

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4690-P-01]

RIN 2502-AH64

Schedule for Submission of One-Time and Up-Front Mortgage Insurance Premiums

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

ACTION: Proposed rule.

SUMMARY: Mortgage insurance premiums ("MIPs") in many of HUD's single family mortgage insurance programs are paid at the beginning of the mortgage, as either a "one-time" or "up-front" payment. Since 1993, HUD has required that all up-front MIPs be paid electronically through automated clearinghouses. One-time MIPs are also paid electronically. Given the electronic processing of payments, which requires only a short time period, a 15 calendar day period in which to remit the funds is no longer necessary, and shortening the period would result in increased efficiencies within the mortgage insurance programs. In addition, some lenders have misused MIP funds during the 15-day period. Therefore, this rule proposes to shorten the remittance period from 15 calendar days to three business days (Monday through Friday, exclusive of Federal holidays) for both one-time and up-front MIPs.

In addition, there is some confusion about when the remittance time period begins. Therefore, this rule proposes a more precise definition of when the remittance period begins.

DATES: *Comment Due Date:* October 21, 2002.

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

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, at (202) 708-

2121. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 203(c)(1) of the National Housing Act authorizes the Secretary to set the premium charge for insurance of mortgages under Title II of the National Housing Act. In a June 23, 1983, final rule (48 FR 28804) that followed a proposed rule and public comment, HUD established the one-time MIP for single-family programs, citing improved cash management for HUD without increased burdens on borrowers. The specific programs affected by this one-time MIP are listed in 24 CFR 203.259a, and include loans for refinancing loans insured under the National Housing Act (*see* 24 CFR 203.43(c)); mortgages in Hawaiian Home Lands (*see* 24 CFR 203.43i); and loans which are obligations of the Mutual Mortgage Insurance fund, which were executed before July 1, 1991.

Under the implementing rule for the one-time MIP, at 24 CFR 203.280—203.283, mortgagees in the affected programs pay the entire premium for the borrower within 15 days of closing. The rule generally contemplates that borrowers would amortize the mortgage insurance premium over the life of the loan, and that the premium amount would be calculated based on actuarial factors including the mortgage term and the costs projected by HUD discounted at a rate based on the expected rate of return of the mortgage insurance fund's investments. (*See* 48 FR 28795.)

Section 203(c)(2) of the National Housing Act authorizes the up-front MIP, implemented at 24 CFR 203.284, which applies to all other mortgages executed on or after July 1, 1991 that are obligations of the Mutual Mortgage Insurance Fund. The up-front MIP requires the payment of a single premium of up to 2.25 percent of the original insured principal balance of the mortgage, and annual payments of .50 percent of the remaining insured principal balance for stated periods of time that vary depending on the original principal obligation of the mortgage.

HUD's regulations at 24 CFR 203.280 state that, for mortgages in which a one-time MIP is charged, the payment shall be made within 15 days of closing. In addition, up-front MIPs under 24 CFR 203.284 and 203.285 are subject to the same 15-day requirement. *See* 24 CFR 203.284(f) and 203.285(c), incorporating 24 CFR 203.280 by cross-reference.

Since April 7, 1993, it has been mandatory for lenders to make up-front MIP payments in the single-family insurance program through an electronic system. (*See, e.g.,* Mortgagee Letter 94-25.) The one-time MIP is remitted electronically as well. (*See, e.g.,* Mortgagee Letter 96-33.) In such an environment, where the funds are transmitted within a few moments rather than by mailing, it is no longer necessary for the lender to retain the funds beyond a brief period for accounting purposes. Furthermore, there have been some instances of MIP premium monies being misused by some lenders during the 15-day period, and earlier remittance should eliminate this problem while improving the cash flow of the insurance fund.

B. This Proposed Rule

This proposed rule would amend 24 CFR 203.280 and 203.282 to reduce the remittance period for the up-front and one-time MIP in affected single-family programs from 15 calendar days to 3 business days, and to adjust the late charge provisions accordingly. Business days are Monday through Friday, excluding Federal holidays. In addition, the rule provides that in the case of refinancings, the three-day period will be counted from the date of disbursement of the mortgage proceeds rather than the loan closing.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new obligations of any kind, but only shortens the timing of an existing obligation to remit one-time and up-front mortgage insurance premiums. Because these premiums are remitted electronically, very little remittance time is actually required. This rule should impose no significant burdens on business.

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

Environmental Impact

This proposed rule does not direct, provide for assistance of loan and

mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not

impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to this rule is 14.117.

List of Subjects for 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons stated in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

Subpart B—Contract Rights and Obligations

2. Revise 24 CFR 203.280 to read as follows:

§ 203.280 One-time or up-front MIP.

(a) For mortgages for which a one-time or up-front MIP is to be charged in accordance with §§ 203.259a, 203.284, or § 203.285, the mortgagee shall, as a condition to the endorsement of the mortgage for insurance, pay to the Commissioner for the account of the

mortgagor, in a manner prescribed by the Commissioner, a premium representing the total obligation for the insuring of the mortgage by the Commissioner or the up-front portion of the total obligation, as applicable, within three business days of the date of closing, or, in the case of a refinancing transaction, within three business days from the date of disbursement of the mortgage proceeds.

(b) For purposes of this section, "business days" means Monday through Friday, exclusive of Federal holidays.

3. Revise 24 CFR 203.282 to read as follows:

§ 203.282 Mortgagee's late charge and interest.

(a) Payment of a one-time or up-front MIP is late if not received by HUD within three business days after the closing, or the disbursement of the loan funds in a refinancing transaction. Late payments shall include a late charge of four percent of the amount of the MIP.

(b) If payment of the MIP is not received by HUD within 30 days after the closing, or the disbursement of the loan funds in a refinancing transaction, the mortgagee will be charged additional late fees until payment is received at an interest rate set in conformity with the Treasury Fiscal Requirements Manual.

Dated: July 8, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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