

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 203**

[Docket No. FR-4690-F-02]

RIN 2502-AH67

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

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

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule that would have, in recognition of the increased efficiencies created by the electronic processing of payments, shortened the remittance period for mortgage insurance premiums (MIPs) from 15 calendar days to three business days (Monday through Friday, exclusive of Federal holidays) for both one-time and up-front MIPs. In response to public comment, the remittance period is set at 10 calendar days in this final rule. This final rule also, in response to public comment, delays the effective date for six months from the date of publication in the *Federal Register* to allow lenders to adapt their electronic systems to the new requirements.

DATES: *Effective Date:* October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, at (202) 708-2121 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free 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.

Section 203(c)(2) of the National Housing Act authorizes the up-front MIP, implemented at 24 CFR 203.284 (and 24 CFR 203.285 for 15-year loans), 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.

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.) Electronic submission allows for MIPs to be paid more quickly than the 15-day period allowed prior to the effective date of this rule.

B. The Notice of Proposed Rulemaking (NPRM)

The NPRM, published on August 21, 2002 (67 FR 54313), proposed amending 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 (Monday through Friday, excluding Federal holidays), and to adjust the late charge provisions accordingly. Affected single family programs include mortgages that are obligations of the Mutual Mortgage Insurance Fund and refinancings under 24 CFR 203.43(c) (see 24 CFR 203.259a). The time period was proposed to be calculated from the date of loan closing. However, in the case of refinancing, the NPRM proposed that the three-day period would be counted from the date of disbursement of the mortgage proceeds rather than the date of loan closing, in order to take into account the fact that refinancing borrowers have three days to exercise a right of rescission.

Current 24 CFR 203.284 and 285 include the remittance rules in 203.280 by cross reference (see 24 CFR 203.284(f) and 203.285(c)). The NPRM proposed to clarify this relationship by referencing 24 CFR 203.284 and 203.285 in 24 CFR 203.280.

C. This Final Rule

This final rule amends 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 10 calendar days, and to adjust the late charge provisions accordingly. While the NPRM had proposed 3 days, HUD has reconsidered that time limit in response to considerations raised by public commenters. In addition, after considering alternatives proposed by commenters, the rule provides that, for both original loans and refinancings, the 10-day remittance period will be counted from the date of disbursement of the mortgage proceeds or the date of loan closing, whichever is later. Finally, in order to accommodate the need for lending institutions to adjust their systems, HUD is delaying the effective date of this final rule for 180 days.

D. Public Comments

The public comment period closed on October 21, 2002. HUD received 24 comments on the proposed rule. Comments were received from mortgage lenders, a state housing development authority, a national association of mortgage lenders, and a national association of community banks.

Comment: Three days is an insufficient time for remittance of MIPs. All commenters made comments criticizing the three-day remittance period. Most of these commenters stated that the three-day period is not realistic or practical given actual business practices. Two commenters stated that even with the 15-day period, "we sometimes have to fund these out of our operating funds while waiting for the arrival of the checks." Four commenters stated that three days is not realistic, as the closing packages are not even back from the attorney's office within three days. Four commenters stated that the process of getting the closed loan documents from the settlement agents can take up to five days. Then, an audit is performed and checks are processed which takes another three days. One commenter stated that it believed that no lender would be able to comply with this rule, because, typically, a title company does not return closed files to lenders in a sufficient time.

Several commenters stated that the three-day rule would not be appropriate because it could result in MIPs having to be paid before the loan proceeds are disbursed. One commenter stated that a vast number of purchase loans do not close and fund all on the same date. Title Companies take anywhere from two to four days to return papers and

checks to the lenders. HUD would then be requiring those lenders to pay the UFMIP before they have even received the cash from the loan funding. Three days is not practical for all lenders. Another commenter similarly observed that in 50% of its retail loan closings, three days or more elapse between closing and disbursement of proceeds. Three commenters stated that HUD assumes that the lender has the closed loan package the day of closing, but in reality, the lender will not have the package until a minimum of one day after the closing, possibly longer. No lender should be forced into submitting the MIP until it has the closed loan package and the security instrument.

Three commenters stated that the period should be shortened to seven business days, instead of three. Another commenter stated that its up-front funds are included in closing packages that arrive in seven business days from closing regardless of transaction type.

Two commenters stated that the proposed remittance period would only work if the overall process was changed. One of these commenters suggested that three days would only work if HUD required the closing agents to electronically transfer the funds when they disburse. Another commenter stated that until the remittance process is streamlined, there should be no reduction in the 15-day period.

Response: HUD agrees in principle with the comments that three business days may be inadequate for submission of the mortgage insurance premiums. Consequently, HUD will extend the submission period from the proposed three business days to 10 calendar days. In place of the 3 business days originally proposed, this will be less disruptive to existing lender processes. HUD disagrees that the remittance process should be streamlined as a condition for this rule. In fact, the process was streamlined in 1993 to require electronic funds transfer while the 15 calendar days remittance period, which dated from prior, non-electronic paper processes, remained in effect.

Comment: Eleven commenters stated that the proposed three-day remittance period would have a significant impact on their businesses. Three commenters stated that the proposal would have a major impact on lenders and closing agents, since lenders might need to increase staff, or transfer staff, to be able to make the 3-day rule and avoid penalties. Another commenter similarly stated that a three-day remittance period would have a significant negative impact on the company. Shortening the period would require a complete revision of procedures and an increase

in expenses, which would either have to be absorbed by the company or passed on to the borrower. Two commenters stated that the short time frame would unfairly require lenders either to have to advance funds out of their own accounts or pay a penalty.

Two commenters quantified the economic impact. One commenter stated that if the rule changes from 15 to 3 days, this translates to an approximate corporate loss of \$16,000.00 monthly from payments of late fees to HUD. Another commenter stated that data shows that the commenter paid 8% in three days, 72% within 10 calendar days, 91% within 13 days and 94% within 15 calendar days. Under the proposed rule, the remaining premiums would cost the company \$656,702.

One commenter stated that the rule could be a large enough financial burden that FHA lenders could possibly re-think their business models and ultimately stop originating HUD/FHA loans.

One commenter stated that shortening the transmittal time frame would not allow lenders to properly validate data coming in from front-end systems and outside title companies.

One commenter stated that the shorter time frame would negatively impact first-time and low- and moderate-income borrowers because the three-day remittance period would reduce the number of FHA loans that lenders could originate.

Response: HUD has no way of determining the accuracy of reported expenses that would be incurred by lenders, including late fees, should the three-day remittance rule be put into effect. However, HUD does agree that the three-day submission period as proposed could require submission of the upfront MIP from the lender's corporate funds. Consequently, HUD is adopting a ten-calendar days remittance period. This longer remittance period will avoid potential economic burdens.

Comment: Ten commenters suggested alternatives to the proposed 3-day remittance period. Three commenters suggested that 5 days would be preferable. Three other commenters stated that a 10-day remittance period would meet HUD's objectives while allowing lenders to maintain a high level of accuracy, reduce refund requests and not further jeopardize the insuring process. One commenter stated that the time could feasibly be shortened to 10 calendar days or 8 business days. One commenter stated that Home Equity Conversion Mortgage (HECM) lenders should be given seven business days to remit their MIPs. One

commenter stated generally that HUD should adopt a more reasonable time period.

Response: As stated in response to other comments, HUD has agreed to adopt a 10-day remittance period. HUD believes that a 10-day remittance period is practical for lenders and will meet HUD's policy goals as stated in the NPRM. Initial premiums on HECM loans were not covered by the proposed rule, but may be addressed in a separate rulemaking.

Comment: Six commenters stated that there was increased risk for lenders with "cancelled" loans (loans that do not close because of borrower rescission).

Two commenters stated that loans that are scheduled to close do not always close. Loan companies will pay the up-front MIP from corporate funds for these "cancelled close" loans because the three-day period is too short for the cancelled status to be communicated to the company. For loans that are cancelled, the company will have to request a refund, which takes several months.

Fives commenters (including one of the above commenters) stated that with the shorter time period, lenders risk remitting funds for a loan that has cancelled. Refunds from HUD are not timely, and in some cases, are made to the applicant instead of the lender.

Response: HUD accepts the arguments of lenders that on refinances the remittance of MIP could occur on a loan where the borrower has exercised the right of rescission notwithstanding that the MIP remittance period begins following the right of rescission. However, HUD believes that ten calendar days should prove sufficient for lenders to communicate with their closing and post-closing staff that the right to rescind has been invoked by the borrower and, thus, eliminate payment of the MIP on a mortgage that has been rescinded. In addition, this final rule will start the MIP remittance period on the later of the date of loan closing or the date of disbursement of the mortgage proceeds. This change should also help prevent a conflict between the remittance of the MIP and the borrower's right of rescission.

Comment: Three commenters disagreed with the proposal in the NPRM that the beginning of the time period for remittance of the MIP for loans, except for refinancings, would be the date of loan closing.

Commenters suggested that the beginning date should be the recording of the mortgage; the actual funding of the loan; or the disbursement date of the loan proceeds, since the disbursement date is the most consistent easily

identified date representing the date amortization of the loan begins.

Response: HUD does not agree that recordation of the mortgage should start the MIP remittance period. Most lenders do not know when the mortgage is recorded and requiring entry of that date into HUD's system of records would be an unnecessary burden to the lender. HUD does agree, however, that the date of disbursement of the loan proceeds, for both purchase money mortgage and refinance transactions, would be an easily understood and recognizable trigger date for starting the remittance period and will thus adopt this suggestion as a possible alternative to the date of loan closing. The date of disbursement of the loan proceeds may occur later than the closing date in the case of refinancings. The loan disbursement date is easily identifiable on the HUD-1 settlement statement by the date of the beginning of per diem interest charges. HUD will look to that entry when auditing lenders for compliance with this revised remittance period.

HUD is modifying its data collection systems to require lenders to enter the date of disbursement (*i.e.*, the date the closing agent transfers control of the loan proceeds, at which time the borrower becomes liable for interest charges) into the system. This final rule provides that the remittance period will start on the date of closing or the date of disbursement of the mortgage proceeds, whichever is later. Once this final rule becomes effective, lenders will have to input the loan disbursement date in order to use the electronic system.

Comment: Six commenters stated that a three-day remittance period will be much more difficult for mortgage companies with decentralized offices.

Five commenters stated that it will be much more difficult to control the accuracy of mortgage insurance payments in the decentralized environment (from main office to branches), possibly leading to a need for refunds from HUD (which are slow to be paid), or additional late fees.

One commenter stated that its automated system requires a minimum of three business days to get the data into transmission form. As a nationwide lender, that commenter stated that it does not receive the necessary documents until day two or three.

Response: HUD is adopting a ten-calendar day remittance period. HUD believes that such a period will be adequate for data transmission within decentralized lender environments.

Comment: One commenter stated that, in the Commonwealth of Virginia,

settlement agents cannot disburse funds collected at closing for the MIP until after recordation of the deed of trust, which in the Commonwealth of Virginia could be two days after closing. (Virginia Code 6.1-2.13)

Response: HUD recognizes this issue and believes that the ten-day remittance rule, along with the adoption of the later of date of closing or date of disbursement of the loan proceeds as the beginning of the remittance period, accommodates the needs of lenders making FHA loans in Virginia.

Comment: One commenter commented that if the rule does go into effect, HUD should give an assurance that refunds will be handled in a timely manner. In addition, it would be helpful to have a contact person at HUD for refund issues.

Response: The adoption of a 10-day remittance period will generally eliminate the need for additional refunds that might have occurred had the rule gone into effect as proposed. Since this final rule makes no change in refunds, refunds will continue to be handled as they are currently, in accordance with the instructions on HUD's web site at http://www.hud.gov/offices/hsg/comp/premiums/at_ref.cfm.

Comment: One commenter asked, if the rule is published as proposed, that HUD impose a six-month delayed implementation time to allow lenders enough time to update systems and change processes.

Response: HUD recognizes that lenders face significant systems issues whenever their trading partners make such changes. For this reason HUD agrees that the implementation of this final rule will not take place for six months following publication of the final rule in the **Federal Register**.

Comment: One commenter stated that Home Equity Conversion Mortgage (HECM) loans should be specifically excluded from this rule in final form. This commenter stated that its understanding was that HECM loans were not intended to be covered by the rule.

Response: Initial premiums on HECM loans were not covered by the proposed rule, but may be addressed in a separate rulemaking. Since there is no indication in the rule that HECM loans are covered, it is not necessary to explicitly exclude them.

Comment: One commenter stated that HUD should leave the 15-day rule in effect, or simply impose a penalty on those lenders that HUD has deemed to have abused the rule.

Response: The purpose of this rule is not to penalize lenders or adopt harsher measures. Rather, HUD seeks to both

clarify when the remittance period begins, and to revise its procedures to reflect electronic MIP remittance rather than the mailing of checks to a lock-box upon which the original 15-calendar day period was based. As to those few lenders that have abused the existing 15-calendar day remittance period, HUD prefers to prevent such abuse rather than attempt to take action after discovering the abuse. Therefore, HUD declines to adopt the suggested approach.

In addition to these comments, one commenter supported the overall goals of the rule. No response to this comment is required.

Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0423. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because of the streamlining of operations and the changes made by this final rule to accommodate current business practices, this final imposes no significant burdens on business.

Environmental Impact

This final 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 final 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 final 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 final rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of 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.

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 10 calendar days after the date of

loan closing or within 10 calendar days after the date of disbursement of the mortgage proceeds, whichever is later.

■ 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 10 calendar days after the date of loan closing or within 10 calendar days after the date of disbursement of the mortgage proceeds, whichever is later. 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 date of loan closing or within 30 calendar days after the date of disbursement of the mortgage proceeds, whichever is later, 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: April 4, 2005.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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