

Subpart A—Eligibility Requirements for Mortgage Insurance

§ 236.1 Applicability, cross-reference, and savings clause.

(a) *Applicability.* This section implements the eligibility requirements for mortgage insurance under the Rental and Cooperative Housing For Lower Income Families Program contained in section 236 of the National Housing Act (12 U.S.C. 1701), as amended. The program authorized the Secretary to insure mortgages to support new construction or rehabilitation of real property to be used primarily for residential rental purposes. A moratorium against issuance of commitments to insure new mortgages under section 236 was imposed January 5, 1973. Section 236(n) prohibits the insurance of mortgages under section 236 after November 30, 1983, except to permit the refinance of a mortgage insured under section 236, or to finance pursuant to section 236(j)(3), the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236.

(b) The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

(c) *Savings provision.* Any mortgage approved by the Commissioner for insurance pursuant to sections 236(j) or 236(n) of the National Housing Act is governed by subpart A of this part as in effect immediately before May 1, 1996, contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499, and by subparts B through E of this part, except as otherwise provided in this subpart.

[61 FR 14407, Apr. 1, 1996, as amended at 63 FR 46592, Sept. 1, 1998; 65 FR 61074, Oct. 13, 2000]

§ 236.2 Increased distributions to certain limited distribution mortgagors.

(a) *Increased distributions.* The Commissioner may permit increased distributions of surplus cash in excess of the amounts otherwise permitted by subpart A of this part to limited distribution mortgagors who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions

will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the mortgagor is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the mortgagor.

(b) *Pre-emption.* Any State or local law or regulation that restricts distributions to an amount lower than permitted by subpart A of this part as in effect immediately before May 1, 1996, contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499, or permitted by the Commissioner under this section is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[65 FR 61074, Oct. 13, 2000]

§ 236.3 Annual income exclusions.

The exclusions to annual income described in 24 CFR 5.609(c) apply to those program participants governed by the regulations at subpart A of 24 CFR part 236 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499), in lieu of the annual income exclusions described in 236.3(c) (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499).

[61 FR 54503, Oct. 18, 1996]

§ 236.60 Excess Income.

(a) *Definition.* Excess Income consists of cash collected as rent from the residents by the mortgagor, on a unit-by-unit basis, that is in excess of the HUD-approved unassisted Basic Rent. The unit-by-unit requirement necessitates that, if a unit has Excess Income, the Excess Income must be returned to HUD. It is not permissible to do an aggregate calculation of the Excess Income for all occupied rent-paying units, and then to offset or subtract from that figure any unpaid rent from occupied or vacant units, before remitting Excess Income to HUD.

(b) *General requirement to return Excess Income.* Except as otherwise provided in this section, or as agreed to by HUD pursuant to a plan of action approved under 24 CFR part 248 or in connection with an adjustment of contract rents under section 8 of the United

States Housing Act of 1937 Act (1937 Act) (42 U.S.C. 1437f), the mortgagor shall agree to pay monthly to HUD the total of all Excess Income in accordance with procedures prescribed by HUD.

(c) *Retention of Excess Income for project use*—(1) *Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement.

(2) *Eligible uses.* Excess Income retained by a mortgagor for project use may be used for any necessary and reasonable operating expense of the project. Examples of necessary and reasonable operating expenses are:

- (i) Project operating shortfalls, including repair costs;
- (ii) Repair costs identified in the Comprehensive Needs Assessment, including increasing deposits to the Reserve Fund for Replacements to a limit necessary to adequately fund the reserve;
- (iii) Service coordinators;
- (iv) Neighborhood networks located at the project for project residents; and
- (v) Enhanced supportive services for the residents.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for project use to the local HUD Field Office. The request must describe:

- (i) The amount or percentage of Excess Income requested;
- (ii) The period from which Excess Income is being requested; and
- (iii) The proposed use of the requested Excess Income.

(d) *Retention of Excess Income for non-project use*—(1) *Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for non-project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement or the mortgagor falls within any of the following categories:

- (i) The mortgagor's Reserve for Replacement is not fully funded;

(ii) The mortgagor's project is not well maintained housing in good condition, as evidenced by:

(A) Failure to maintain the project in decent, safe, and sanitary condition and in good repair in accordance with HUD's Uniform Physical Condition Standards and Inspection Requirements in 24 CFR part 5, subpart G;

(B) A score below 60 on the physical inspection conducted by HUD's Real Estate Assessment Center (REAC);

(C) The existence of uncorrected Exigent Health and Safety (EHS) deficiencies identified by REAC; or

(D) A Comprehensive Needs Assessment that finds there are significant repair or maintenance needs, and those repair or maintenance needs are still outstanding;

(iii) The mortgagor has engaged in any one of the following material adverse financial or managerial actions or omissions:

(A) Materially violating any federal, state, or local law or regulation with regard to the project or any other federally assisted project, including any applicable civil rights law or regulation, after receipt of notice and an opportunity to cure;

(B) Materially breaching a contract for assistance under section 8 of the 1937 Act, after receipt of notice and an opportunity to cure;

(C) Materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, after receipt of notice and an opportunity to cure;

(D) Repeatedly and materially violating any federal, state, or local law or regulation, including any applicable civil rights law or regulation, with regard to the project or any other federally assisted project;

(E) Repeatedly and materially breaching a contract for assistance under section 8 of the 1937 Act;

(F) Repeatedly and materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, including failure to submit audited financial statements or required tenant data;

(G) Repeatedly failing to make mortgage payments at times when project

income was sufficient to maintain and operate the project;

(H) Materially failing to maintain the project in decent, safe, and sanitary condition and in good repair after receipt of notice and a reasonable opportunity to cure; or

(I) Committing any actions or omissions that would warrant suspension or debarment by HUD.

(2) *Eligible uses.* Excess Income retained by a mortgagor for non-project use may be used for any purpose, except that the non-project use of Excess Income by a nonprofit entity mortgagor is limited to activities that carry out the entity's nonprofit purpose.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for non-project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested; and

(ii) The period from which Excess Income is being requested.

(e) *Timing of request to retain Excess Income*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, a mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year before any other date during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year.

(2) *Specific ongoing purpose.* A mortgagor requesting approval to retain Excess Income for a specific, ongoing purpose where the purpose extends beyond the current fiscal year may submit a request that describes the proposed use of Excess Income and advises that the intended use will extend beyond the current fiscal year. If HUD approves the request, following review of the request in accordance with paragraph (f) of this section, the mortgagor will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same. The mortgagor will still be required to submit the Monthly Report of Excess Income and the end of year narrative under paragraph (g) of this section. If the use of Excess Income changes, the mortgagor must notify HUD of the change and submit a new request to re-

tain Excess Income 90 days prior to the date the mortgagor intends to begin retaining Excess Income for the new purpose.

(f) *HUD review and response procedure.* HUD will review a mortgagor's request to retain Excess Income and issue a letter of approval or denial as follows:

(1) *Approval letter.* The approval letter from HUD permitting the mortgagor to retain Excess Income must, at a minimum, assert:

(i) Retention rights are for the time specified in the approval letter, but cannot extend beyond the current fiscal year except as provided in paragraph (e)(2) of this section;

(ii) Failure of the mortgagor to maintain the Reserve for Replacement account in a fully funded amount at all times is grounds for HUD to rescind the approval;

(iii) Failure of the mortgagor to maintain the project in a decent, safe, and sanitary condition and in good repair at all times is grounds for HUD to rescind the approval;

(iv) If the Excess Income requested for project use is not used for the proposed purpose described in the mortgagor's request, the income must be returned to HUD, unless the mortgagor has obtained prior HUD approval for the alternate use; and

(v) The failure of a mortgagor to return retained Excess Income to HUD for not complying with applicable requirements is a violation of the Regulatory Agreement for which there are enforcement remedies that HUD may take.

(2) *Denial letter.* A letter from HUD denying a mortgagor's request to retain Excess Income must cite the specific reasons for denial and state what requirements the mortgagor must meet to receive HUD's approval to retain Excess Income.

(3) *Environmental review.* Before approving a request to retain Excess Income for project use, HUD will perform an environmental review to the extent required under 24 CFR part 50 for activities that are not excluded under 24 CFR 50.19(b).

(g) *Post-approval requirements.*—(1) *Monthly report.* A mortgagor approved to retain Excess Income must continue to prepare and submit to HUD a revised

Form HUD-93104, Monthly Report of Excess Income, or successor form.

(2) *Other reporting requirements.* A mortgagor that retains Excess Income for project use must provide HUD, on an annual basis, two copies of a narrative description of the amount and the uses made of Excess Income during the prior fiscal year of the project. The calendar year or HUD's fiscal year is not relevant to this requirement unless the fiscal year of the project coincides with the calendar year or HUD's fiscal year. HUD may request additional follow-up information on a case-by-case basis. The report must contain the following certification: "I certify that (1) the amount of Excess Income retained and used was for the purposes approved by HUD; (2) all eligibility requirements for retaining Excess Income were satisfied for the entire reporting period; and (3) all the facts and data on which this report is based are true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal or civil penalties, or both (18 U.S.C. 1001, 1010, 1012; and 31 U.S.C. 3729 and 3802)."

(h) *Return of remitted Excess Income—*
(1) *For project use.* A mortgagor that is eligible to retain Excess Income for project use under paragraph (c)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998, in accordance with the procedures of paragraph (c)(3) of this section. A mortgagor that is eligible to retain Excess Income for project use may not apply for the return of Excess Income that was:

(i) Repaid in accordance with a Workout or Repayment Agreement with HUD; or

(ii) Generated between October 1, 2000, and October 27, 2000, by projects with state agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages

(2) *For non-project use.* A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998, in accordance with paragraph (d)(3) of this section. A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section

may not apply to retain Excess Income that was:

(i) Repaid in accordance with a Workout or Repayment Agreement with HUD; or

(ii) Generated between October 1, 2000, and October 27, 2000, by projects with state agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages.

(3) *Reporting requirement.* A mortgagor that receives returned Excess Income requested for project use is subject to the reporting requirements of paragraph (g)(2) of this section with respect to the returned Excess Income.

(4) *Time limit.* After September 1, 2005, a mortgagor may no longer apply for the return of any Excess Income remitted to HUD.

(i) *HUD withdrawal of approval to retain Excess Income.—*(1) *Bases for withdrawal of approval.* HUD may withdraw approval for any of the following reasons:

(i) If, at any time after approval, a mortgagor fails to meet the eligibility requirements of paragraph (c)(1) or (d)(1) of this section, as applicable;

(ii) If the mortgagor does not use the Excess Income requested for project use for purposes and activities as approved by HUD; or

(iii) If at any time during the fiscal year that such approval is in effect, mortgagor, approved to retain Excess Income for non-project use, fails to maintain the project in decent, safe, and sanitary condition and in good repair, or maintain the Reserve for Replacement account in a fully funded amount.

(2) *Notification of withdrawal of approval.* HUD will notify the mortgagor by certified mail that the authorization to retain Excess Income is withdrawn. The notification will state:

(i) Specific reasons for HUD's withdrawal of approval;

(ii) The effective termination date, which may be the date of the violation resulting in the withdrawal or the date of HUD's determination that the mortgagor was out of compliance;

(iii) The amount of retained Excess Income improperly retained that must be returned to HUD; and

(iv) The actions that the mortgagor must take to restore the authorization to retain Excess Income.

(3) *Mortgagor's request for reconsideration.*—(i) *Letter of reconsideration.* A mortgagor may request that HUD reconsider its decision by submitting, to the Hub/Field Office Director or other party identified by HUD in the notification, within 30 days of receipt of the notification of withdrawal, a letter stating the basis for reconsideration. The letter must include documentation supporting a review of the withdrawal.

(ii) *HUD response.* Within 30 days of HUD's receipt of the mortgagor's request for reconsideration, HUD will make a final determination and respond in writing to the mortgagor. HUD's response may:

(A) Affirm the withdrawal of authority to retain Excess Income;

(B) Reverse the withdrawal of authority to retain Excess Income; or

(C) Request additional information from the mortgagor before affirming or reversing the withdrawal of authority to retain Excess Income.

[69 FR 53560, Sept. 1, 2004]

Subpart B—Contract Rights and Obligations for Mortgage Insurance

§ 236.251 Cross-reference.

All of the provisions of subpart B, part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 236 of the National Housing Act except the following provisions:

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207.252 First, second, and third premiums.

207.252a Premiums—operating loss loans.

207.259 Insurance benefits.

207.262 No vested right in fund.

[37 FR 8664, Apr. 29, 1972, as amended at 42 FR 59675, Nov. 18, 1977]

§ 236.252 First, second, and third mortgage insurance premiums.

All of the provisions of § 207.252 of this chapter governing the first, second, and third mortgage insurance premiums shall apply to mortgages insured under this subpart, except:

(a) Where an application for a loan under section 202 of the Housing Act of 1959 has been filed previously in connection with the project, but it is being financed with a mortgage insured under this part because funds are not available to make the section 202 loan, the mortgage insurance premium due and payable between the dates of initial and final insurance endorsement shall be at the rate of one-fourth of one percent per annum of the average outstanding principal obligation of the mortgage and such premiums shall be prorated for any fractional part of a year. Following final endorsement, the mortgage insurance premium shall be increased to one-half of one percent and shall be paid as provided in § 207.252.

(b) Where a mortgage has been insured under this subpart pursuant to section 238(c) of the Act, the mortgage insurance premiums due in accordance with § 207.252 shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

§ 236.253 Premiums—operating loss loans.

All of the provisions of § 207.252a of this chapter relating to mortgage insurance premiums on operating loss loans shall apply to mortgages insured under this subpart, except that for mortgages insured pursuant to Section 238(c) of the Act the mortgage insurance premiums due in accordance with § 207.252a shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

§ 236.254 Termination of mortgage insurance.

In addition to the provisions of § 207.253a, the following requirements apply to multifamily mortgages insured under section 236 of the National Housing Act:

(a) For those projects qualifying as eligible low income housing under § 248.201, the contract of insurance may be terminated only as provided in part 248.

(b) For those projects subject to section 250(a) of the National Housing Act,

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the contract of insurance may be terminated only if the Commissioner determines that the requirements of section 250(a) are met.

[55 FR 38958, Sept. 21, 1990]

§ 236.255 Forbearance relief.

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of the mortgagor's regular mortgage payments for a specified period of time, if the Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time. Such determination shall be evidenced by the Commissioner's written approval of the forbearance agreement.

(b) The time specified in § 207.258(a) of this chapter, within which a mortgagee shall give the Commissioner written notice of its intention to file an insurance claim, shall be suspended for the period of time specified in the forbearance agreement as long as the mortgagor complies with the requirements of such agreement.

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its election to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 236.265(b) shall be applicable.

§ 236.260 Request by Commissioner for assignment of mortgage.

The mortgagee shall, when requested by the Commissioner, assign to the Commissioner a mortgage on which interest reduction payments are being made pursuant to the provisions of

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§ 236.501 *et seq.* If the mortgage is not in default when the Commissioner requests its assignment, the first day of the month following the Commissioner's request shall be considered the date of default.

§ 236.265 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except as follows:

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures.

(b) When the mortgage is assigned to the Commissioner pursuant to § 236.260 or is assigned in a case where the mortgagor fails to comply with the requirements of a forbearance agreement approved by the Commissioner in accordance with the requirements of § 236.255 or is assigned in a case where the mortgagor fails to cure the default at the expiration of the forbearance period, the insurance benefits shall be paid in cash and shall be computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, an amount shall be included equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 207.256, 207.258(b), and 236.255(c) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such amount shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(c) Where the assignment of the mortgage is made pursuant to § 236.260 and the mortgage is not in default at the time of such assignment, the one percent deduction prescribed in

§ 207.259(b)(2)(iv) of this chapter shall not be applicable.

[36 FR 24643, Dec. 22, 1971, as amended at 59 FR 49817, Sept. 30, 1994]

Subpart C—Interest Reduction Payments

§ 236.501 Interest reduction payments contract.

This subpart shall constitute the interest reduction payment contract between the mortgagee and the Commissioner with respect to a mortgage insured under section 236 of the National Housing Act. The endorsement of the mortgage for insurance shall constitute the execution of the interest reduction payment contract with respect to the mortgage being insured.

§ 236.505 Eligible mortgages.

Interest reduction payments pursuant to this subpart shall be made only in connection with a mortgage which is insured under subparts A and B of this part.

§ 236.510 Term of payments.

(a) The term for which interest reduction payments shall be made shall begin on the following dates:

(1) With respect to a mortgage involving insurance of advances, on the date the Commissioner finally endorses the mortgage not for insurance or such earlier date as may be established by the Commissioner.

(2) With respect to a mortgage insured upon completion, the date on which the Commissioner endorses the mortgage note for insurance.

(b) The term of the interest reduction payments shall end upon the occurrence of one of the following events:

(1) The termination of the contract of insurance, except where the mortgage has been assigned to the Commissioner.

(2) The Commissioner's receipt of the mortgagee's notice of intention to file an insurance claim and to acquire and convey title to the Commissioner pursuant to § 207.258(c) of this chapter. In the event the mortgagee fails to provide the Commissioner with such notice of intention within the time specified in § 207.258(a) of this chapter, the last day on which the Commissioner

should have received the mortgagor's notice shall be deemed the date the Commissioner receives such notice.

(3) At the discretion of the Commissioner, the mortgagor's failure to meet its obligations under the regulatory agreement it has entered into with the Commissioner.

(c) Upon termination of the interest reduction payments contract, the payment due on the first of the month in which the termination occurs shall be the last payment to which the mortgagee shall be entitled.

(d) Where the term of interest reduction payments is ended pursuant to paragraph (b) (2) or (3) of this section, such interest reduction payment contract may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, interest reduction payments will be made to the mortgagee for those months during which such payments were suspended.

§ 236.515 Time of payments.

The interest reduction payments shall be due on the first day of each month following the beginning of the term, and shall be paid upon the receipt of a billing (on a form prescribed by the Commissioner) from the mortgagee or its authorized agent.

§ 236.520 Amount of payments.

(a) The interest reduction payment to the mortgagee shall be in an amount not exceeding the difference between the following:

(1) The monthly installment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage; and

(2) The monthly payment for principal and interest the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 percent per annum.

(b) Where individual family units in the project are sold, subject to a plan approved by the Commissioner, and as the principal amount of the mortgage is reduced by payment of the portion of the mortgage attributable to the sold units and as the amount of the mortgage payments which the mortgagor is

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obligated to pay is reduced, proportionate reductions will be made in the interest reduction payments.

(c) In addition to the interest reduction payment referred to in paragraph (a) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the mortgagee for its expenses in servicing the mortgage.

§ 236.525 Application of payments.

The mortgagee shall apply each monthly interest reduction payment, together with the mortgagor's monthly payment, to the items and in the order set out in the mortgage.

§ 236.530 Mortgage records.

The mortgagee shall maintain such records as the Commissioner may require with respect to the mortgagor's payments and the interest reduction payments received from the Commissioner. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or the Comptroller General of the United States.

§ 236.535 Effect of assignment of mortgage.

In the event a mortgage subject to interest reduction payments is assigned to another approved mortgagee, the assignee shall thereupon succeed to all the rights and obligations of the assignor under the interest reduction contract.

§ 236.599 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but no such amendment shall adversely affect the interests of a mortgagee under a contract for interest reduction payments already in effect or to be put into effect pursuant to the Commissioner's commitment to enter into such contract.

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Subpart D—Rental Assistance Payments

SOURCE: 40 FR 31872, July 29, 1975, unless otherwise noted.

§ 236.701 Scope of rental assistance.

The Secretary shall enter into Rental Assistance Contracts with the owners of section 236 projects which:

(a) Had received a commitment for mortgage insurance under this part on or before August 22, 1974, but are reprocessed before final endorsement with rental assistance pursuant to an agreement between the sponsor and the Secretary;

(b) Had not received a commitment for mortgage insurance under this part on or before August 22, 1974, but did so subsequently;

(c) Had received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance and to be financed under a State or local government aided program pursuant to section 236(b) of the National Housing Act) on or before August 22, 1974, but are reprocessed with rental assistance pursuant to an Agreement between the sponsor, the State or local agency providing additional aid to the project, and the Secretary. Projects in this category which are converted from Rent Supplement shall have Rental Assistance Contracts with terms which do not exceed the unexpired terms of the Rent Supplement Contracts. Projects in this category which have no Rent Supplement Contract shall have Rental Assistance Contracts with terms which do not exceed the unexpired terms of Agreement for Interest Reduction Payments or equivalent documents or 40 years whichever is less; or

(d) Had not received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance) on or before August 22, 1974, but did so subsequently.

Projects may not receive the benefit of rent supplement payments under part 215 of this Title and rental assistance payments at the same time. (Notwithstanding the provisions of this subpart, it shall be a matter of the Secretary's

discretion whether he enters into contracts for such benefits in connection with the sale of HUD-owned projects.) The conditions of eligibility for a Rental Assistance Contract and its terms are specified in this subpart D.

[40 FR 31872, July 29, 1975, as amended at 45 FR 50734, July 31, 1980]

§ 236.705 Projects eligible for benefits.

(a) Rental assistance payments may be made with respect to section 236 projects with Rental Assistance Contracts pursuant to this subpart.

(b) Rental assistance payments to owners of projects pursuant to paragraph (a) of this section will normally be made available to 20 percent of the dwelling units, except that the Secretary may:

(1) Reduce that percentage in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(2) Increase that percentage in the case of any project if he determines: (i) That such action is necessary and feasible, after taking into account the objective of assuring, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or (ii) that such action is to be taken to meet the housing needs of elderly or handicapped families.

§ 236.710 Qualified tenant.

(a) The benefits of rental assistance payments are available only to an individual or a family who is renting a dwelling unit in a project that is subject to a contract entered into under the requirements of this subpart or who is occupying such a dwelling unit as a cooperative member. To qualify for the benefits of rental assistance payments, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(b) To receive rental assistance under this subpart, the income of the individual or family must be determined to be too low to permit the individual or family to pay the approved Gross Rent with 30 percent of the individual's or family's Adjusted Monthly Income, as

defined in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499). Determination of the Adjusted Monthly Income must include the deductions required for adjusted income in 24 CFR 5.611(a) in lieu of the deductions provided in the definition of "adjusted income" in 24 CFR 236.2 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(c) For requirements concerning the disclosure and certification of Social Security Numbers, see 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5, subpart E.

(d) The definition of "persons with disabilities" in paragraph (d) of this section replaces the terms "disabled person" and "handicapped person" used in the regulations in 24 CFR part 236, subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)). *Person with disabilities*, as used in this part, has the same meaning as provided in 24 CFR 891.305.

[66 FR 6224, Jan. 19, 2001]

§ 236.715 Determination of eligibility.

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 5 govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

(b) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(1) First: Applicants eligible for Rental Assistance Payments;

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(2) Second: Applicants eligible to pay a below market rent under section 236;

(3) Third: Applicants who can pay the Market Rent.

(c) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the section 236 program are already occupied by tenants paying Market Rent.

(d) Before admitting an applicant who will not receive the benefit of Rental Assistance Payments, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the Rental Assistance Payments contract are already occupied by tenants receiving such assistance.

(e) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (b) through (d) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(Approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

[51 FR 21862, June 16, 1986, as amended at 60 FR 14833, Mar. 20, 1995; 61 FR 13624, Mar. 27, 1996]

§ 236.720 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rental assistance payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rental assistance payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Secretary.

(b) The term *tenant* as used in this subpart shall include a member of a cooperative, and the term *rental payment* shall include the carrying charges under the occupancy agreement between the members of the cooperative and the cooperative housing owner.

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§ 236.725 Term of contract.

The rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

§ 236.730 Maximum annual rental assistance contract amount.

The rental assistance contract shall specify the maximum amount of the rental assistance payments for the project for the rent-up period, or for any such other period of time as the Secretary may prescribe, based upon the Secretary's estimate of probable demand and tenant income, including a 10 percent contingency allowance. At the end of such period of time, and annually thereafter, appropriate adjustments, as the Secretary may prescribe, shall be made in the maximum annual rental assistance contract amount, to reflect the actual requirements of the eligible tenants and a 10 percent contingency allowance.

§ 236.735 Rental assistance payments and rental charges.

(a) *Amount of rental assistance payments.* The rental assistance contract shall provide that the payment on behalf of a Qualified Tenant shall not exceed the difference between the Gross Rent and the Total Tenant Payment.

(b) *Total tenant payment for qualified tenants who first receive rental assistance on or after May 1, 1983.* Notwithstanding § 236.55(b), the Total Tenant Payment payable for these Qualified Tenants shall be the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of Adjusted Monthly Income as defined in subpart A;

(2) 10 percent of one-twelfth of Annual Income as defined in subpart A;

(3) If the family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(3)

shall be the amount resulting from one application of the percentage.

(c) *Total tenant payment for qualified tenants who were receiving rental assistance on April 30, 1983 and whose assistance has been continuous thereafter.* Notwithstanding § 236.55(b), the Total Tenant Payment for these Qualified Tenants shall be calculated in accordance with paragraph (b) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special conditions.* (1) For the purposes of this section, a Qualified Tenant whose initial lease was effective before May 1, 1983 includes the following: A Qualified Tenant that resided in a unit assisted under the Rental Assistance Programs or Rent Supplement Program on April 30, 1983, and whose assistance under those programs has been continuous thereafter; and a family that resided in a unit with the benefit of section 8 Housing Assistance Payments on July 31, 1982 and whose participation in the section 8, Rent Supplement or the Rental Assistance Payment Program has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit in the same project. For these purposes, units in buildings located on adjacent sites and managed as one project will be considered part of the same project even if they have separate project numbers and separate mortgages.

(2) Notwithstanding paragraphs (b) and (c) of this section, the Total Tenant Payment payable by a Qualified Tenant who continues to receive assistance in the same project shall not be increased by more than 10 percent during any 12-month period as a result of application of the percentages in paragraph (c) of this section, and application of the revised definitions in §§ 236.2 and 236.3. However, this 10 percent limit does not apply to Families subject to paragraph (b)(3) of this section, provided that the welfare agency in-

cludes as the housing component of the Family's grant an amount equal to their entire rent payment, without reduction. The Total Tenant Payment may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributable to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in this paragraph (d)(2).

(e) *Utility reimbursement.* Where applicable, the Utility Reimbursement shall be paid to the Qualified Tenant. If the tenant and the utility company consent, the owner may pay the Utility Reimbursement jointly to the Qualified Tenant and the utility company, or directly to the utility company.

[51 FR 21862, June 16, 1986]

§ 236.740 Time of payment under contract.

The rental assistance contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility.

§ 236.745 Tenant occupancy limitations.

Eligible tenants shall not be permitted to occupy units larger than the Secretary determines necessary for their family needs, except on a temporary basis with the approval of the Secretary.

§ 236.750 Form of lease.

(a) *Lease form.* Eligible tenants shall be required to execute a lease in a form approved by the Commissioner.

(b) *Prohibited lease provisions.* Lease clauses of the nature described below shall not be included in new leases or occupancy agreements covered by paragraphs (a) and (b) of this section and shall be deleted from existing leases and agreements either by amendment thereto or by execution of a new lease or agreement.

(1) *Confession of judgment.* Prior consent by the tenant:

(i) To any lawsuit the landlord may bring against the tenant in connection with the lease; and

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(ii) To a judgment in favor of the landlord.

(2) *Distrain for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has determined that tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on the part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before actions for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right:

(i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents; or

(ii) To file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

[51 FR 21863, June 16, 1986]

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§ 236.755 Housing owner's obligation under contract to report tenant income increase.

The rental assistance contract shall contain a provision obligating the housing owner to notify the Secretary upon receiving a report from a tenant of an increase in the tenant's income resulting in the tenant's ability to pay the approved basic monthly rental (plus, where applicable, the utility allowance established for utility charges paid by the tenant) with the amount the tenant is required to pay for rent in accordance with § 236.735. The contract shall also obligate the housing owner, upon failing to notify the Secretary when a report of such increases in income is received from a tenant, to reimburse the Secretary for any rental assistance payments made during the period following receipt of such report when the tenant is receiving the increased income.

[48 FR 13982, Apr. 1, 1983]

§ 236.760 Change in tenant income status.

Appropriate adjustments will be made in rental assistance payments to reflect changes in income or other circumstances which are reported by a tenant and verified or are shown by the annual tenant income recertification, as required by § 236.80. Rental assistance payments will be discontinued when it is determined by the Secretary that the amount the tenant is required to pay for rent, in accordance with § 236.735, is sufficient to pay the approved basic monthly rental (plus, where applicable, the established utility allowance) for the unit occupied by the tenant. Where a tenant is no longer entitled to rental assistance payments, he/she may continue to occupy the unit. The rents charged for the unit shall not exceed those specified in subpart A.

[48 FR 13982, Apr. 1, 1983]

§ 236.765 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall

obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of 24 CFR part 5.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in 24 CFR part 5.

[61 FR 13624, Mar. 27, 1996]

Subpart E—Audits

§ 236.901 Audit.

Where a State or local government receives interest reduction payments under section 236(b) of the National Housing Act or is the mortgagor of a mortgage insured or held by the Commissioner under this part, it shall conduct audits in accordance with HUD audit requirements at 24 CFR part 44.

[58 FR 37813, July 13, 1993]

Subpart F—Uniform Relocation Assistance

§ 236.1001 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, mortgagors shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for the assisted project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A “displaced person” (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A “displaced person” shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the mortgagor’s determination concerning whether the person qualifies as a “displaced person,” or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the mortgagor. A person who is dissatisfied with the mortgagor’s determination on his or her appeal may submit a written request for review of the determination to the HUD Field Office.

(f) *Responsibility of mortgagor.* (1) The mortgagor shall certify (i.e., provide assurance of compliance as required by

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49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The mortgagor shall ensure such compliance notwithstanding any third party's contractual obligation to the mortgagor to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The mortgagor shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The mortgagor shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the mortgagor executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the

temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the mortgagor's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the mortgagor or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The mortgagor may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the mortgagor's execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

[59 FR 29331, June 6, 1994]

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

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