, if applicable, the seller or builder.
- A. **Title Insurance.** Title insurance is not required at closing. However, the lender is responsible for conveying good, marketable title to FHA when a claim is filed. The one exception to this involves property that previously had been sold by HUD (REO sale) and FHA has insured the mortgage financing the sale by HUD. If such a property had a title defect prior to the original conveyance to FHA, the lender will not be held responsible for any title defects arising prior to the sale by FHA. See 24 CFR 203.390 for additional information.
- B. **Title Objections.** Any additional exceptions discovered during the title search should be reported to the DE underwriter before the loan is closed, unless the exceptions are covered by the General Waiver. Lenders should ensure that any conditions of title to the property will be acceptable to FHA. FHA regulations at 24 CFR 203.389 state that FHA will not object to title because of common customary easements, restrictions, and encroachments and provides a general waiver for these title conditions. These include easements for public utilities, party walls, driveways, wooden or wire fences and for other similar purposes. Lenders should review 24 CFR 203.389 for a full description of the general waiver provisions. Other title matters not covered by this general waiver must be reviewed by the lender. The lender will make the decision about other title conditions and whether the title condition will significantly affect the property's value and/or marketability.
- C. **Closing Instruments.** Forms or language prescribed by FHA must be used.
- D. **Date of Closing.** The date of closing is defined as the settlement date as it appears on the [HUD-1](#) Settlement Statement. On refinance transactions, the date from which the lender must submit any upfront mortgage insurance premium begins when the lender disburses loan proceeds.
- E. **Date from which interest may be collected.** The date from which interest may be collected is the date on which the lender disburses (relinquishes control of) the loan proceeds. Interim interest for the period preceding amortization must be computed using a daily factor of 1/365th of the annual rate.

5-2 CLOSING COSTS AND OTHER FEES. Listed below are the customary and reasonable fees and charges that may be collected from the borrower by the lender and used to meet the minimum investment requirement for purchases and added to the existing indebtedness for refinances. The cost for any item charged to the borrower must not exceed the cost paid by the lender or charged to the lender by the service provider.

- A. Appraisal Fee and Inspection Fee.** The borrower may be charged an appraisal fee. Borrowers may only be charged a pro-rata appraisal fee on Master CRVs (MCRVs) or MARs since the fee charged by the appraiser is for all lots covered. This fee may not exceed the actual appraisal fee, divided by the number of lots covered by the appraisal. Inspection fees may be collected from the borrower for any inspections that must be conducted on the property.
- B. Credit Reports (Actual Costs).** The lender can charge a fee for a credit report when the loan is manually underwritten, and it also may charge a fee for Automated Underwriting System (AUS) credit reports.
- C. AUS Fee.** When the lender uses an AUS that is not the lender's own system or a system directly/indirectly owned by the lender, the lender may collect from the borrower the underwriting fee charged to the lender by the AUS. The lender can collect only one AUS underwriting fee from the borrower.
- D. Verification Charges.** The borrower may be charged only the actual charges imposed by the depository institution, employer, or property management firm, etc.
- E. Origination Fee.** The borrower may be charged an origination fee in accordance with 24 CFR 203.27. HUD is reviewing this regulation for possible amendment.
- F. Home Inspection Fees.** Home inspection fees up to \$300, or the actual cost, may be included as closing costs in meeting the borrower's minimum investment.
- G. Document Preparation Fees.** Document preparation fees may be charged only if the documents are prepared by a third-party and are not controlled by the lender. The lender may not charge these fees if it prepares documents itself.
- H. Property Survey Fees.** The borrower may be charged property survey fees, although they are not required by FHA.

- I. Title Examination and Title Insurance Fees.** The borrower may be charged title examination and title insurance fees, although they are not required by FHA.
- J. Attorney's Fees.** The borrower may be charged attorney's fees, only if the attorney is not an employee of the lender.
- K. Settlement Fees.** The borrower may be charged settlement fees, only if the closing agent is not an employee of the lender. A fee may be charged if the settlement agent is an independent company or a subsidiary that regularly closes loans for several different lenders.
- L. Real Estate Broker's Fees (Buyer Broker).** The borrower may be charged real estate broker's fees, only if the borrower engages the broker independently and the fees are reasonable and customary. However, if the broker is not independently engaged, no fees may be charged to the borrower. See HUD Handbook 4155.1 for additional information.
- M. Recording Fees and Taxes.** The borrower may be charged recording fees and taxes that are customary or required in the area.
- N. Test or Treatment Fees.** The borrower may be charged test or treatment fees that are required by FHA or the lender. These fees include tests of water supplies, soil percolation tests for individual septic systems, or testing for or treating insect infestation.
- O. Courier/Wire/Notary Fees.** Courier fees and wire fees may be charged only on refinances and only for delivery of the mortgage payoff statement to the lien holder and for closing documents to the settlement agent. The borrower must agree in writing to pay for the courier and wire fees, prior to loan closing. Notary fees may be charged if notarization is required by state law and is performed by a notary who is not employed by the lender.
- P. Other Fees and Charges.** Other fees and charges that may be assessed, but are not considered "closing costs" include:
- Discount Points.** Discount points charged by the lender on a purchase transaction may be charged to the buyer but may not be financed into the mortgage amount. On refinance transactions, reasonable discount points may be financed into the mortgage amount subject to equity requirements and other restrictions applied to refinances.
 - Lock-Ins/Rate Locks.** A written guarantee that ensures the loan terms will not change for a definite period of time (not less than 15 days) or that limits the extent to which the terms may change. See

paragraph 1-9 of this handbook for additional information.

The appropriate HOC may authorize or reject any other charge or the amount of any charge, based on what is reasonable and customary in the area.

5-3 PROHIBITED PAYMENTS.

- A. Unearned Fees.** A lender is not permitted to pay any fee, compensation, or thing of value:
1. Other than for services actually performed.
 2. That is a kickback.
 3. Above that actually paid for the service.
 4. To any party for referring the loan (a finder's fee).
 4. To a party that has or will receive other payment for the service, except in the case of a commission for selling a hazard insurance policy at the request of the borrower.
 6. That is prohibited by the Real Estate Settlement Procedures Act (RESPA).
- B. Advances.** Advancing funds in anticipation of commissions on sales to be financed with FHA-insured mortgages is prohibited.
- C. Loans.** A lender may not make below-market or no-interest loans to a real estate broker, real estate agent, mortgage broker, packager, builder, or any other party from whom the lender accepts proposals involving FHA-insured mortgages.

5-4 UNIFORM CASE BINDER. Lenders must prepare and submit a uniform case binder to the appropriate HOC. The case binder must be purchased from private sources, meet FHA specifications, and contain documents arranged as prescribed by FHA. HUD Handbook 4165.1 provides detailed information on assembling the case binder for insurance submission purposes, including the required stacking order of the documents.

5-5 SUBMISSION OF CLOSING PACKAGE FOR ENDORSEMENT.

Following mortgage closing, the lender must submit the case binder to the appropriate HOC for endorsement.

- A. Timing of Submission.** The case should be submitted for endorsement

within 60 days after mortgage loan settlement or funds disbursement, whichever is later.

- B. Delays in Submission.** When there is a delay in submitting the case binder or a delay in closing the loan, the lender must submit additional documentation and comply with FHA's late endorsement policy to obtain a MIC. See Mortgagee Letter 2004-14 for additional information.

5-6 INSURANCE ENDORSEMENT. If the closing package is acceptable, FHA provides an electronic acknowledgement that FHA has insured the mortgage. Mortgagees may download the electronic MIC from the FHA Connection for their records.

5-7 DEFICIENT SUBMISSIONS. Requests for insurance endorsement that are deficient and do not meet our guidelines will be issued a Non-Endorsement Notice, Form HUD-59100 and the case binder will be returned to the lender.

5-8 RETENTION OF LENDER'S ORIGINATION FILE. The originating lender must retain the entire case file pertaining to loan origination, either in hard copy or electronic form, for at least two years from the date of insurance endorsement for auditing purposes. Upon request, the lender must make legible hard copies of the material available to HUD staff.

A. Documents to be Retained.

1. The original mortgage note, and mortgage (or deed of trust and deed of trust note) must be preserved for all FHA-insured mortgages.
2. The remaining documents must be retained either in hard copy form or any electronic form. If the lender elects to retain the documents in electronic form, all documents (including notes to the file, forms and records) must be retained in this format.

B. Sale or Transfer of Servicing. Upon sale or transfer of servicing, the entire origination file, whether electronic or not, must accompany the transfer. Either the holding or servicing lender, by arrangement between them, retains the file for the life of the insurance, plus two years, whether the mortgage has been satisfied by payment-in-full, voluntary termination, or a claim for insurance benefits.

5-9 POST-ENDORSEMENT REVIEWS. To ensure that lenders understand and comply with FHA's requirements, selected case binders are reviewed after insurance endorsement.

A. DE Cases. The post-endorsement review includes a technical review of

the appraisal report, mortgage credit analysis, underwriting decisions, and the closing documents.

- B. FHA-Processed Cases.** A sampling of cases are fully reviewed after insurance endorsement to assure compliance with FHA's closing conditions and regulations.

HISTORICAL REFERENCE ONLY