

program if he or she makes a false statement or other misrepresentation in the certifications and documentation required for H4H program eligibility, including but not limited to the certifications required under paragraphs (b)(1) and (b)(2) of this section.

(c) *Mortgagee in violation of program requirements.* (1) If the mortgagee holds an H4H program mortgage that it originated and/or underwrote, and FHA finds that the mortgagee violated the representations and warranties required under paragraph (a) of this section, FHA is prohibited from paying FHA insurance benefits to that mortgagee.

(2) If the mortgagee no longer holds the H4H program mortgage that it originated and/or underwrote, FHA will pay an insurance claim to the mortgagee presently holding the H4H program mortgage (if all other requirements of the contract for mortgage insurance are met and the present holder did not participate in the violation of H4H program requirements) and shall seek indemnification from the mortgagee that originated the H4H program mortgage.

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within such time period as HUD prescribes. The binder shall include evidence acceptable to HUD that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within 120 days from the date of closing of the mortgage. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage payment on behalf of the mortgagor. The mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

§ 257.118 Exit fee.

(a) *Initial Equity.* For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of an H4H program mortgage on a property, as calculated by

the H4H program mortgage lender, shall equal:

(1) The lesser of—

(i) The appraised value of the property that was used at the time of origination of the H4H program mortgage to underwrite the mortgage and to determine compliance with the maximum LTV ratio at origination established by section 257(e)(2)(B) of the Act; or

(ii) The outstanding amount due under all existing senior mortgages, existing subordinate mortgages, and non-mortgage liens on the property; less

(2) The original principal amount of the H4H program mortgage on the property.

(b) *FHA's interest.* Upon the sale or disposition of a property secured by the H4H program mortgage or H4H program mortgage refinancing, FHA is entitled to receive the portion of the initial equity (as defined by paragraph (a) of this section) set forth in section 257(k)(1) of the Act, subject to such standards and policies as HUD may establish.

§ 257.120 Appreciation sharing or upfront payment

(a) *Calculation of appreciation.* For purposes of section 257(k)(2) of the Act, the amount of the appreciation in value of a property securing an H4H program mortgage that occurs between the date the mortgage was insured under section 257 of the Act and the date of any subsequent sale or disposition of the property shall be equal to the following, as such amounts of appreciation may be established to the satisfaction of FHA:

(1) In the case of—

(i) A sale of the property to one or more persons, none of whom is a related party of the mortgagor, the gross proceeds from the sale of the property; or

(ii) A disposition of the property or the sale of the property to a related party of the mortgagor, the current appraised value of the property at the time of the disposition or sale; less

(2) The amount of closing costs, as adopted by HUD, incurred by the mortgagor(s) in connection with such sale or disposition, if any; less

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(3) The appraised value of the property that was used at the time of origination of the H4H program mortgage to underwrite that mortgage and determine compliance with the maximum LTV ratio at origination established by section 257(e)(2)(B) of the Act.

(b) *HUD's interest in appreciation.* Upon sale or disposition of a property securing an H4H program mortgage, FHA may be entitled to receive the lesser of:

(1) An amount up to 50 percent of the appreciation in value of the property calculated in accordance with paragraph (a) of this section; or

(2) An amount equal to the appraised value of the property that was used at the time the existing senior mortgage was originated.

(c) *Eligibility of subordinate mortgage holders to receive portion of appreciation in value.* The persons or entities that hold, on the date of origination of an H4H program mortgage, an existing subordinate mortgage on the property may be eligible to receive a portion of FHA's interest in the appreciation in value of the property, as determined in accordance with the provisions of this section and such additional standards and policies that HUD may establish, if:

(1) The amount of the unpaid principal and interest on such existing subordinate mortgage, as of the first day of the month in which the mortgagor made application for the H4H program mortgage, is at least \$2,500; and

(2) Each person holding such existing subordinate mortgage agrees, in connection with the origination of the H4H program mortgage, to fully release:

(i) The mortgagor(s) from any indebtedness under the existing subordinate mortgage; and

(ii) The holder's mortgage lien on the property.

(d) *Shared appreciation interest of subordinate mortgage holders.* (1) *In general.* The eligible holder(s) of an existing subordinate mortgage on a property securing an H4H program mortgage may be eligible to receive, subject to paragraph (c)(3) of this section, an interest in FHA's interest in the appreciation in the value of such property, up to the amount set forth in administrative instructions issued by HUD.

(2) *Form.* The interest of an eligible holder of an existing subordinate mortgage under paragraph (d) of this section is evidenced in a shared appreciation certificate or other documentation to be issued by, or on behalf of, HUD.

(3) *Multiple subordinate liens.* If there is more than one eligible existing subordinate mortgage on a property securing an H4H program mortgage, the interests of such eligible existing subordinate mortgages under paragraph (d)(1) of this section shall have priority among each other in the same order of priority that existed among the existing subordinate mortgages on the date of origination of the H4H program mortgage.

(4) *Distribution of appreciation interest to subordinate mortgage holders.* Upon the sale or disposition of a property securing an H4H program mortgage other than sale or disposition related to a default, any proceeds due to H4H as a result of the appreciation in value of the property (as calculated in accordance with paragraph (a) of this section) shall be distributed:

(i) First to the holders of any shared appreciation certificate or other documentation issued by HUD with respect to the property, if any, in accordance with paragraphs (d)(1), (d)(2), and (d)(3) of this section; and

(ii) The remaining amounts, if any, will be retained by FHA.

(e) *FHA election to offer up-front payment in lieu of a share of appreciation.* In lieu of any shared appreciation payment under paragraph (c) of this section, FHA may elect to offer the eligible holder(s) of an existing subordinate mortgage on a property securing an H4H program mortgage, a payment in an aggregate amount as provided by HUD through Mortgagee Letter. Eligible subordinate lien holders would receive the up-front payment contemporaneously with the origination of the H4H program mortgage.

§ 257.122 Forgiveness or waiver of prepayment penalties and default fees.

The holder or servicer of the existing senior and subordinate mortgages shall either forgive or waive all prepayment penalties and delinquency and default fees.