CHAPTER 5. PREPAYMENTS - TERMINATIONS - MIP REFUNDS AND DISTRIBUTIVE SHARES

5-1 GENERAL.

A. Prepayments (24 CFR 203.22(b) and 203.558(a)). HUD regulations 24 CFR 203.22(b) provides for the prepayment of HUD-insured mortgages either in part or in full without penalty. HUD regulations 24 CFR 203.558 permit the mortgagee to accept prepayment in any amount at any time, so long as interest is calculated on the actual unpaid principal balance of the debt.

B. Voluntary Termination Of Mortgage Insurance (24 CFR 203.295). Mortgage insurance may be voluntarily terminated at any time as long as both the mortgagor and the mortgagee agree to the termination. However, mortgagors are to be made fully aware that by electing to terminate the mortgage insurance, they are also electing to forego all future HUD assistance and relief measures to which they were previously entitled.

C. Disclosure Statements (24 CFR 203.9 and 203.558(f)). Section 329 of the Cranston-Gonzalez National Affordable Housing Act requires that effective August 22, 1991, 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.

The annual Disclosure Statement provided by the mortgagee must contain the amount outstanding under the mortgage which includes the total of principal, interest, penalties and late charges and advances, information which is generally available in automated systems. Also, any other charges related to the loan and foreclosure or bankruptcy expenses incurred to date under the mortgage must be included in the amount provided on the disclosure statement. Because this amount could change after the date of the statement, the disclosure is supplemented by a statement which indicates that the amount provided is subject to

further accounting adjustments along with the note that any payments received or advances made to the account before the stated expiration date will change the amount provided.

The Disclosure Statements must be used in the formats shown in

Appendices 8 (A and B). The basic disclosure language is necessary because it pertains to the mortgagee's rights under the mortgage. The mortgagee must insert the appropriate mortgagee option language and the appropriate date for mortgages insured before and after August 2, 1985.

Mortgagees may use a checklist arrangement for the inserts and options on each form. But, mortgagees must be certain to check the appropriate boxes to avoid any confusion on the part of the mortgagor.

NOTE: Mortgagees which will accept a prepayment with or without advance notice and/or accept payment on other than the installment due date and not charge any additional interest, may supplement the language, as appropriate, to inform mortgagors of its practice and its legal rights as reflected in the mortgage instrument. None of the HUD-required language should be deleted.

The mortgagee may provide the annual disclosure statement along with the end of year statement (24 CFR 203.508(c)), subject to any IRS prohibitions. It is not required that the mortgagee provide the annual disclosure at that specific time. The disclosure statement can be inserted in the same envelope with the end of year statement, but it must be a separate
* document. A perforated attachment to the annual 1098 Statement which highlights and delineates clearly the prepayment disclosure form from the 1098 would also be acceptable.
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5-2 PREPAYMENT IN FULL (24 CFR 203.558).

A.Mortgages Insured Prior To August 2, 1985 (24 CFR 203.558(b)). The security instrument provides that the mortgagor may prepay the mortgage in full on the first day of any month in the term of the mortgage (i.e., on an installment due date) without penalty provided the mortgagee receives 30-day prior written notice of intent to prepay.

1.Mortgagee's Options. If a prepayment is offered on other than an installment due date, the mortgagee has the option of:

a.refusing to accept the prepayment until the first day of the month following expiration of the 30-day notice period as provided in the mortgage; or

b. requiring the payment of interest to that date, but only if the mortgagee so advises the mortgagor in a form approved by HUD (an acceptable format is shown in Appendix 8(C)) in response to the mortgagor's inquiry or request for payoff figures, or upon receipt of the prepayment amount from the mortgagor.

NOTE: The decision to require a 30-day prepayment notice is up to the mortgagee. HUD regulations (24 CFR 203.558(a)) permit the mortgagee to accept a prepayment any time in any amount as long as interest on the debt is calculated on the actual unpaid principal balance of the mortgage.

2. Interest Calculations (24 CFR 203.558(a)). HUD regulations require that interest on the debt be calculated on the actual unpaid principal balance of the mortgage.

Examples are given below as to how to determine the date to which a mortgagee is entitled to collect interest in connection with a prepayment.

a. EXAMPLE #1: Notice and Prepayment Required According To The Terms Of The Mortgage.

(1) Written notice of intent to prepay is received by the mortgagee on October 20;

(2) Mortgagee immediately furnishes mortgage balance data and notice of its payoff policy to the mortgagor (and his/her agent);

(3) 30 days advance notice runs from October 20 to November 17; (See Paragraph 5-2D, below for calculations)

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(4) Next installment due date (after 30-day notice period expires) is December 1;

(5) Payoff is received on November 10;

(6) Mortgagee has the privilege of:

(a)refusing to accept the prepayment until December 1; or

(b)accepting the payment and charging interest to December 1.

b. EXAMPLE #2: Written Notice Given Less Than 30 Days Before Prepayment AND Mortgagee Fails To Respond To Mortgagor With Prepayment Policy.

(1)Written notice of intent to prepay was received by the mortgagee on January 15;

(2)Mortgagee failed to (or chose not to) advise mortgagor and his or her agent of its prepayment policy and the procedures which must be followed;

(3)Payoff was received on February 1;

(4)Mortgagee must accept the prepayment on February 1 as the required disclosure was not sent to the mortgagor. (Interest may only be charged to February 1).

c. EXAMPLE #3: No Written Notice Given To Indicate Mortgagor's Intention To Prepay.

(1)April 15 mortgagor tendered payment in full--without giving the mortgagee prior written notice of intent to prepay;

(2)April 15 would be considered the date written notice of intent to prepay was received;

(3)Mortgagee would have the option of:

(a)responding to the mortgagor's action (i.e., the tender of the payment in full) with a written statement advising of its prepayment policy--this would enable the mortgagee to either:

(i)defer the acceptance of the prepayment until June 1; or

(ii)accept the payment and charge interest through June 1;

(b)accept the prepayment on April 15 (the date the payoff was tendered by the mortgagor)--this would limit the collection of interest to April 15.

3.Non-disclosure Penalty. Any mortgagee that fails to meet the disclosure requirements shown in Paragraph 5-2C below must forfeit the interest collected for any period after the date the prepayment is received.

B.Mortgages Insured On Or After August 2, 1985 (24 CFR 203.558(c)). Mortgages insured on or after August 2, 1985, shall not require 30 days advance notice of prepayment even though the mortgage security instrument states otherwise.

Mortgagors may, without penalty, prepay the mortgage in full on the first of any month in the mortgage term without giving the mortgagee any notice (oral or written) of intent, regardless of what the mortgage security instrument may state.

1.Mortgagee's Options. 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 figures, or upon receipt of the prepayment amount from the mortgagor.

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

C.Disclosure. When a mortgagee receives information indicating that a mortgagor intends to prepay the insured mortgage in full on a specific date in the future, the mortgagee must disclose the procedures that must be followed with respect to the payoff and must explain how the amount of the prepayment has been determined. Otherwise, the mortgagee must forfeit any interest collected after the date of prepayment.

This disclosure must include, but need not be limited to, an explanation pointing out that:

1.unlike principal (which is paid in the current month's mortgage payment), interest earned by the mortgagee the previous month must be paid in the next month's mortgage payment since the interest must be earned by the mortgagee before it is owed by the mortgagor; and

2.the interest being charged to the next installment due date with regard to prepayments is in fact interest that was earned the previous month and has yet to be paid by the mortgagor.

NOTE:A copy of the payoff statement and the disclosure notice must be provided to the mortgagor directly even though the mortgagee is dealing with an agent of the mortgagor (such as a real estate agent, attorney, broker, seller, title company, escrow agent, etc.).

D.Effective Dates Of The Notice Of Intent And The Prepayment Amount.

The effective date of the "Notice of Intent" to prepay is considered to be the date the mortgagee's records indicate the "Notice" was received by the mortgage company (regardless of what office in that company

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actually received it) unless the mortgagor can produce documentation evidencing the "Notice" was received earlier. The 30-day advance notice period begins on the date of delivery to the mortgage company through the next 29 consecutive calendar days.

E.When "Installment Due Date" Falls On A Non-Work Day (24 CFR 203.558(d)). When the installment due date (i.e., the first day of the month) falls on a non-work day, the mortgagor's Notice of

Intent to prepay and the receipt of the prepayment amount shall be considered timely if received on the next working day.

F.Expiration Of Notice Of Intent. Once received, a mortgagor's Notice of Intent to prepay shall be considered as having met the mortgagee's 30-day advance notice requirement for a minimum of 90 calendar days after receipt.

G.Escrow Balance Returned To Mortgagor. When the mortgage insurance is terminated without payment of a claim for insurance benefits (i.e., payment in full) the remaining funds held in escrow for the payment of taxes and hazard insurance shall be
* released to the mortgagor promptly (i.e., no later than 30 calendar days after the payoff).
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EXCEPTION:An analysis must be performed in accordance with Paragraph 10-20D3 on all Section 235 prepayments in full prior to refunding any escrow money to the mortgagors.

H.Section 235 Mortgages. In addition to the other requirements cited under Paragraph 5-2, for all Section 235 mortgages that are prepaid in full, the following requirements apply:

1.mortgagees must perform an analysis in accordance with Paragraph 10-20D3 prior to refunding any escrow money to the mortgagor as stated in the "Exception" cited in the preceding paragraph; and

2.mortgagees must determine in accordance with the instructions outlined in Chapter 11 if the mortgage is insured pursuant to a firm commitment issued after May 27, 1981 as to whether;

a.the prepayment has triggered the recapture provision in connection with HUD's Section 235 mortgage on the property; and

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b.the appropriate action has been taken as required by Chapter 11.

5-3PARTIAL PREPAYMENT (24 CFR 203.558). The language cited in Paragraphs 5-1 and 5-2 apply to partial prepayments as well as prepayments in full. However, the application of partial prepayments varies from that of applying prepayments in full.

A.Acceptable Methods Of Applying Partial Prepayments. Partial prepayments may be applied in any of the following ways, based on the method agreed upon by the mortgagee and the mortgagor. The advantage of each method is also given below.

1. Making Advance Full Monthly Payments. The mortgagor may make one or more full monthly payments before they come due. The advantage to the mortgagor applying a partial prepayment in this manner is that should he/she encounter financial difficulty in the future, this would allow him/her to miss an equal number of installments without creating a mortgage default or incurring a late charge.

2. Applying Additional Payments Toward Reducing Principal and Future Monthly Payments. By applying additional payments to reduce the unpaid principal balance, the new balance may be reamortized over the remaining term of the mortgage and the mortgagor's future payments will be reduced accordingly. A modification agreement may be necessary to accomplish this, and the mortgagor must receive formal notification of the mortgagee's willingness to accept the reduced payments.

EXCEPTION: This method of application cannot be used with mortgages insured under Section 235 unless the assistance payments are recomputed as described in Paragraph 10-12. This method of application will benefit the mortgagor in the future as it would result in the following:

a. the mortgagor making smaller mortgage payments;

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b. the acceleration of the maturity of the mortgage;

c. the reduction in the amount of interest paid over the term of the mortgage;

d. affecting the manner in which mortgage payments are applied;

e. interest would be recomputed on the actual unpaid principal balance, making the principal portion larger and the interest portion smaller; and

f. as the original amortization schedule would no longer apply, a new amortization schedule would be required.

B. Effects On Mortgage Insurance Premiums (24 CFR 203.261). Regardless of any partial prepayments, delinquent payments, agreements to postpone payments or agreements to recast the mortgage, the MIP collected must follow the original payment schedule of the mortgage established at the time it was insured.

5-4TERMINATIONS. When insurance is terminated without a claim for mortgage insurance benefits, the mortgagee must submit Form HUD-27050-A, Mortgage Insurance Termination (Appendix 9) or its tape equivalent to report the termination (24 CFR 203.318).

A.Submit Form HUD-27050-A or its tape equivalent within 15 calendar days whenever:

1.the mortgage is paid-in-full, either at or before maturity; (24 CFR 203.316)

2.the mortgagee and mortgagor mutually agree to voluntary termination of the mortgage insurance (24 CFR 203.317); or

3.the mortgagee has acquired title to the property but decides not to convey title to HUD and submit a claim (24 CFR 203.315).

B.Magnetic Tape Submission. If a mortgagee typically terminated 50 or more mortgages a month, HUD encourages

submitting the data from Form HUD-27050-A on magnetic tape.

1.The data must be complete for each mortgage and must conform to HUD data input formats. Tapes should be sent to:

Department of HUD
Computer Management Division
Room 4135
451 7th Street, SW
Washington, DC 20410

2.HUD accepts no responsibility for errors or the correction of errors. HUD will return to the mortgagee a report of unreconcilable errors.

3.Mortgagees may obtain additional information about tape submissions from:

Department of HUD
Insurance Operations Division
Systems Management Branch
Room 2234
451 Seventh Street, SW
Washington, DC 20410

*   C. HUD's Reliance On Termination Data. It is very important that the mortgagee use the correct case number and the current mortgagor name and current mailing address when submitting the termination of mortgage. HUD relies directly on this data to locate and pay MIP premium refunds and/or distributive shares.

D.Compute the pro rated MIP due if a "periodic" premium was paid. (24 CFR 203.319) The additional premium, if any, should be included in the next monthly premium remittance. *

5-5 MIP REFUNDS (24 CFR 203.283).

HUD will refund any portion of the "Up-front" premium that it did not earn when the mortgage insurance is terminated without a claim for mortgage insurance benefits. (See Appendix 10, Homeowner's Fact Sheet and Appendix 11, Application for Premium Refund or Distributive Share)

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*   A.   The FHA Commissioner reviews the annual audit of FHA's Mutual Mortgage Insurance Fund and determines how much premium to charge for new loans and how much to refund (the rate at which the "up-front" premiums is earned) when loans are terminated.

B.To compute the Premium Refund, obtain information on the MIP that should have been paid and the first payment date from the borrower's closing documents, the mortgage instrument, the servicing mortgagee or from corrected Statement of Accounts that were received that reflect adjustments to under and over payments. Use this information to complete the following steps:

1. List the "up-front" MIP amount: $_________

2. Determines the period of insurance in months: _________

3. Select the premium factor (See Appendix 10A) by using the period of insurance in Step 2. _________

4. Compute the premium refund amount by multiplying line 1 times line 3. $=========   *

NOTE:The period of insurance begins when the mortgage starts to amortize, i.e., 1 month prior to the first payment due date of the mortgage, and ends at the end of the month in which the mortgage is paid-in-full, assumed, or refinanced. For example, a mortgage with a first payment due of April 1, 1991, that was paid-off on January 15, 1993, has a period of insurance of 23 months (March 1991 - January 1993).

No premium refund remains for mortgagors with a period of insurance equal to or greater than 84 months.

* C. Notification To Mortgagors. Whenever a mortgage that is an obligation of the Mutual Mortgage Insurance Fund is originated or terminated without a claim for mortgage insurance benefits, the mortgage must notify the mortgagor of the possibility of eligibility for a premium refund. (Appendix 10 is FHA Homeowners' Fact Sheet that may be used for this purpose.)

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the mortgagor of the possibility of eligibility for a premium refund. (Appendix 10 is FHA Homeowners' Fact Sheet that may be used for this purpose.)

D.Assumptions. When a mortgage is assumed, the insurance continues in force; there is no refund of unearned premium. If an "up-front" MIP was financed as part of the original transaction, the MIP remains a part of the unpaid balance of the assumed mortgage. If the "up-front" MIP was paid in full at closing by the original mortgagor, the assumptor gains the benefit of that payment unless negotiated otherwise by the seller and the purchaser. HUD will not be a party to this negotiation.
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5-6DISTRIBUTIVE SHARES. HUD may also pay Distributive Shares under certain conditions when mortgage insurance is terminated either at or before maturity (24 CFR 203.423) on mortgages that are obligations of the Mutual Mortgage Insurance Fund (i.e., most mortgages insured under Section 203 and some mortgages insured under other sections.)

When insurance of one of these mortgages is terminated without a claim for mortgage insurance benefits, the owner of the property at time of termination may be eligible for a distribution from the Fund. If so, HUD will send a Form HUD-27050-B Notification of Premium Refund or Distributive Share (Appendix 11) to the mortgagor at the address on its records or to the address entered on the Form HUD-27050-A or its tape equivalent. The amount of the distributive share is determined by HUD and is indicated on the Form HUD-27050-B.

*Mortgages that terminated prior to November 5, 1990, may be eligible for a distributive share if the mortgage insurance was in force for at least seven years. Eligibility is based on the characteristics of the mortgages in their group.

Mortgages that terminated on or after November 5, 1990, are not currently eligible for a distributive share because of an amendment to the National Housing Act (12 U.S.C. 1711) that prohibits the issuance

of distributive shares in any year that the operational goals of the Mutual Mortgage Insurance Fund are not met.
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the mortgagor of the possibility of eligibility for a distributive share. (Appendix 10 is FHA Homeowners' Fact Sheet that may be used for this purpose.)

B.Assumptions. When a mortgage is assumed, the insurance continues in force and no eligibility for distributive shares is determined. The owner(s) of the property at the time the mortgage insurance is terminated are eligible for the distributive share, if any.

*   C. Statute Of Limitations On Distributive Shares. Because of the amendment to Section 205(c) of the National Housing Act (12 U.S.C. 1711(C)), effective October 28, 1993, HUD is no longer liable for unpaid distributive shares that remain unclaimed 6 years from the date notification was first sent to the last known address.
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5-7RECORD KEEPING. Mortgagees must maintain precise records related to MIP for each mortgage serviced, including data on all MIP payments since September 1, 1982, when monthly collection of MIP began. These records, covering mortgages in the portfolio, payments made, mortgages acquired, sold and paid in full, voluntarily terminated, and subject to claims, must be retained for at least three years after the mortgage is removed from the portfolio.

At the end of each year, the mortgagee's Independent Public Accountant (IPA) must include in its statement related to its audit of the mortgagee a certification that the mortgagee's procedures are adequate to ensure compliance with HUD rules and regulations pertinent to the payment of MIP.

A.Portfolio Reconciliations. HUD may, from time to time, require mortgagees to provide information adequate to permit reconciliation of mortgagee records with HUD's. This information may include:

1.identification of the mortgage;

2.the amount of MIP due and paid to HUD for each mortgage for each time period;

3.the date insurance was terminated or servicing transferred, if applicable; and

4.for mortgages acquired after September 1, 1982, the date servicing was acquired.

NOTE:This information may be required for a specific amortization anniversary month or for all mortgages in the servicer's portfolio at the end of a specific calendar month.

B.Payment Of MIP (24 CFR 203.259). Any MIP due HUD may be paid either in cash or in debentures.

C.Mortgagee Responsibility. A servicer acquiring servicing of an insured mortgage becomes responsible to HUD for all MIP required to be paid from origination of the mortgage. It is the acquiring mortgagee's responsibility to assure that any obligation to HUD arising before the acquisition of servicing was discharged by the former mortgagee. HUD will not deal with originating mortgagees or former servicers on issues related to the payment of MIP.