

CHAPTER 4. FEES AND CHARGES AFTER ENDORSEMENT

4-1 ACCEPTABLE FEES AND CHARGES - GENERAL (24 CFR 203.552). HUD regulations specify that the mortgagee may collect "reasonable and customary" fees and charges from the mortgagor after the mortgage is insured and as authorized by HUD.

A. Fee Basis. The basic rule governing all the amounts shown in this chapter that may be charged for a service is that all fees must be:

1. "reasonable and customary" for that area of the country; and
2. based on actual cost of the work performed (including actual out-of-pocket expenses); and
3. within the maximum amount allowed by HUD.

NOTE: Under no circumstances may a post-endorsement fee or charge be based upon a percentage of either the face amount or the unpaid principal balance of the mortgage.

B. Fee Regulators. Services for which a fee may be assessed and the amounts that may be collected from mortgagors are either established by HUD regulations, HUD Headquarters, HUD Regional Offices and/or HUD Field Offices having jurisdiction over the mortgage and in accordance with the Federal National Mortgage Association (FEMA) fee schedules. (See Paragraph 4-8.)

NOTE: A mortgagee may be in violation of HUD regulations should it be collecting a fee (regardless of when the fee is actually collected) for:

1. a service which is not specifically authorized in Paragraph 4-1C; or

2. a service not authorized in advance by one of the fee regulators above.

3. charging a fee that does not comply with the rule stated in Paragraph 4-1A.

4.a service for which a fee is prohibited

(Paragraph
4-12).

C.Services For Which Charges May Be Assessed. A "reasonable and customary" fee (determined in accordance with Paragraph 4-1A) may be assessed for the following services:

1.late charges as set forth in Paragraph 4-2; (Established by the security instrument).

2.processing and reprocessing checks in accordance with Paragraph 4-3 which have been returned as uncollectible; (Established by HUD Regional Offices).

3.processing a change of ownership by assumption in accordance with Paragraph 4-4; (Established by HUD Headquarters).

4.processing a change of ownership involving review of the assumptor's credit, with or without release of the original mortgagor from liability in accordance with Paragraph 4-4; (Established by HUD Headquarters).

5.substitution of hazard insurance policies at a time other than at the expiration of an existing policy in accordance with Paragraph 4-5; (Established by HUD Regional Offices).

6.modification (recast) of the mortgage involving formal, recorded documents in accordance with Paragraph 4-6; (Established by the local HUD Field Offices).

7.processing partial releases of the security in accordance with Paragraph 4-7; (Established by the local HUD Field Offices).

8.attorney and trustee fees associated with mortgagor reinstatement in accordance with Paragraph 4-8A; (Established by the Federal National Mortgage Association (FNMA) Schedule of Standard Attorney's and Trustee's Fees). The Department considers the FNMA fee schedule to be reasonable and customary.

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NOTE:allowable attorney fees with respect to Claims for Insurance Benefits are established by Headquarters.

9.annual service charges in accordance with Paragraph 4-9; (Established by HUD Headquarters).

10. trustee and recording fees associated with satisfaction referred to in Paragraph 4-10; (Established by the local HUD Field Offices).

11. property inspections and preservation expenses as referred to in Paragraph 4-11; (Established by Regional HUD Offices).

12. FAXing of payoff statement, upon request, (Established by HUD Headquarters. See Paragraph 4-12C2.)

* D. Services For Which Charges May Be Assessed After Established Number Of Times Has Been Exhausted. HUD has established the number of times a service can be provided at no charge to the mortgagor. After the established number of times has been exhausted, each time a service is performed, the cost can be charges to the mortgagor. The following services with established fees are considered reasonable and customary for all sections of the country.

1. Providing a copy of the mortgage or deed of trust: if the copy is a duplicate of what had already been provided to the mortgagor, a maximum fee of \$10 is allowable.

2. Providing a copy of the mortgage note: if the copy is a duplicate of what has already been provided to the mortgagor, a maximum fee of \$10 is allowable.

3. Providing a copy of the settlement statement, gift letters and other documents: a maximum fee of \$10 is allowable.

4. Providing a new amortization schedule other than the schedule provided at closing: a maximum fee of \$15 is allowable.

5. Incorporating a borrower's name change into the servicer's loan system: since this service is

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considered a routine servicing function, no fee is approved.

6. Providing payoff statements: no charge may be made for the first two such statements provided per calendar year; the mortgagee may charge \$10 for providing each additional statement requested.

7. Faxing any payoff statement (upon request of mortgagor): a maximum fee of \$5 is allowable.

8. Providing replacement coupon books: a maximum fee of \$5 is allowable.

9.Re-analyzing escrow accounts and providing new coupon books: since these are normal servicing functions no fee is allowable.

10.Providing a payment history to the mortgagor (other than the current year and one prior year): a maximum fee of \$5 is allowable.

11.Verifying the mortgage to prospective creditor: this covers requests from other lenders to verify the status of an existing loan (typically in connection with a refinance application). A \$20 fee is allowed as long as the mortgagor has given the new lender a written authorization for the release of the information to the new lender and for the fee.

12.Providing duplicate year-end statements: a maximum fee of \$5 is allowable.

13.Processing and/or reprocessing of checks returned as uncollectible: if a State has a set fee, a mortgagee may charge up to the maximum amount; otherwise, the maximum allowable fee is established by HUD Regional Offices. *

4-2LATE CHARGES (24 CFR 203.25). Assessment of a late charge is intended only to reimburse the mortgagee for the added expense of collection activities and to serve as motivation to the mortgagor to make timely payments (also, see Paragraph 7-7F).

A.Date Late Charge May Be Assessed. HUD regulations 24 CFR 203.25 and the security instrument provide the mortgagee with the option of collecting a late charge if a payment is received by the mortgagor more than 15

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days after the due date, the first day of the month, (i.e., the payment is received by the mortgagee after the 16th of the month in which it is due).

EXAMPLE: Installment Due Date	=	March 1
Mortgage Is Delinquent	=	March 2
15th Day After Installment Due Date;	=	March 16
Earliest Date Late Charge May Be Assessed	=	March 17

NOTE:A late charge may not be assessed against a Payment

UNTIL the 17th of the month which is the 16th day after the installment due date.

B.Mortgagee's Option To Assess Late Charges. HUD does not require that a mortgagee enforce the late charge provision of the security instrument. However, if the mortgagee chooses to assess a late fee on a delinquent payment, HUD expects it to prudently exercise this option and the late fee assessment must conform to the requirements set forth under Paragraph 4-2.

C.Percentage That May Be Assessed (24 CFR 203.25).

1.Amount. The actual percentage of the monthly payment that the mortgagee may collect is governed by the regulations, security instrument, and state law.

a.Mortgages Insured Before January 1, 1977. Security instruments of mortgages insured before January 1, 1977, provide for a late charge of up to two percent of each payment in arrears.

b.HUD regulations (24 CFR 203.25) provide for a maximum charge of four percent of each payment that is in arrears. Older mortgages using post-1976 HUD forms generally provide for a four percent charge in the security instrument. More recent forms prepared by private sources to conform to current HUD requirements provide for the late charge in the note; HUD does not suggest any amount other than one that conforms to the regulations. In all cases, the late charge stated in the note or security instrument

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shall prevail unless it exceeds four percent.

NOTE:If a mortgage is insured under Section 235, the late charge may be assessed against the mortgagor's portion of the monthly payment only.

D. Computing Late Charges. Late charges are computed on
* the full monthly payment (Principal, interest, taxes
and insurance) due from the mortgagor in the month of *
computation. Previously uncollected late charges may not be
added to the monthly payment due when computing the present late
charge. Multiple delinquent payments are considered separately,
with a late charge computed on each individual monthly payment.

NOTE:When the mortgage is insured under Section 235, OR the mortgage is subject to a buy-down, only the mortgagor's portion of the monthly payment is used when computing a

late charge.

E.Advance Demand Notice (24 CFR 203.554). Before a mortgagee may enforce the obligation to pay a late charge or before the mortgagee may return a mortgage payment to the mortgagor for failing to include the late charge amount, the mortgagor must have been provided an advance notice (see Paragraph 4-2F). This advance notice may be in the form of:

1.a monthly payment coupon issued to accompany the mortgagor's monthly payment; or

2.an individual monthly billing statement which was issued to accompany the mortgagor's monthly payment.

3.a written demand to the mortgagor to pay the late charge.

F.Content Of Advance Notice. In order to comply with HUD's requirement, the advance notice sent to the mortgagor must provide the following information:

1.the due date of the payment;

2.the amount of the regular monthly payment;

3.the date on which the late charge will be imposed; and

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4.the amount of the late charge (or the full amount now due which consists of the regular monthly payment plus the late charge amount).

G.Application Of The Late Payment (24 CFR 203.554). If a monthly payment is received on or after the 17th of the month in which it is due and does not include the late charge, the late charge may not be deducted from that monthly payment. That payment must be applied in the order set forth in 24 CFR 203.24 as follows:

1.to MIP, if any;

2.to other escrow items;

3.to interest;

4.to principal; and

5.to late charges.

H.Application Of Subsequent Payments To Unpaid Late Chargers) (24 CFR 203.554(b)). Once the demand notice has been sent to the

mortgagor, if the late charge is not included in the subsequent payment, the mortgagee may treat that payment, or any subsequent payment, in accordance with HUD's partial payment rules. (See Paragraph 7-9.)

I.Waiver Of Late Charges. Mortgagees are expected to exercise good judgment when levying late charges. When the reason for the late payment is due to the mortgagee's failure to perform or due to circumstances obviously beyond the mortgagor's control, mortgagees are expected to waive the late charges.

J.Default/Foreclosure Due To Unpaid Late Charge (24 CFR 203.554(a)). A mortgage is technically in default if a late charge is not paid within 30 days after it becomes due. However, foreclosure action may not be initiated on a HUD-insured mortgage when the only delinquency is:

- 1.unpaid late charges that are due on the account; and/or
- 2.unpaid monthly payments that remain unpaid because the mortgagee did not comply with the partial payment rule and refused to accept a subsequent

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payment which was insufficient to pay the full amount due including late charges from the previous month or months.

K.Surplus Escrow Application To Delinquency (24 CFR 203.550(b)). Should a delinquency exist (due to unpaid late charges and/or monthly payments) and an escrow surplus is discovered when performing the annual escrow account analysis, this escrow surplus may be applied to offset all or a portion of the delinquency. Application of surplus escrow funds in this manner shall be considered as a cash refund to the mortgagor in accordance with Paragraph 2-8A. However, this is a method of last resort; a mortgagee should first use the mechanism provided in the regulations for enforcement of late charges as discussed in H. above.

A letter shall be sent to the mortgagor explaining the application of the surplus escrow funds if all the surplus is used toward the delinquency. If only a portion of the escrow surplus is needed to cure the delinquency, the letter shall give the mortgagor the opportunity to select the method for adjusting the remaining portion of the escrow surplus as shown under Paragraph 2-4D.

4-3UNCOLLECTIBLE CHECKS. Where a mortgagor's bank policy permits a check must be presented for payment and returned unpaid twice before it can be deemed "uncollectible". When the check is returned to the

mortgagee unpaid the second time, a fee may be assessed on the returned check.

4-4 ASSUMPTIONS.

A. Maximum Allowable Fees. Fees for processing assumptions must be based on the mortgagee's actual costs and cannot exceed the maximum amount authorized in this Handbook. (See Chapter 6 for requirements concerning assumptions.) The maximum amounts allowed by HUD for processing various types of assumption are as follows:

1. "Simple" Assumptions. Where no credit checks are required, the maximum fee that may be charged is \$125.00.

2. Assumption With A Release of Liability. Where a credit check is required, the maximum fee that may be charged is \$500.00.

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3. Section 235 Assumptions.

a. Assumption Without A Release of Liability and Where Assistance Is Requested But Disapproved. Where no credit checks are required and the mortgagor applies for assistance but is not considered eligible for Section 235 subsidy the maximum fee that may be charged is \$140.00.

b. Assumption Without A Release of Liability and Where Assistance Is Requested and Approved. Where a credit check is not required and the Section 235 subsidy will be terminated, the maximum fee that may be charged is \$185.00.

c. Assumption With A Release of Liability and Where Assistance Is Not Requested or Approved. Where a credit check is required and the Section 235 subsidy will be terminated, the maximum fee that may be charged is \$500.00.

d. Assumption With A Release of Liability and Assistance Is To Continue. Where a credit check is required and the Section 235 subsidy will continue on behalf of the assumptor, the maximum fee that may be charged is \$500.00.

4. Section 143 of the Internal Revenue Code of 1986. HUD does not permit additional fees for ensuring that mortgage revenue bond mortgages, when assumed, comply with

requirements of the subject Code.

B.Allowable Charges Separate From Processing Fee. Additional fees that may be assessed for items in connection with an assumption which are not included in the processing fee referred to in Paragraph 4-4A are as follows:

1.Credit Reports and Verification of Employment. Fees or charges for such things as credit reports and verification of employment that must be collected by the mortgagee and passed through, may be assessed in addition to the amounts stated in Paragraph 4-4A for assumption processing fees. These fees are non-refundable.

2.Execution of Release Form. Should a co-mortgagor or former mortgagor request that he/she be provided an executed release of liability form (i.e., Form HUD-92210.1, Approval of Purchaser and Release of

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Seller) (Appendix 7) separate and apart from the actual processing of the creditworthiness review (with or without Section 235 subsidy involvement), the maximum fee that may be charged for the preparation and execution of this additional document is \$45.00.

NOTE:A Form HUD-92210.1, prepared at the same time a creditworthiness review is performed, is included in the maximum \$500 fee. An additional fee of \$45.00 may only be assessed should a co-mortgagor (or a previous assumptor) come in at a later date and ask for an executed Form HUD-92210.1 as evidence that he/she also had been released during a previous creditworthiness review.

C.Circumstances Governing Refund Of Processing Fees. In the event a mortgage is not assumed, processing fee refunds are to be made in accordance with the following:

1.if the assumptor's credit is rejected and HUD's consent to release from liability is denied, the entire processing fee may be retained by the mortgagee;

2.if the assumptor's credit is approved but the closing of the sale does not occur for reasons beyond the control of the assumptor, the mortgagee is to refund one-half of the collected fee.

4-5SUBSTITUTION 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, the mortgagee may charge a reasonable and customary fee (set by the Regional Office having jurisdiction over the mortgage) for handling the replacement policy.

NOTE: This does not apply to an assumption where the new mortgagor prefers to use a company and/or agent other than the one used by the former mortgagor, even if it does not fall within the normal time for renewing the policy on that particular mortgaged property.

4-6 MODIFICATION (RECAST) OF MORTGAGES. Where a mortgagee grants relief to a defaulting mortgagor by modifying (or recasting) the mortgage, a fee, considered by the local HUD Field Office to be "reasonable and customary" for that area

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of the country, may be assessed for processing and recording the modification.

4-7 PARTIAL RELEASE OF SECURITY. Costs involved in processing partial releases of the security (whether as a result of condemnation or of voluntary action by the mortgagor) are the mortgagor's responsibility and may be passed on to the mortgagor. However, any costs passed on to the mortgagor must be in an amount that is considered by the local HUD Field Office to be "reasonable and customary" for that service in that area of the country.

4-8 ATTORNEY'S AND TRUSTEE'S FEES - MORTGAGOR REINSTATEMENT
* (24 CFR 203.552 (a)(9)). When a mortgage is referred to foreclosure and is later reinstated, and where bankruptcy related services occur, mortgagees can collect fees from the mortgagor in accordance with the Federal National Mortgage Association (FNMA) Schedule of Standard Attorney's and Trustee's Fees in effect on the date the legal action is instituted. The Department considers the FNMA fee schedules to be reasonable and customary.

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A. Legal fees may be collected from the mortgagor only when the mortgagee has made its "decision to foreclose" and has instructed the attorney to initiate legal action.

NOTE: It is HUD's position that, if the attorney is required to ask the mortgagee's permission to proceed further at any stage of the foreclosure once the case is referred to the attorney, the "decision to foreclose" has not been made by the mortgagee.

Where the "decision to foreclose" has not been made, no legal fee may be passed on to the mortgagor for any

work that was performed prior to the mortgagee making its "decision to foreclose".

B.The amount passed on to the mortgagor must be the "actual amount incurred" by the mortgagee and must be in accordance with the FNMA fee schedules. In order to pass on this cost, neither the attorney nor the trustee performing the service can be a salaried member of the mortgagee's and/or servicer's staff.

C.Mortgagees shall not charge mortgagors an administrative and/or reinstatement fee in connection with the reinstatement of their mortgage.

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NOTE:Attorney and trustee fees associated with filing a claim for insurance benefits when a mortgage is not reinstated are discussed in Paragraph 9-5C.

4-9ANNUAL SERVICE CHARGES (24 CFR 203.23(c)). For mortgages insured as the result of an application submitted before July 17, 1961, with an original principal amount of no more than \$9,000, the mortgagee may collect a monthly service charge of no more than one-half of one percent per annum of the average unpaid principal balance if provided for in the security instrument.

4-10TRUSTEE'S AND RECORDING FEES FOR SATISFACTIONS (24 CFR 203.552).

A.Trustee's Fee (24 CFR 203.552(a)(11)). If the security instrument specifically provides for the payment of a trustee's fee for the execution of a satisfaction, release or trustee's deed when the debt is paid in full, the mortgagee may charge a fee for that service. However, the fee must be an amount that is considered by the local HUD Field Office to be "reasonable and customary" for that service in that area of the country.

B.Recording Fee (24 CFR 203.552(a)(12)(iv)). In those states where a mortgagee is not required by law to record the satisfaction, the mortgagee may charge a fee. However, the fee must be one that is considered by the local HUD Field Office to be "reasonable and customary" for that service in that area of the country. (See Paragraph 4-12C for satisfactions required by State law.)

4-11PROPERTY INSPECTIONS/PRESERVATION (24 CFR 203.377). Mortgagees are charged with the responsibility of taking reasonable action to protect and preserve vacant and abandoned properties until foreclosure can be completed and title conveyed to HUD in accordance with HUD regulations. In the event of reinstatement, the mortgagee may pass on the costs of such action.

A.If A Mortgage Is Reinstated. Costs of property inspections and/or preservation may be recovered from the mortgagor provided all of the following conditions are met:

1.the mortgage is reinstated;

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2.the fee is not inconsistent with HUD's requirements;

3.the fee is not inconsistent with state law;

4.the fee is not inconsistent with the security instruments;

and

5.the costs are considered by the Regional Office to be reasonable and customary" for such services.

B.If A Claim Is Filed With HUD. The mortgagee shall be reimbursed in accordance with HUD claims policies for costs of property inspections and/or preservation. See Chapter 9, Paragraph 9-9A2.

4-12PROHIBITED FEES AND CHARGES (24 CFR 203.552(a)(12)). There are some services a mortgagee may not charge the mortgagor. These services are listed below:

Fees and Charges Specifically Prohibited by HUD Regulations (24 CFR 203.552(a)(12)). Fees and charges listed below are prohibited:

A.Charges For Servicing Activities. Mortgagees may not charge mortgagors for the cost of telephone calls, telegrams, personal visits with the mortgagor, or other activities that are normally considered a part of a prudent mortgagee's servicing activity.

B.Fees For Tax Services. The mortgagee's use of an independent contractor such as a tax service to furnish tax data and information necessary to pay property taxes and in some circumstances to make the payments on behalf of the mortgagee.

C."Satisfaction", "Reconveyance", Or "Termination" Fees. Except as provided for in Paragraph 4-10, no fee may be collected for:

1.preparing and providing evidence of satisfaction, reconveyance or termination of the mortgage;

2.providing information essential to the satisfaction, such as preparing a payoff statement; Although mortgagees may not charge for the payoff statement, if FAXing of the statement "is requested," a fee of \$5 is permitted. (See Paragraph 4-1C12)

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3.recording the satisfaction of the mortgage in states where recordation is the responsibility of the mortgagee.

D.Attorney's Fees. No charge may be made for any legal service provided by an attorney who is a salaried member of the mortgagee's and/or servicer's staff.

E.Trustee's Fees. No charge may be made for any service performed by a trustee who is a salaried member of the mortgagee's and/or servicer's staff.

F.Fees Based On Fee Amount Or Unpaid Balance (24 CFR 203.552(b)). No fee or charge shall be based on a percentage of either the face amount of the mortgage or the unpaid principal balance due on the mortgage.

4-13OTHER FEES AND CHARGES (24 CFR 203.552(12)). The local HUD Office or Headquarters may be asked to rule on any fee or charge or unusual service not specifically mentioned in this Handbook. The determination will be based on what is reasonable and customary in the area.

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