

CHAPTER 10. SECTION 235 MORTGAGES

10-1 GENERAL (24 CFR 235). Under the Section 235 program, HUD assists mortgagors in making their monthly mortgage payments by paying directly to the mortgagee a portion of the mortgagor's monthly payment as long as the mortgagor remains eligible for subsidy under this program.

Servicing of Section 235 mortgages is generally the same as that described in the previous chapters of this handbook for mortgages insured under other HUD programs, except this program has added requirements due to the assistance payments contract (Subpart C of 24 CFR 235).

- A. Mortgages Subject To Recapture (24 CFR, Part 235, Subpart C). Pursuant to a firm commitment issued on or after May 27, 1981, all or part of the assistance payments is subject to recapture under certain circumstances. (Recaptures and mortgagees' responsibilities with respect to recaptures are discussed in detail in Chapter 11).
- B. Reactivation Of Section 235. The Appropriations Act of 1984 reactivated the Section 235 program in accordance with Section 226 of the Housing and Urban Rural Recovery Act (HURRA) of 1983. The provisions of the reactivated program (which is known as Section 235 Revised/Recapture/10), are discussed in Paragraph 10-36.

10-2 CONTRACT FOR MONTHLY ASSISTANCE PAYMENTS (24 CFR 235). The terms and conditions of the assistance payment contract are contained in Subpart C of Part 235 of the HUD regulations. The issuance of the Mortgage Insurance Certificate (MIC), Form HUD-59100 (Appendix 42), to the HUD-approved mortgagee incorporates these provisions by reference to the contract between HUD and the mortgagee.

- A. What Constitutes Execution Of The Contract (24 CFR 235.310). Issuance of form HUD-59100 constitutes execution of the contract for assistance payments with respect to that particular mortgage. The date of endorsement of the MIC does not affect the term of the contract.

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- B. Date Contract Term Begins. The term of the contract begins on either the date of disbursement of the mortgage proceeds or the date the mortgagor occupies the property, whichever occurs later.

NOTE: "Date of disbursement" in this instance means the date the funds escrowed to assure completion (in accordance with Form HUD-92300 (Appendix 43), Mortgagee's Assurance of Completion), have been disbursed.

C. Date Contract Term Ends (24 CFR 235.345). The term of the contract ends on the first day of the month following the occurrence of one of the events listed under Paragraph 10-19.

D. Definitions (24 CFR 235.5). Listed below are definitions of some of the terms used in this chapter as they pertain to the Section 235 program.

1. "Family" or "Household" (24 CFR 235.5). These terms mean:

a. a pregnant woman, or two or more persons related by blood, marriage, or operation of law, who occupy the same unit;

b. a handicapped person who has a physical or mental impairment which is expected to be of a continued duration and which impedes his/her ability to live independently unless suitable housing is available; or

c. a single person, 62 years of age or older.

2. "Adjusted Annual Income" (24 CFR 235.5). This term means the annual family income remaining after making certain exclusions from gross annual income as shown in 24 CFR 235.5(a)(1), (2) and (3).

3. "Gross Annual Income" (24 CFR 235.5). This term means the total income (i.e., before any adjustments, tax deductions or any other deductions), received by all members of the mortgagor's household for those items listed in Paragraph 10-9.

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4. "Minor" (24 CFR 235.3). This term means a person under the age of 21 but shall not include a mortgagor or the spouse of a mortgagor.

5. "Cooperative Member" (24 CFR 235.325). This term means a person who is a member of a cooperative association which operates a housing project financed with a mortgage insured under Sections 213 or 221 of the National Housing Act and meets the conditions set forth under 24 CFR 235.325 and 235.330.

6. "Active Contract". This term means a Section 235 assistance payment contract that is not currently suspended or

terminated.

7."Recertification of Family Income and Composition". This term means the process for determining whether a mortgagor's household;

a.continues to qualify for the Section 235 assistance now being received; and/or

b.is eligible for more or less assistance than is currently being received.

10-3CONTRACT FOR MONTHLY ASSISTANCE PAYMENTS UNDER THE HOUSING AND URBAN RURAL RECOVERY ACT OF 1983. The Section 235 Revised/Recapture/10 Program provides for the following:

A.an assistance payments contract executed by the mortgagee and HUD which includes the "Notice To Buyer" (Appendix 44), signed by the mortgagors; and

B.the mortgagee must submit to the local HUD Field Office having jurisdiction over the mortgage the completed and executed contract along with the closing package at the time of insurance endorsement. (HUD will execute the contract and return it to the mortgagee with the Mortgage Insurance Certificate.)

10-4CONTINUING ELIGIBILITY FOR ASSISTANCE. Once the assistance payments contract has been executed and the mortgage insured, many of the initial eligibility requirements (such as owning other property, family size, etc.,) no longer restrict the mortgagor's continuing eligibility for assistance.

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A.Requirements To Continue Receiving Assistance. In order to continue receiving assistance payments, the mortgagor must meet all four of the following conditions:

1.Owner-occupancy Continues. Must be a mortgagor (as described in 24 CFR 235.315) or a cooperative member (as described in 24 CFR 235.325) and live in the mortgaged property;

a.Co-mortgagors. Where there are co-mortgagors, this requirement will be satisfied as long as one co-mortgagor lives in the mortgaged property.

b.Absentee Occupant. If a mortgagor is away from the mortgaged property for a period up to one year this requirement will be satisfied if the absence is due to

circumstances beyond his/her control and the mortgagor has taken no action which would indicate this property is no longer his/her primary residence.

Each case must be decided on its own merit as to whether the circumstances meet the occupancy requirement. If additional guidance is needed, the HUD Field Office having jurisdiction over the mortgaged property should be contacted.

Examples of an "absentee occupant" may include, but not necessarily be limited to, a member of the armed forces, and/or a hospitalized mortgagor.

NOTE: Assistance payments must be suspended where the mortgagor:

(1) actually collects rent for the mortgaged property;

(2) vacates the mortgaged property for any reason other than for a temporary absence;

(3) offers the property for rent or sale;

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(4) fails to make the mortgage payments after vacating the property;

(5) rents another property which the mortgagor is occupying for any reason other than for a temporary absence (as described in (1) - (4) above from his mortgaged property;

(6) purchases and occupies another property (mortgagor or co-mortgagor)

c. Appointed Trustee/Guardian. In the event of the death of the mortgagor and a trustee/ guardian was appointed as the only survivors were minors, this requirement may be satisfied if the appointed trustee/guardian lives in the mortgaged property with the surviving minors.

2. Contract Remains Active. Must be under an assistance payments contract that has not been suspended or terminated;

3. Meets Income Requirements. Mortgagor has insufficient income to make the full monthly mortgage payment with 20 or 28 percent of income depending on the firm commitment date

of the mortgage; and

NOTE: The 20 percent calculation applies to mortgages insured pursuant to a firm commitment issued on or before October 26, 1984. The 28 percent calculation applies to mortgages insured pursuant to a firm commitment issued on or after October 27, 1984.

4. Recertifies As Required. Recertifies as to occupancy, employment, family composition, and income at least annually and at such other times as required by HUD regulations 24 CFR 235.350.

B. Basis Of Assistance Calculation. If the four conditions cited in Paragraph A above are met, only the amount of assistance remains to be calculated. This calculation is based on periodic recertifications of

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income, family composition, occupancy and employment as discussed in Paragraph 10-5.

C. Disclosure And Verification Of Social Security Number (SSN). The disclosure and verification of the SSN is an explicit condition of continued eligibility for Section 235 assistance. All mortgagors (and members of their households six years of age and older) are required to disclose and verify complete and accurate SSNs in connection with any recertification.

D. Verification Of The SSN Is A One-time Requirement.

If a mortgagor provides the mortgagee with documentation to verify the SSN at the time of an annual recertification (October 1990), it is not necessary to provide the documentation to verify the SSN for any subsequent recertifications. However, disclosure of the SSN must be provided at the time of each recertification. Mortgagees must advise mortgagors of the requirements in writing.

E. Documentation Requirements.

1. Documentation is required for each SSN disclosed. To document the SSN, all individuals should furnish a copy of a valid Social Security Card (SSC) issued by the Social Security Administration of the Department of Health and Human Services. (The SSN has nine digits separated by hyphens as follows: 000-00-0000). See Appendix 60.

2. In those cases where the individual is unable to provide a copy of a valid SSC, mortgagees may accept copies of any two

of the following documents which would contain the SSN and the individual's identity:

- a. A drivers license (See Appendix 61).
- b. An identification card issued by a Federal, state or local agency.
- c. An identification card issued by an employer or trade union.
- d. Earnings statements or payroll stubs.

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- e. Bank statements or personal checks.
- f. Internal Revenue Service (IRS) Form 1099.
- g. Unemployment benefit letter.
- h. Retirement benefit letter.
- i. Life insurance policies.
- j. Court records: such as marriage and divorce judgments or bankruptcy records.
- k. Other documents that the mortgagee determines adequate evidence of a valid SSN.

F. Individuals who have applied for legalization under the Immigration Reform and Control Act of 1986 (IRCA) are an exception to the documentation requirements stated above.

1. These individuals have a SSN to disclose but will not have the copy of the SSC as documentation. Acceptable documentation from those individuals is a letter from the Immigration and Naturalization Service (INS) assigning them the SSN.

2. IRCA applicants generally applied for a SSC at the time they applied for amnesty. The Social Security Administration assigned these individuals a SSN and issued a SSC. However, this card was forwarded to INS and was placed in the applicant's file. INS sends a letter to IRCA applicants informing them that a SSN has been assigned and they may use it until they are granted temporary lawful resident status.

G. Unacceptable Documentation.

Mortgagees may not accept documents that:

1. Are produced or completed by individuals, such as business cards, self completed wallet identification cards, or other store purchased cards. (People often purchase a plastic or metal SSC from companies or mail order firms.)

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2. Have little or no importance, such as club membership or library cards.

3. Mortgagees have the discretion to include similar documents in this category.

H. Invalid Or False Documents.

A mortgagee may reject documents that are invalid or false. To be considered invalid or false, the document must fall under one of the following categories:

1. Invalid Social Security Numbers - Some individuals use invalid numbers taken from sample cards put in new wallets or from similar advertising. These "pocketbook" numbers are invalid and are listed in Appendix 62.

2. False Documents - False Identification documents can be either counterfeit, altered, or impostors:

a. Counterfeit - A forgery of a genuine document or a copy of a document which may appear authentic but is not legally issued.

b. Altered - A genuine document that has had some identification changed to match the bearer. Most often the name, photograph, address or age and physical description are changed on altered documents.

c. Imposter - A genuine document obtained under false pretenses, or a blank genuine document stolen from the issuing agency.

I. Procedures For Rejecting SSNs Or Documentation.

When a mortgagee suspects that it has been given an invalid or false document to evidence the SSN, it should notify the homeowner and require an explanation or additional proof of the SSN. If the additional documentation is questionable, the mortgagee may require the SSC be provided, or a duplicate card obtained if the original is not available. If the additional

documentation does not satisfy the mortgagee that it is valid or genuine, the following actions must be taken:

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1.The assistance payments contract must be suspended effective the 1st day of the first month after receipt of the additional documentation.

2.The assistance payments contract cannot be reinstated until the validity of the SSN can be verified. The mortgagee must advise the homeowner in writing of the action.

3.If the validity of the SSN is verified, the assistance payments contract is to be reinstated effective the 1st day of the month following receipt of the documentation.

J.Certifications.

1.If individuals disclose their SSN, but are unable to meet the verification requirement, a written certification must be executed by the individual to this effect. The certification should state the individual's name, SSN, and that he/she is unable to submit the documentation. The certification must be signed, and dated by each individual who does not have the documentation. If the individual is under 18 years of age, the certification must be executed by his/her parent or guardian.

2.The individual then has 60 days from the date of certification to obtain necessary documentation to verify the SSN disclosed. If an individual is at least 62 years of age, the mortgagee may at its discretion, extend the period up to an additional 60 days (or 120) days after certification).

3.The mortgagee may refer the homeowner to the local Social Security Office so that he/she may complete and submit Form SS-5, "Application for Social Security Card," to request a duplicate Social Security Card.

4.If any individual has not been assigned a SSN, a certification executed by that individual is required. The certification should state the individual's name, and that he/she has not been assigned a SSN. The individual should then date and sign the certification. If the individual is under 18 years of age, the certification must be

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executed by/his parent or guardian. This certification is required annually. No further action is needed. A mortgagee cannot require an individual to apply for a SSN.

K.Criminal Violations.

1.Since the SSN was considered an administrative tool for many years, it was not considered necessary to have a penalty provision covering the fraudulent application for or use of a SSN. However, as time passed and the SSN came into broader use, the need to protect it became more apparent. Penalty provisions were added to the Social Security Act and are contained in 42 U.S.C. 408(f), (g) or (h). Violations of these statutes include:

- a.Providing false information to obtain a SSN.
- b.Using a SSN based on false information to get a federally financed benefit.
- c.Using someone else's SSN.
- d.Misusing a SSN for any reason.
- e.Making, possessing, buying, or selling counterfeit Social Security cards.

2.If documentation obtained indicates that the homeowner knowingly intended to deceive the mortgagee, referral of the information should be forwarded to the Office of Inspector General for the Department of Health and Human Services (DHHS) may be contacted by toll free hotline:

1-800-368-5779 or by contacting a Regional Inspector General for investigation (see Appendix 63).

10-5RECERTIFICATION OF INCOME, FAMILY COMPOSITION, OCCUPANCY AND EMPLOYMENT.

A.Recertification Requirements. In an effort to fully apprise mortgagors of their responsibility and the importance of reporting all required information

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timely, mortgagees must notify mortgagors of the requirement not

only at the time of the annual recertification but also at an additionally specified time within 30 days after the end of each calendar year. It is suggested that this be accomplished at the same time the mortgagor is provided a statement of the interest paid and the taxes disbursed from the escrow account during the preceding year.

1.Requirement For All Mortgages (24 CFR 235.350 and 235.355). Mortgagees must secure recertifications of gross income, family composition, occupancy, and employment at least annually and as otherwise required by HUD regulations to ensure that the amount of assistance paid on behalf of the mortgagor is that which is authorized by statute.

2.Disclosure and Verification of Social Security Numbers (24 CFR 235.350(d)). Mortgagor must meet the disclosure and verification requirements for Social Security Numbers in connection with any recertification.

3.Requirement For Mortgages Insured On Or After January 5, 1976. The annual recertification must contain a statement of the total gross income (i.e., before adjustments and/or deductions) reported for all adult family members living in the household as shown on their last federal income tax returns.

NOTE:If the "total" gross income reported on their last federal income tax returns is "individually or collectively" more than 25 percent above the income reported on the recertification, the mortgagee must require a written explanation of the difference in income from the mortgagor.

B.Recertification Form To Be Used. The only acceptable form on which mortgagors and their families may recertify is the Form HUD-93101, Recertification of Family Income and Composition, Section 235(b). (See Appendix 31). The recertification must include the following:

1.the signature of at least one mortgagor;

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2.the date of the signatures;

3.current income, total income for last 12 months and expected income for next 12 months of all family members;

4.names and addresses of sources of income for verification purposes; and

5.Social Security Numbers of all family members 6 years of age and older.

10-6WHEN RECERTIFICATIONS ARE REQUIRED (24 CFR 235.350). (See Appendix 45.)

A.Annual Recertifications.

1.Date Recertification Must Be Performed. Except where the mortgagor has been recertified within 90 days prior to the anniversary (or arbitrary anniversary) date, the mortgagee must recertify the mortgagor at least annually on either:

a.the anniversary date of the first mortgage payment due under the mortgage; or

b.an arbitrary anniversary date established by the mortgagee for its entire portfolio of Section 235 mortgages.

2.Events Which Permit Recertification Anniversary Dates To Be Changed. Once established, annual and arbitrary anniversary dates are to remain constant except when:

a.the mortgage is recast;

b.the mortgage is transferred to a new mortgagee or servicer; and/or

c.prior written approval has been obtained from the local HUD Field Office where the mortgagee is located with a copy of such approval must be maintained in each individual case file. A copy must also be provided as an attachment to the Form HUD-93102 (Appendix 46) assistance payment request form notifying HUD

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Headquarters Office of Finance and Accounting's Subsidy Accounting Branch.

NOTE:When any of the above events occur, the mortgagee or servicer automatically has the option of:

(1)using the anniversary date of the first mortgage payment due under the mortgage;

(2)using the same arbitrary anniversary

date (assuming an arbitrary date was being used) as the transferring mortgagee or servicer; or

(3)selecting a different arbitrary anniversary date.

(For further details concerning the arbitrary anniversary date with respect to required recertifications, see Appendix 47).

B.Intermittent Recertifications.

1.For Mortgages Insured Before January 5, 1976. Recertifications must be done within 30 days of the effective date of any "addition to" the adult family's "source of income". An "additional" source of income" may be due to, but not necessarily limited to, the following:

a.a family member (other than a mortgagor) may have reached the age of 21. If this family member was a wage earner, this would require that his/her wages now be taken into consideration when computing assistance payments;

b.an adult who did not work previously may have obtained employment;

c.an adult who had a job may have elected to get an additional part-time job; and/or

d.a family wage earner may have gotten married.

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e.an adult wage earner joins the family through marriage.

NOTE:Unless the increase was due to a change in source, the mortgagor needs only to recertify at the next anniversary--at which time the increase must be reported to the mortgagee.

2.For Mortgages Insured On Or After January 5, 1976. Recertification is required within 30 days of the date when the total gross income increases by \$50 or more per month, regardless of whether the source changes.

It is the mortgagor's responsibility for providing this information to the mortgagee.

Mortgagors must be made aware that their failure to advise the mortgagee of an increase in income within the 30-day time frame could result in that mortgagor being required to repay a significant amount of overpaid assistance (24 CFR 235.350(c)).

C. Recertifications At The Direction Of The Secretary Of HUD. The Secretary of HUD, and/or his designee, may require recertification any time there is reason to believe recertification is warranted (24 CFR 235.350(a)(3)).

D. Optional Recertifications At The Request Of The Mortgagor (24 CFR 235.355). The mortgagor has the option of requesting that the mortgagee accept a recertification any time there is a reduction (of any amount) in the adult family income.

Should the change not be made within the 30-day time frame due to the mortgagor's failure to notify the mortgagee, any increase in assistance resulting from income decrease will be made effective the first day of the month following the date the recertification is received by the mortgagee and not retroactively. (24 CFR 235.360).

1. Acceptable Reasons For Performing Optional Recertifications. The mortgagor may request an optional recertification due to, but not necessarily limited to, any of the following reasons:

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- a. an adult wage earner's death;
- b. an adult wage earner moving out of the property;
- c. an adult wage earner becoming unemployed; and/or
- d. an adult wage earner's loss and/or reduction of overtime or salary.

NOTE: If the mortgagor is already receiving the maximum assistance allowed based on income (i.e., maximum allowed under Formula Two), the recertification requesting that assistance be increased need not be processed. However, the mortgagor must be advised, in writing, of the reason for the mortgagee's inability to increase the assistance payment.

2. Time Frame For Making The Request.

- a. In the case of self-employed adult family members, the reduction must have continued for at least 90 days

prior to the mortgagor's request for recertification. The best information available must be used to ensure that the reduced income has been in effect for 90 days. Assistance must not be based on the unsupported word of the mortgagor.

b. For mortgagors NOT self-employed, the reduction or loss of income must reduce the family income to less than the income that was used in computing the most recent assistance.

3. Time Frame for Mortgagee To Process Optional Recertification. The mortgagee must request on HUD Form 93101-A to make any assistance increase effective the first day of the month following the month the mortgagor's recertification is received.

10-7 ANNUAL RECERTIFICATION OF MORTGAGORS.

A. Time Frame For Requesting Recertifications. Unless the assistance payments contract has been suspended or terminated, annual recertifications must be secured by the mortgagee:

1. no earlier than 60 days before and no later than 30 days after the mortgage (or arbitrary) anniversary date; and

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2. the HUD-93101-A must be received by HUD Headquarters Office of Finance and Accounting's (OFA's) Subsidy Accounting Branch no later than 45 days after the mortgage anniversary (or arbitrary anniversary) date.

NOTE: The Subsidy Accounting Branch (SAB) will identify as suspended the subsidy payments on cases when required annual recertifications are not received by the 45th day after the anniversary date. SAB will notify mortgagees by letter that an account has been identified as suspended.

When subsidy is identified as suspended by SAB due to untimely recertification, it will not be paid retroactively unless the HUD-93114 request for reinstatement and the HUD-93101-A are accompanied by a statement from the mortgagee. The statement must include the reason for mortgagee's failure to adhere to recertification requirements.

Assistance payments identified as suspended by SAB shall not be retroactively reinstated because a mortgagor failed to properly respond to a timely

request from the mortgagee for recertification.

For examples of the effective dates of payment changes resultant from recertifications, see Paragraph 10-15C.

For examples of time limits for required recertifications, see Appendix 47.

B. "Reasonable Effort" Action Required Of Mortgagee. A reasonable effort must be made by the mortgagee to comply with the time frames shown in Paragraph 10-7A. In order for the mortgagee's actions to meet the "reasonable effort" requirement, the mortgagee's actions must include, but not necessarily be limited to, the following:

1. sending a written notice to the mortgagor, early enough to result in obtaining recertification no earlier than 60 days before and no later than 30 days after the mortgage anniversary (or arbitrary anniversary) date, which:

a. advises the mortgagor of the annual recertification requirement;

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b. transmits a Form HUD-93101 that must be filled out and returned to the mortgagee;

c. advises the mortgagor that failure to return the completed HUD-93101 within the required time frame will result in suspension of subsidy payments;

d. advises the mortgagor that assistance payments will not be made retroactively and that the mortgagor will be responsible for making the full mortgage payment during the period of suspension;

e. advises the mortgagor that the reinstatement of suspended subsidy payments will not be effective until the first payment month which occurs after 30 days from the date of the mortgagee's receipt of HUD-93101 from the mortgagor; and

f. provides a telephone number and contact name to be used by the mortgagor to obtain responses to recertification questions.

2. providing special help (whether requested or not) to mortgagors who are unable to recertify due to lack of

education, language barrier, physical or emotional impairments.

NOTE:Mortgagees are expected to assist mortgagors in completing forms and/or advising relatives or community assistance agencies when mortgagors need assistance in filling out forms.

10-8MORTGAGOR FAILS TO RECERTIFY WITHIN TIME FRAME (24 CFR 235.375(b)(4)). If the mortgagor fails to respond to the mortgagee's request for recertification within the required time frame, the mortgagee is required to request via Form HUD-93114 that the HUD Headquarters OFA's Subsidy Accounting Branch suspend assistance payments effective the first month after the date that the recertification was required.

NOTE:The Subsidy Accounting Branch will identify the case as suspended and will not pay assistance payments when a recertification is due and neither

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a HUD-93101-A nor a HUD-93114 is received from the mortgagee by the 45th day after the anniversary date.

A.Mortgagor Recertifies After Suspension. If the recertification is received by the mortgagee after assistance payments have been suspended, the mortgagee must submit Form HUD-93114, together with HUD-93101-A, requesting that the assistance payments be reinstated as an adjustment transaction Code 2 on the next regular month's billing Forms HUD-93102 and HUD-300 (Appendix 48).

NOTE:The billing forms and all adjustment transaction documents (i.e., Forms HUD-93114, HUD-93101-A, HUD-93102 and HUD-300) should be submitted as one package to the Subsidy Accounting Branch for processing. The reason for the adjustment in Column 3 on Form HUD-300 should be noted as "Late mortgagor recertification".

The reinstatement will be effective on the first payment month which occurs after the date of the mortgagee's receipt of Form HUD-93101 from the mortgagor.

NOTE:No assistance will be paid for the period during which a recertification should have been received (i.e., 30 days after it was requested) and the date it was actually received.

B.Contract Suspended Due To Mortgagee's Failure To Meet "Reasonable Effort" Requirement. In situations where HUD determines that the

action taken by the mortgagee when contacting the mortgagor with regard to the recertification fails to meet the "reasonable effort" requirement (as stated in Paragraph 10-7B) and the assistance was subsequently suspended, the mortgagee must go back to that mortgagor and allow that mortgagor to recertify as long as he/she recertifies within 30 days of this second written request. The mortgagee must:

1. secure recertification and complete verification;

NOTE: If more than one recertification was missed, for each missed recertification the mortgagee must reconstruct family income as

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accurately as possible for each anniversary date.

2. make any resulting change in assistance effective retroactive to the period for each recertification in question; and

3. if the recertification results in overpaid assistance, careful consideration must be given in order to choose a method which will allow for the recovery of overpaid assistance that may have accumulated without creating an undue hardship on the mortgagor.

However, the mortgagee must immediately refund the total overpaid assistance amount to HUD. The overpaid amount should be included as an adjustment transaction on the next regular month's billing which should be accompanied by applicable Forms HUD-93114 (requesting reinstatement) and HUD-93101-A (recertifying income). The periods of overpayment (i.e., month and year) must be included in Column 3 of Form HUD-300. The reason for adjustment should be noted as "Late Recertification Request".

NOTE: When assistance has been suspended and a request for reinstatement is retroactive, the current monthly billing amount should be treated as a Code 1 transaction on Form HUD-300. The retroactive billing amount should be treated as a Code 2 adjustment transaction on Form HUD-300.

Both the reason for adjustment (i.e., late mortgagor recertification, recertification request; suspended in error, etc.) and the beginning and ending effective period (month and year) must be included in Column 3 of Form HUD-300. Failure to provide this information or

failure to attach the required Forms HUD 93101-A and HUD-93114, as appropriate, will result in non-payment of the adjustment amount.

Disallowed adjustment amounts due to lack of documentation must be included on the next regular month's billing. The HUD

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Headquarters OFA's Subsidy Accounting Branch will process only one Form HUD-93102 for each billing period.

10-9 DETERMINING INCOME.

A.Gross Annual Income (24 CFR 235.5(d)). Assistance is based on gross income which is made up of the total income (prior to any adjustments, taxes or other deductions) received by all members of the mortgagor's household.

NOTE:Members of the mortgagor's "family or household" are considered to be all persons living in the mortgaged property who are related to the mortgagor by blood, marriage or operation of law.

1.Income Sources Included. For the purposes of annual or other required recertifications which project income, the following sources must be included:

- a.wages, child support, alimony, and rental income;
- b.Social Security or welfare benefits;
- c.retirement benefits, military and veterans' usability benefits;
- d.unemployment benefits;
- e.interest and dividend payments;
- f.lottery winnings paid over extended periods; and
- g.insurance benefits paid on a fixed schedule.

2.Income Sources Excluded. Income from the following sources must NOT be included:

- a.lump sum insurance benefits;
- b.lump sum winnings from a lottery;

c.hospital or other medical insurance benefits;

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d.bonuses and/or overtime (if they DO NOT represent a pattern of annual payments over a period of time);

e.food stamps;

f.scholarships; or

g.any unusual income such as payments made to Vietnam Veterans from the Agent Orange Settlement Fund.

NOTE:The Agent Orange Compensation Exclusion Act (Public Law 101-201) requires that none of the payments made to Vietnam Veterans from the Agent Orange Settlement Fund be considered income for the purpose of determining eligibility for or the amount of benefits under any Federal or federally assisted program. This requirement must be adhered to when processing Section 235 Annual or other required Recertifications of Family Income and Composition.

h.any temporary income such as income of a wage earner from temporary employment that has been discontinued at the time recertification is taking place.

B.Income Requiring Special Consideration. The mortgagee is to use the mortgagor's verified current income or the mortgagor's stated "expected income", WHICHEVER IS HIGHER.

"Expected income" is different from income received over the past 12 months (or year-to-date income) in that if there has been a recent increase in the mortgagor's (and/or family member's) hourly wage or salary, that new hourly rate or salary would serve as the basis for projecting the "expected income" for the next 12-month period.

1.Overtime Pay. Overtime pay must be included in the total income if the employer verifies that overtime is currently being paid on a regular basis regardless of whether the employee states (or fails to state) at the time of verification

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that the overtime is expected to continue in the future. If there is a continuing record of overtime work, the only time the overtime income is to be excluded is when the employer verifies that overtime will be discontinued.

2. Self-Employment. Include in gross income all income listed on Internal Revenue Service's (IRS) Form 1040. When calculating the income of self-employed mortgagors, the deductions set out in Schedule C, Profit (or Loss) from Business or Profession, must be recalculated for HUD purposes. Salary or wage distributions for the mortgagor or co-mortgagor, depletion or depreciation) are not deducted from the gross business income for HUD purposes.

NOTE: For example, Schedule C is not the only form where self-employment income is claimed, farmers may have a Schedule F instead of a Schedule C. All sources of self-employment income must be included.

a. Recalculate Business Income On IRS Form 1040. Mortgagees must recalculate the business income (Item 12 on IRS' Form 1040). If the recalculated income shows a loss, that loss cannot be used to offset other forms of income reported on Items 7 through 22 on IRS Form 1040.

b. Item 12 on the mortgagor's IRS Form 1040 may reflect a negative amount in some cases. However, when the mortgagee recalculates the Schedule C as prescribed in Paragraph 2a above, it could result in a positive amount to be included in income. Elimination of the deductions for depletion and depreciation may, from HUD's perspective, result in a business profit.

3. Special-Purpose Payments. These are payments made to the mortgagor's household that would be discontinued if not spent for a specific purpose. Payments which are intended to defray specific expenses of an unusual nature and which are expended solely for those expenses should not be

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considered as income. Examples include, but are not necessarily limited to, the following:

a. Medical Expenses. Funds provided by a charitable

organization to defray medical expenses, to the extent to which they are actually spent to meet those expenses.

b.Foster Children. Payments for the care of foster children who are not otherwise related to the mortgagor's household by blood, marriage, or operation of law.

NOTE:Foster children are not considered members of the family. Therefore, no \$300 adjustments to income are to be made because of their presence.

c.VA Educational Benefits and/or Scholarships. VA educational benefits and/or the proceeds of scholarships are not considered income to the extent the benefits or proceeds are actually used for educational expenses (i.e., tuition, books, lab fees, etc.). Any excess income after deducting actual educational expenses must be included as income.

NOTE:Costs of transportation to and from school or for cost of housing for living away from home to attend school are not considered educational expenses.

d.Payments In Kind. Items such as food stamps, meals, clothing, or transportation provided by the employer is not considered as income if used for that expressed purpose. However, cash reimbursement for any of these items is considered as income to the extent it continues when not spent to defray a specific expense.

e.Insurance Benefits.

(1)Health/Accident/Disability Insurance.

(a)Premiums Paid By Mortgagor. Benefits received from policies where the mortgagor is both the insured and the beneficiary are not to be

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considered income if the mortgagor paid the premiums.

(b) Premiums Not Paid By Mortgagor. If

these premiums were paid by someone outside the mortgagor's household (such as an employer), the benefits would be considered as income.

(2) Other Types of Insurance. The benefits of

other type insurance policies would be considered as income if the benefits are paid in two or more installments unless they meet the test of special purpose payments as described in Paragraph 10-9B3 above.

Regardless of the type or reason for payment, insurance benefits paid in a lump sum are not to be considered income. However, if the mortgagor chose to invest any or all of the money from this lump sum payment, all interest (or other gain) from this investment would be considered as income.

f. Earnings of Minors. Income of all family members within the mortgagor's household must be included in the family's total gross income which is used as a base for computing the assistance.

All income of all members of the family is included in gross family income. In arriving at the family's adjusted income, five percent of this total is subtracted before subtracting the earnings of minors. Note that only the earnings of minors are subtracted. Income of minors from sources other than earnings is not subtracted.

For example, income to a minor from a trust or an insurance policy is not earnings and is not subtracted. It is thus immaterial whether income other than earnings is paid to a minor or to an adult family member for the benefit of the minor. In neither case would it be deducted in arriving at adjusted income.

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g. Military Pay and Allowances. All cash payments to a member of the armed forces are considered as income, regardless of the reason for the payment, unless the payment is made only once and for a special purpose, such as a lump sum re-enlistment bonus.

Many military personnel may exercise a degree of choice

in some areas of compensation. For example, they may choose between eating in a government cafeteria without charge or receiving an allowance for rations in cash and paying for any meals consumed in the cafeteria. If the allowance is received in cash, it is income. Otherwise, it is not.

h.Reimbursement for Expenses. If the family member's employment requires spending considerable time away from home on a regular basis and the employer provides reimbursement for the unusual living expenses incurred as a result, the reimbursement is not normally considered to be income.

Exceptions to this rule:

(1)If the reimbursement is paid for periods other than when the employee is actually away from home, the entire reimbursement is considered as income regardless of whether the employee accounts to the employer for actual expenses and the reimbursement is fixed on a daily basis (or some other standard) and is inadequate to cover all normal living expenses; and

(2)if the employee accounts to the employer for expenses, and the expenses equal or exceed the reimbursement, the reimbursement is not considered income. However, if the reimbursement exceeds the expenses, the excess reimbursement is considered income.

NOTE:Where expenses exceed the reimbursement, the amount not covered by the reimbursement

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cannot be deducted from the family's gross annual income.

10-10VERIFYING INCOME. To calculate assistance payments, the mortgagor's verified current income, or the reported expected income, WHICHEVER IS HIGHER, must be used. The mortgagor's option to recertify is his/her only protection when there is a loss of income. When mortgagees fail to use the highest income reported, overpaid assistance results.

A.Third-party Verification Required. Third-party verification of the mortgagor's statements, similar to that required when a mortgage is originated, is required at the time of each recertification.

EXCEPTION:Third-party verifications are not required for self-employed persons.

B.Verification Not Available. Where third-party verification cannot be obtained and/or the mortgagor's statements cannot be reconciled with the verification, the local HUD Field Office having jurisdiction over the mortgaged property should be contacted for assistance in establishing the income.

C.Unacceptable Forms Of Verification. Examples of unacceptable forms of verification include, but are not necessarily limited to, the following:

1.Federal income tax returns or Forms W-2's (withholding tax forms), except for self-employed persons and where HUD has reviewed the case and has established that this would be the best information available;

2.where verifications have passed through the hands of the mortgagor and/or the person whose income is being verified; and/or

3.checks and/or pay stubs which show only the net amount of the check.

D.Acceptable Forms Of Verification. The most difficult part of income verification is determining that all sources of earned income have been reported by all members of the mortgagor's household.

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1.Listed below, ranked in the order of preference, are acceptable forms of verification for earned income.

a.Pay Stubs and Checks. If these show gross income as well as net, these documents are considered to be the most reliable source of accurate information concerning recent income.

(1)Documentation for Preceding Six months Is To Be Requested. The most recent information available is to be used for recertifications. Salary information requested should include at least any pay stubs and/or copies of

check(s) received by any household member just prior to the mortgagee's request as well as any checks or income received within at least the last six-month period.

(2)Each Source of Income Must be Documented.

Care should be taken to assure that the mortgagor provides information with respect to each source of income. If a source is missing, one of the other forms of verification should be used with respect to that source.

b.HUD Form 92004-G (Appendix 49), Request for Verification of Employment. This form of verification is acceptable (or similar forms designed by the mortgagee to elicit the same information) only if it is delivered directly to and from the employer without passing through the hands of the mortgagor and/or the employee whose salary is being verified.

NOTE:If the HUD form is used, it should be modified to add, in the remarks section, a request for information about anticipated wage increases.

c.Telephone Verification. While some employers may be reluctant to provide income information by telephone, they will usually verify that the mortgagor is or is not employed with that company. In using the telephone:

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(1)Contact Designated Personnel. It should be established by the mortgagee that the person spoken to is either:

(a)the mortgagor's supervisor; or

(b)an employee of that company who has been authorized by that company to give out employment verifications.

(2)Maintain Mortgagor's Privacy. The detailed reason for the call (i.e., to determine if the employee remains eligible for Sections 235 subsidy) should not be disclosed to any parties other than those described in the

preceding paragraph.

(3) Document Telephone Call. Each telephone call should be fully documented as follows:

(a) the date;

(b) the time;

(c) the parties of the conversation; and

(d) the information provided by the employer.

d. Use of Standard Benefit Scales. Some localities have established that a family with a given composition receiving public assistance or unemployment compensation as its sole source of income must receive assistance in a set amount.

NOTE: Where this is the case, the income taken from the current schedule of benefits established by that source may be accepted as the family's income without individual verification of the benefits.

e. Use of Public Housing Authority's Standard Minimum Income Scales. Some Public Housing Authorities have established schedules of

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minimum incomes for various occupations in their areas, especially those with fluctuating, seasonal, and irregular patterns. These schedules are based on experience indicating that workers in each of the covered occupations can be expected to earn at least a minimum each year under normal working conditions.

(1) Income Reported At Or Above Minimum Scale. If the mortgagor has stated an income at or above the minimum found in these tables, the mortgagor's statement may be accepted without further verification.

(2) Income Reported At Less Than Minimum Scale. Where the mortgagor can provide convincing evidence that a lower income is accurate, the lower figure may be used.

2. Income from Self-Employment. As noted in Paragraph 10-9 with respect to self-employment, the income of self-employed persons must often be adjusted to avoid reducing it for non-cash expenditures such as depletion and depreciation. Supporting documentation (such as statements showing deposits consistent with claimed income) should be obtained from self-employed mortgagors.

a. Audited Profit and Loss Statements. A copy of the latest audited Profit and Loss Statement may be requested from the mortgagor.

NOTE: Due to the expense involved, mortgagors are not to be required to obtain an audited Profit and Loss Statement for the sole purpose of the mortgagee using it for income verification to determine Section 235 subsidy. However, should a recent audited Profit and Loss Statement exist for other purposes, the mortgagee may require that a copy be provided for income verification.

b. Unaudited Profit and Loss Statements. These are acceptable only if prepared by someone

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other than the mortgagor. Even then, they are of questionable validity as they are based solely on information provided to the preparer by the mortgagor. Any apparent discrepancy should be followed up thoroughly.

c. Financial Statements. A financial statement is a picture of the financial condition of the business at a specific time. It must be noted that a financial statement does not provide information about the income of the mortgagor, but only serves as a basis for determining that the business can afford to pay the mortgagor what is claimed as earned income.

NOTE: When the self-employed mortgagor is a principal owner of a corporation, that person's income is generally a combination of salary and dividends on investment in the corporation.

In these situations, the corporation's

undistributed earnings should also be considered as income of the mortgagor to the extent of that person's ownership.

3.Unearned Income. Income from sources other than employment or self-employment must also be verified, and there are probably as many ways to do this as there are different sources of income. It is left to mortgagees to determine the best source of information in each case.

E.Verification Not Required. Certain types of income need not be verified.

1.Minors. Incomes of minors (persons living in the household who are under the age of 21) need not be verified. Only the income of "adult" members of the family need be verified. "Adult" for this purpose is any mortgagor and spouse of any mortgagor (regardless of age) and any other person related to any mortgagor by blood, marriage, or operation of law who occupies the mortgaged property and is 21 years old or older.

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2.Latest Verification Performed Within Last Six Months. On mortgages insured prior to January 5, 1976, income which has been verified within the six months preceding the mortgagee's receipt of the signed Form HUD-93101 need not be verified if:

a.the family members report no change in employers;
and

b.the income reported is either the same as that verified earlier or reflects a change which was expected and/or verified as a part of the previous verification.

3.Disqualifying Income. If either the current or expected income as reported by the mortgagor is adequate to enable the mortgagor to make the full monthly payment with 20 or 28 percent of income (depending on when the mortgage was insured), no further verification is necessary before suspending the assistance payments contract.

10-11 FAMILY COMPOSITION. Family composition need not be verified, but, all changes in the status of adult and family members must be questioned.

A. Separations. Where a mortgagor has left the property due to a separation, the remaining mortgagor may certify as to the composition of the remaining portion of the household.

B. Death. Normally, if there is no owner-mortgagor occupying the property, assistance cannot be paid. In the event of the death of one or more mortgagors, there could be a question as to both the title to the property and the mortgage obligation. The status may be even more uncertain if the only survivors are minor children.

1. Obtaining Clear Title/Disposing of Property. Where the only survivors are minor children, it may be necessary to initiate court proceedings in order to have a guardian appointed for the purpose of clearing and/or disposing of the title of the property.

2. Commencement of Assistance Payments. In the event of a death or separation leaving no owner-mortgagor,

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the mortgagee may begin billing for assistance immediately as though there had been an assumption at the time of the death or separation, provided the mortgagee can identify an individual who meets all of the following conditions:

a. is a member of the surviving family (even though he/or she may not have qualified as a "family" member for assistance purposes earlier);

b. will probably become the holder of title (either in his/her own name or in trust for one or more of the survivors);

c. will assume the mortgage obligation in the same capacity;

d. will occupy the mortgaged property with the survivors; and

e. will qualify for assistance within the limits prescribed for initial eligibility (see Paragraph 10-22).

3. Establishing Eligibility. It must be recognized that to determine who will most likely inherit or be appointed as a guardian or trustee on behalf of the survivors before the estate is settled can only be based on assumptions. Once the mortgagee can

reasonably determine who that individual will be and whether the conditions in Paragraph 10-11B2 have been met, eligibility must be established.

NOTE: Establishing eligibility need not be delayed until the disposition of title has been completed and the mortgage obligation is formally assumed by the new mortgagor.

Should it become evident that those assumptions are incorrect, the assistance payments contract must be suspended effective with the date of death or separation and any assistance paid in the interim must be refunded to HUD.

10-12 COMPUTING ASSISTANCE (24 CFR 235.335). The maximum monthly assistance that can be paid by HUD is the lesser amount computed under two formulas, commonly referred to as "Formula One" and "Formula Two". Instructions for

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these computations are given on Form HUD-93101-A under Section A and B (Appendix 32).

A. Formula One. The "Formula One" assistance payment is the difference between the full monthly mortgage payment (i.e., principal, interest, and all escrowed items) due under the mortgage and either 20 or 28 percent of the mortgagor's adjusted monthly income. (See Section A and B of the Form 93101-A (Appendix 32) to determine how the assistance payment is computed.)

NOTE: The 20 percent calculation applies to mortgages pursuant to a firm commitment issued on or before October 26, 1984. The 28 percent calculation applies to mortgages insured pursuant to a firm commitment issued on or after October 27, 1984.

The "Formula One" payment must be recomputed whenever there is a change in the total payment or when there is a change in the income or family composition reflected in a recertification.

B. Formula Two. The "Formula Two" assistance payment is the difference between the actual monthly payment to principal, interest, and the mortgage insurance premium (MIP) under the mortgage and the monthly payment to principal and interest (without the MIP) that the mortgagor would have to pay if the mortgage bore interest at some lower rate. Those lower rates vary, depending on when the mortgage was insured, as

indicated below:

Date of Closing Note Rate	Note Rate	Interest Rate to Compute Second Element	P&I Factor per \$1,000 30-year of Formula Two
Term			
8/9/68-1/4/76	No difference	1.00%	\$3.22
1/5/76-3/6/78	No difference	5.00%	\$5.37
3/7/78-3/8/81	No difference	4.00%	\$4.78
3/9/81 and later	13.50% or lower	4.00%	\$4.78

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13.75-14.00%	4.75%	\$5.22
14.25-14.50%	5.50%	\$5.68
15.00%	6.00%	\$6.00
15.50%	6.75%	\$6.49
16.00%	7.25%	\$6.83
16.50%	8.00%	\$7.34
17.50%	8.00%	\$7.34

10-13 INTERIM ASSISTANCE PAYMENTS. When it is impossible to complete the verification of all or part of the family's income at the time of the effective date of a change in the assistance payment, the assistance payment should be temporarily adjusted, if appropriate, based upon information provided by the mortgagor on Form HUD-93101 until all income can be verified or until the local HUD Field Office makes a decision as to the amount of assistance to be paid based on available documentation.

A. Basis For Computing Interim Assistance Payments. Interim changes in assistance payments should be based on the highest family income figure which can be developed from any source (or sources) until the mortgagor's family income can be verified or a decision is made by the local HUD Field Office.

B. Affect On Payments. Interim changes in assistance payments should:

1.not result in overpayment of subsidy unless the mortgagor understates income;

2.result in the Formula One assistance (after verification) being equal to or greater than the interim adjustment; and

3.not affect Formula Two calculations as the Formula Two are not income related.

C.HUD Assistance Requested. Whenever acceptable verifications cannot be obtained, the local HUD Field Office should be asked to make a decision as to the

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total family income to be used to determine the amount of assistance to be paid on behalf of the mortgagor.

D.Documentation Needed. Requests to local HUD Field Offices for assistance in determining correct assistance should include:

1.Form HUD-93101, Recertification of Family Income and Composition, Section 235(b);

2.all income verifications received to date that pertain to this recertification, including summaries of any received verbally;

3.copies of any correspondence related to the recertification or verification of income.

4.a summary of any attempted verifications or reconciliation of differences may not have been made clear by the basic documentation; explain the problem encountered; and

5.the names, addresses and telephone numbers of any income source identified by or for any family member.

10-14FIRST MONTHLY ASSISTANCE PAYMENT. Where mortgage closings do not take place on the first day of a month, the first assistance payment on a new mortgage will normally be smaller or larger than subsequent assistance payments (depending on how interest for the first partial month is collected from the mortgagor). (See Appendix 51.)

If the interest is collected at closing or as a separate payment of interest only on the first of the month following closing, the

initial assistance payment will be smaller.

If the interest is collected as a part of the first full monthly installment, both that payment and the assistance payment will be larger.

In calculating this first assistance payment, the mortgagee's basic calculations are the same. Both "Formula One" and "Formula Two" assistance payments are to be calculated, but the mortgagor's income and the full monthly payment used in "Formula One" and the monthly

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payments to principal, interest and MIP on the actual mortgage and to principal and interest on a mortgage at the appropriate interest rate used in "Formula Two" must be adjusted to reflect the number of days for which interest was actually collected.

10-15ASSISTANCE PAYMENTS ADJUSTMENTS (24 CFR 235.360). Most adjustments take place as a result of changes in income or family composition reflected in a recertification or due to an increase in the full monthly payment required by the mortgage.

A.Adjustments. Assistance payment adjustments will be made either retroactively or prospectively as described below.

1.Retroactively. Assistance payments may be adjusted retroactively (i.e., adjusted back to the date the change should have taken effect). Payments may be adjusted retroactively under the following circumstances:

a.to correct errors or to include previously unreported income (i.e., \$50.00 increases);

b.to reinstate a suspended assistance payments contract when:

(1)there is an assumption and the assumptor is found eligible for assistance; or

(2)a foreclosure action is withdrawn;

c.when an "interim" assistance payment was put into effect in accordance with Paragraph 10-13; and

d.when directed to do so by HUD.

2.Prospectively. Most assistance payments will be adjusted prospectively (i.e., adjustments made

effective within 30 days after the processing of recent or anticipated changes when reported by the mortgagor as required). These changes may be due to, but not necessarily limited to, the following:

a.changes in income or family composition reflected in a recertification; or

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b.an increase in the full monthly payment required under the mortgage.

B.Computation Changes. "Formula Two" assistance payments change every twelve months (on the anniversary of the beginning of amortization) at the time MIP changes for the coming year.

NOTE:This adjustment must be made even when the mortgagee has established an arbitrary anniversary date for the purpose of processing recertifications.

C.Effective Dates Of Changes (24 CFR 235.360). The effective date of payment change recorded in Block 19 on Form HUD-93101-A must be in accordance with the following schedule:

Action Requiring Change	Effective Date
Annual recertification if mortgagor's share of payment increases	First day of first or second month after receipt of Form HUD-93101 at the
Annual recertification if mortgagor's share of payment decreases	The first day of the first month after receipt of Form HUD-93101
Action Requiring Change	Effective Date
Reported increase in income	The first day of the first month after the

effective date of the

increase income
Reported decrease in The first day of the
income first month after receipt
of Form HUD-
93101

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Change in total The date of the
monthly payment monthly payment amount
required under the change
mortgage

Change in "Formula The anniversary date
Two" assistance due of the beginning of
to an MIP change amortization

10-16ADVISING MORTGAGORS OF CHANGES. The mortgagee must notify the mortgagor of changes in assistance payments no less than 10 days before the due date of the first payment affected by the change.

A.Required Advance Notice Not Given. Any time there is an increase in the mortgagor's share of the payment and the required 10-day advance notice cannot be given to the mortgagor, the mortgagee must arrange a schedule that is acceptable to both parties (must be one that is realistic and does not put an undue hardship on the mortgagor) for collecting any additional amounts that may become due before the 10-day advance notice period can be given.

NOTE:Payment schedule arrangements made between the mortgagor and the mortgagee should not result in overpaid assistance. The amount of assistance requested from HUD on Form HUD-93102 should be reduced effective on the effective date of payment change in accordance with the schedule provided in Paragraph 10-15C, regardless of when the mortgagee collects the higher mortgagor's share of the monthly payment amount.

B.Written Notice To Mortgagor. The notice to the mortgagor should include, but not necessarily be limited to, the following information:

1.the total monthly mortgage payment, excluding items not required by the mortgage (such as premiums for life and/or disability insurance);

2. HUD's share of the mortgage payment and whether it was computed under "Formula One" or "Formula Two";

3. the mortgagor's share of that payment;

4. any additional amounts that must be paid by the mortgagor in connection with the mortgage payment

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which was excluded in Item 1 above (such as premiums for life and/or disability insurance);

5. the monthly gross income used to calculate the assistance payment for the purpose of providing a benchmark to help the mortgagor know when to report increases of \$50 or more per month;

6. the due date of the first payment due from the mortgagor which reflects the increase.

10-17 RETENTION OF DOCUMENTATION (24 CFR 235.365). Form HUD-93114 and all other pertinent records must be in the mortgagor's case file for the life of the insured mortgage plus three years. In the event the mortgage is transferred to another mortgagee or servicer, and/or assigned to HUD, this documentation must remain a part of the mortgagor's case file and must be conveyed to the new mortgagee, servicer, and/or HUD which shall retain the entire case file for the life of the mortgage plus three years. (Also see Paragraphs 10-26, 10-33, 10-34, 9-16, 1-4D and 1-4E.) (For Section 235 record maintenance see Paragraph 10-32.)

10-18 SUSPENSION OF ASSISTANCE PAYMENTS (24 CFR 235.375).

A. Events Which Require Suspension. Events listed below (and are also given under Item 15 of Form HUD-93114 (Appendix 33)) require the suspension of assistance payments. Effective dates are also given as to when each is to be suspended.

1. When the mortgagor or cooperative member ceases to meet the occupancy criteria for continued assistance;

Effective Date: the first day of the month following the date the mortgagor or cooperative member ceased to meet the criteria;

2. The mortgagee determines that the mortgagor or cooperative member ceases to qualify for assistance payments because of income increases enabling the mortgagor or cooperative member to pay the full monthly

payments using 20 or 28 percent (whichever applies) of the family income.

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Effective Date: the date that the mortgagor received the increase in family income which enabled payment of the full monthly mortgage payment with 20 or 28 percent of the adjusted gross family income;

3.The required recertification of occupancy, employment, income and family composition cannot be obtained from the mortgagor.

Effective Date: For annual recertifications, the assistance payment contract must be suspended if the recertification Form HUD-93101 has not been received 30 days after the anniversary date, or the disclosure and verification of the Social Security numbers are not provided.

For other required recertifications, the contract is suspended as of the first day of the month following expiration of the 30-day period given the mortgagor for recertification.

NOTE:Assistance payments are not to be suspended when a mortgagor requests recertification due to a reduction in income (i.e., optional recertification), and then fails to recertify.

4.Mortgage obligation or cooperative membership is assumed by a party before eligibility has been established.

Effective Date: The first day of the month following the date on which the seller fails to meet the occupancy criteria as set out in paragraph, or the assumptor assumes the mortgage or cooperative membership, whichever is earlier.

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5.Foreclosure is initiated.

Effective date: The first day of the month following the date the first legal action required by state law is taken by the mortgagee's attorney to foreclose on the mortgage.

B.Suspension Notification Required. A notice shall be sent to the mortgagor advising of the suspension when:

1.the suspension of assistance payments is the result of a mortgagor being able to make the full monthly payment using the appropriate 20 or 28 percent of family income;

2.the mortgagor fails to submit a required recertification; or

3.the mortgagor fails to meet the disclosure and verification requirements for Social Security numbers in connection with a recertification.

C.Content Of Suspension Notice. The notice to the mortgagor must include the following:

1.the date of the suspension;
2.the reason for suspension (as stated in Paragraph 10-18A);
3.the mortgagor's total required monthly mortgage payment;

4.a statement advising that for a period of 3 years immediately following the suspension, assistance payments may be reinstated at any time within that 3-year period if:

a.circumstances occur which would eliminate the reason for the suspension; and

b.provided that another event (listed in Paragraph 10-18A) has not taken place which would in itself require that the assistance payment contract continue to be suspended.

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D.Reinstatement Effective Dates. A suspended assistance payment contract shall be reinstatement as follows:

1.Suspension Due To Mortgagor's Non-occupancy Status. Assistance payments may be reinstated effective with the first monthly billing after the mortgagee receives Form HUD-93101 notification that the mortgagor meets the occupancy requirement.

2.Suspension Due to Over-Income Mortgagor. Assistance payments may be reinstated effective the first day of the month after the mortgagee receives Form HUD-93101 notification that the mortgagor is no longer "over income" and meets all other continued eligibility criteria.

NOTE:Reinstatement may be as a result of a reduction in the mortgagor's family income and/or due to an increase in the total monthly mortgage payment (such as an increase in amount being escrowed).

3.Suspension Due To Mortgagor's Failure to Recertify. Assistance payments may be reinstated effective the first day of the month after the mortgagee receives the required Form HUD-93101.

4.Suspension Due To Mortgagor's Failure to Disclose and Verify Social Security Numbers (24 CFR 235.375(b)(4)). Assistance payments may be reinstated effective the first day of the month after the mortgagee receives the social security number information.

5.Suspension Due To Initiation of Foreclosure. Upon the withdrawal of foreclosure action, assistance payments may be reinstated retroactively to the date of

suspension provided that, during the period the assistance payments were suspended, the mortgagor continued to meet all other criteria for receiving assistance payments.

a.Negotiation of Reinstatement Terms. The terms of reinstatement of the mortgage (i.e., whether the delinquency is to be paid in a lump sum, or additional sums are to be paid each month until the mortgage is current,

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etc.,) may be negotiated between the mortgagee and the mortgagor. However, the terms agreed upon must be realistic and may not affect the monthly mortgage payment on which the Formula One assistance payment is based.

b.Reimbursement of Foreclosure Costs. Mortgagee retains the right to be reimbursed by the mortgagor for any costs incurred with respect to the withdrawn foreclosure action. However, these costs must be kept separate and apart from any Section 235 assistance. These costs may not be added to the monthly mortgage payment used to calculate the assistance payments and may not be billed to HUD as a separate item.

10-19TERMINATION OF ASSISTANCE PAYMENT CONTRACT (24 CFR 235.375).

A.Events Which Require Termination. Events are listed below (and also given under Item 16 of HUD-93114 (Appendix 33)) which require the termination of the assistance payment contract:

1.when the contract of mortgage insurance is terminated;

EXCEPTION:The assistance payment contract is not terminated because HUD accepts an assignment of the mortgage.

2.the mortgage is assumed by a mortgagor or cooperative member who is not eligible for assistance; or

3.the assistance payment contract has been properly suspended for three consecutive years without the subsidy being reinstated within that three-year period of suspension; or

4.when the assistance payment contract for Section 246

10-year mortgages terminate unless extended by the Secretary.

B.Termination Effective Dates. Assistance payment contracts terminated for the events cited in the preceding paragraph shall be made effective the first

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day of the month following the date of the event which requires the termination of the contract.

C.Contracts Terminated In Error. Where the assistance payment contract is terminated in error, the mortgagee shall reinstate the contract immediately upon discovering the error. Form HUD-93114 must be submitted with the box checked under Item 17(1). (Item 17(1) denotes "Terminated in Error" as the reason for the reinstatement.) Documentation of the error is to be retained in the mortgagor's case file for the life of the mortgage. (Also see Paragraphs 1-4D, 9-15 and 10-33.)

NOTE:Once a Section 235 assistance payment contract has been properly terminated it may not be reinstated.

10-20ESCROW ACCOUNTS. Basically escrow accounts for Section 235 mortgages are serviced the same as escrow accounts for other insured mortgages (i.e., in accordance with procedures discussed in Chapter 2). However, certain differences will be encountered. Mortgagees must determine which escrow items and/or what portion of the premium for an acceptable escrow item may be included in the total monthly mortgage payment prior to computing the amount of subsidy the mortgagor is entitled to under the Section 235 program. Guidance for making this determination is as follows:

A.Escrow Items Which May Be Included In Assistance Computations. Only certain items required under the mortgage may be included in the assistance computations (see Appendix 50). The escrow items that are acceptable, and the guidelines for determining the acceptable portion of the premium for that escrow item (if the entire amount cannot be included) are listed below:

1.Hazard Insurance. Only the cost of either the standard fire and extended coverage or basic homeowner's policy may be included in the assistance calculations. If a basic homeowner's policy is used, the mortgagee must be sure that any premiums for other items, such as cars, boats or other properties are not included in the assistance calculations. If the cost of the basic homeowner's policy appears excessive, the

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mortgagee must contact the agent and establish the cost of a standard fire and extended coverage policy and use the lesser of the two.

NOTE:Do not include disability or life insurance premiums.

2.Flood Insurance. The entire premium may be included in the computation if the insurance is required by HUD or the mortgagee.

3.Taxes. The entire amount for taxes and special assessments which are levied by a government body may be included in the assistance calculations. Caution, specified assessments may be payable over several tax years. Only the prorated portion due for a specific tax year may be included.

NOTE:Do not include ground rents, assessments by mortgagors' associations, and special assessments levied by persons or private organizations.

B.Additional Disclosures Required Prior To Closing. Prior to closing, mortgagees must make mortgagors aware of the following:

1.the availability of any tax exemption (i.e., available to the mortgagor at the time of closing) for which the mortgagor may qualify;

2.that the responsibility for applying for the exemption is that of the mortgagor;

3.that their assistance payments will be computed based on the assumption that the mortgagor will be receiving the tax exemption for which they qualify;

C.Adjustment Of "Excessive" Surpluses And Shortages. Where an escrow analysis reveals an "excessive" surplus or an "excessive" shortage, a retroactive analysis must be performed.

NOTE:Definition of "Excessive" Surpluses and Shortages. An "excessive" surplus or shortage is defined as any amount that is greater or less than requirements by more than 15 percent

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of the actual disbursements from the account during the most recent full year. Before applying the 15 percent rule, the mortgagee may add one-sixth to the actual disbursements if it has chosen to maintain the surplus permitted in Chapter 2 of this Handbook.

D. When Retroactive Adjustments Are Required. Retroactive adjustments must be made at the following times:

1. When The First Analysis Is Performed After Settlement. If a shortage or surplus is discovered at this time, the shortage or surplus was probably caused by an incorrect amount being collected at settlement to establish the escrow account.

NOTE: If the cause is due to an improper amount being collected at settlement, HUD would not be billed for any portion of the shortage or refunded any portion of the surplus.

2. When The Escrow Analysis Reveals an "excessive" surplus or shortage Allowed (as stated in the "NOTE" under Paragraph 10-20C).

3. When The Mortgage Is Being Assumed Or Paid In Full. Any necessary adjustment revealed by the required escrow analysis (see Chapter 5, Paragraph 5-2G) must be made prior to completion of either of these transactions. However, if this is not possible and/or the mortgagee later discovers an adjustment should have been made for underpaid assistance, make the appropriate refund to the mortgagor and bill HUD for the underpayment amount using an adjustment transaction Code 2 on the next regular month's billing Forms HUD-93102 and HUD-300. The specific reason for adjustment must be provided in Column 3.

For example, underestimated tax escrow. The beginning and ending effective periods of the adjustment (month and year) must be included in the reason for adjustment in Column 3 on Form HUD-300. A copy of the escrow analysis clearly depicting the cause of escrow shortage and the period must accompany Forms HUD-93102 and HUD-300.

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4. When The First Escrow Analysis Of A Suspended Or Terminated Contract Is Performed.

5. When A Prospective Adjustment Would Reduce Assistance To Zero. (A retroactive adjustment is required to confirm the proper suspension of the assistance payments contract.)

E. Prospective Adjustments. Except as cited above, the mortgagee may exercise its option to make prospective adjustments.

F. Adjustment Procedure. Regardless of whether the adjustment is to be prospective or retroactive, the procedure is the same:

1. Adjust the "Formula One" Assistance Payment.

a. Determine the exact amount needed in order to make proper disbursements as they become due;

b. Determine if there were any reported changes (i.e., valid recertifications submitted to the mortgagee) in the mortgagor's household income during the period for which escrow is being collected;

c. Recalculate the "Formula One" assistance payment for any period where the income differed;

2. Verify Accuracy of the "Formula Two" Assistance Payment. If there was an anniversary of amortization during the period, the "Formula Two" payment should have been adjusted at that time because of the change in MIP. If no adjustment was made, the "Formula Two" payment must be recomputed for the period after that anniversary.

NOTE: A common error to look for when verifying Formula Two computations is the use of the wrong column in the Section 235 Factor Table (Appendix 52) Amortization Year - Formula Two when determining the anniversary factor. The first column on each page of this Factor Table is the factor for the first year (the origination factor) -- not the factor for the first recertification.

For example, to compute the Formula Two assistance for the first annual recertification of a mortgage, the factor shown in the 2nd column would be the correct factor to use.

3. Compare the Two Results. For each period where the mortgagor's household income differed, the smaller of the recomputed "Formula One" assistance payment and the correct "Formula Two" assistance payment is the amount that HUD should have been billed. Total the correct payments for the entire disbursement period for which money was being collected and compare these payment amounts with the amounts actually billed. The difference is the overpayment or underpayment of assistance. (Examples of liquidating Section 235 escrow surpluses and shortages are given in Appendix 50.)

10-21BILLING FOR ASSISTANCE/HANDLING CHARGES. In order to receive Section 235 Original, Revised, Revised with Recapture or Revised, Recapture/10 Program assistance payments and handling charges, mortgagees must submit billings to HUD on a monthly basis using an original and one copy of Form HUD-93102, Mortgagee's Certification and Application for Assistance or Interest Reduction Payments (Appendix 46). Both the original and the copy of the Form-HUD-93102 must contain original signatures of an authorized mortgagee official.

NOTE: Only one Form HUD-93102 per mortgage will be accepted for processing each month regardless of the mortgagee's servicing organization or billing procedures. Form HUD-93102 will be returned unprocessed if it is not accompanied by Form HUD-300 detailing as required all billing amounts included in Blocks 1, 2, 3 or 5 on Form HUD-93102.

A. Time Frame For Submitting Form HUD-93102. The Form HUD-93102 must be submitted to HUD (at the exact address shown on the back of the Form) no earlier than the 5th and no later than the 20th of each month in accordance with the instructions printed on the back of this Form.

NOTE: Adjustment amounts determined necessary subsequent to submission of a Form HUD-93102 for a given month must be included on the next

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regular month's billing on the Form HUD-93102 line(s) provided for billing adjustment amounts. Duplicate Forms HUD-93102 submitted in the same month will be

returned to the mortgagee unprocessed.

B.Submission/Completion Of HUD-93102.

1.A Single Form HUD-93102 For The Total of All Section 235 Program Assistance Payment Requests. One billing must be submitted on Form HUD-93102 which includes billing amounts for all Section 235 assistance payments due for either the Original program in Block 1, the Revised program in Block 2, the Revised with Recapture program in Block 3, or the Revised Recapture/10 program in Block 5. The billing must be submitted with an original and one copy of Form HUD-93102. Both the original and the copy must contain original signatures of an authorized mortgagee official. Failure to submit the original and a copy will cause payment processing delays.

NOTE:Mortgagees are no longer required to submit two separate Forms HUD-93102 for Section 235 assistance payments.

The current Form HUD-93102, dated March 1988 (see Appendix 46), must be used. Expired Forms HUD-93102 will be returned unprocessed.

If a billing is resubmitted for any reason, it must be clearly marked "Resubmission" on its face.

Payments will be made to the servicer identified in HUD's records regardless of any directions to the contrary that may be inserted on the billing form. HUD will only send payments to the servicer of record. Form HUD-92080, Mortgage Record Change (Appendix 1) must be submitted in accordance with Chapter 6 to report a change of servicers.

2.Adjustments To The Regular Monthly Billing Amounts. The adjustment Line 2 in each Block 1, 2, 3 or 5 on Form HUD-93102 must be used to request retroactive payment of assistance for prior months.

Line 1 in Blocks 1, 2, 3 or 5 should include the total amount of assistance for the current billing period only.

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Any billing amounts included on an adjustment Line 2 on Form HUD-93102 must be reflected as adjustment transactions using transaction Code 2 listed on Form HUD-300 should balance with the sum of the adjustment amounts on Lines 2 in Blocks

1, 2, 3 or 5 on Forms HUD-93102. Failure to verify that the adjustment amounts and the regular billing amounts on Form HUD-93102 balance with transaction code 1, regular billing and transaction Code 2, adjustment billing amounts on Form HUD-300 will cause payment processing delays.

3. Prior month billing amounts, adjustment transaction Codes 2. Prior month billing amounts must reflect the beginning and ending effective period (month and year) and an explanation of adjustment code in Column 3 as defined below.

Any adjustment must also be supported by documentation requirements as defined below.

Retroactive Review Billing are discussed in Paragraph 10-21(G).

Reason for Adjustment	Explanation of Adjustment	Documentation Code	Documentation Required
Reinstatement after suspension or termination in error	1	HUD-93114	
Reinstatement after mortgagor's failure to recertify timely	2	HUD-93114,	HUD-93101-A
Handling charges returned due to mortgagee failure to meet contractual obligations (See Par. 10-28A)	3	None	
Suspension	4	HUD-93114	
Termination	5	HUD-93114	

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Reason for Adjustment	Explanation of Adjustment	Documentation Code	Documentation Required
Escrow Shortage	6		Escrow analysis

Escrow	7	Escrow analysis
Surplus		
Income	8	HUD-93101-A and
Increase		HUD-93101
Income	9	HUD-93101-A and
Decrease		HUD-93101

NOTE: If more than one explanation of adjustment code applies to a single transaction, all applicable codes should be recorded in Column 3 on Form HUD-300 and all applicable documentation should be submitted.

Failure to identify the period of billing, the explanation of adjustment code or the documentation required, as defined above will cause non-payment of assistance for the affected cases. The mortgagee will have to rebill non-paid cases on the next monthly billing. Payment may not be requested on a second bill for the same month.

Adjustment Code 2 must not be used in connection with the 7% interest penalty assessed due to fraud, misrepresentation and/or failure to meet contractual obligations. The 7% penalty must be submitted to HUD in accordance with Paragraph 10-29A.

C.Submission/Completion Of Form HUD-300. A Form HUD-300, Monthly Summary of Assistance Payments Due Under Sections 235(b), 235(j), or 235(i), or of Interest Reduction Payments Due Under Section 236, (see Appendix 48) must accompany the completed Form HUD-93102.

1.Mortgagees using facsimile versions of Form HUD-300 must include on the modified version, all data required on the actual Form HUD-300.

2.Any transaction Code 1, current month's regular billing amount which is more or less than the amount billed in the prior month must be supported by appropriate documentation as follows:

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Reason For Change	Documentation Required
Case reinstated	Form HUD-93114 and, unless
suspended in	

HUD-93101-A

error, Form
and HUD-93101.

Income increase or
decrease

Form HUD-93101-A

Monthly mortgage
payment amount
changed due to
escrow shortage
or surplus

A copy of the escrow
analysis clearly
depicting what caused
the required decrease
or increase in escrow,

underestimated

(e.g.,

\$20.00 per

taxes by

month).

D.Review For Billing Accuracy. HUD will review billings for propriety, legality and correctness. When a billing is received that is not signed by an authorized mortgagee official, not accompanied by a Form HUD-300, and/or requests amounts which cannot be reconciled to FHA/HUD case detail provided on Form HUD-300, it will be returned to the mortgagee unpaid. No payment will be made until the mortgagee has submitted a corrected billing for that month.

When the amount billed for a case is more or less than the amount billed in the prior month, no payment will be made for the case unless the billing is accompanied by the required Form HUD-93101-A, escrow analysis, or HUD mortgage recapture approval letter, whichever is applicable.

When a mortgagee determines that an income increase is not retroactive, as reflected by the "effective date of payment change" entered in Block C (7) on Form HUD-93101-A (i.e., the mortgagor's income increase was not received prior to the date that the mortgagee received the mortgagor's recertification), a copy of HUD-93101 must be attached to the Form HUD-93101-A for accounting office verification of the overpaid subsidy determination.

When the effective date of payment change reflects that an income decrease is retroactive, Form HUD-93101 must be attached to Form HUD-93101-A for verification of the underpayment determination (also see Paragraph 10-31).

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No payment will be made on cases when non-retroactive subsidy decrease, or retroactive subsidy increase amounts as described above are not documented for verification by

attachment of both Forms HUD-93101-A and HUD-93101 to the billing Form HUD-93102.

Subsidy increases due to escrow shortage will not be paid for any case unless:

1.the billing is accompanied by an escrow analysis; and

2.for each escrow item disbursed which was included in the subsidy amount calculation, copies of the canceled checks and invoices for accounting office verification of the shortage computation are attached.

E.Mortgagee Liability (24 CFR 235.361(b)). Mortgagees are responsible for the accuracy of the billings and shall be held liable for fraud or false certification made on these billings (see Paragraph 10-28B). All billings must be signed by an authorized mortgagee official. Improper billings may result in the imposition of substantial financial penalties as the Program Fraud Civil Remedies Act applies to assistance payments.

NOTE:Mortgagee signing officials should give special attention to the meaning of the certification signed by authorized mortgagee officials on Form HUD-93102. The signing official is certifying, subject to the Program Fraud Civil Remedies Act, that:

1.the assistance payment amount requested for each case included in the bill has been correctly calculated both for the amounts and the periods claimed due in accordance with the provisions of this Handbook;

2.the bill does not include any amounts on behalf of mortgagors who have not complied with recertification requirements within the time limits specified in this Handbook, or in the manner set forth in 24 CFR 235.350;

3.the bill does not include amounts on behalf of mortgagors not eligible for assistance in accordance with provisions set forth in 24 CFR 235 and as set forth in this Handbook;

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4.no amount in the billing has been previously claimed in an outstanding bill, determined by HUD as not payable in a previous bill (i.e., determined not payable after a HUD review of required billing support documents) or paid in a previous bill;

5.supporting details, records and worksheets, together

with a copy of the applicable billing are being held in the mortgagee's file; and

6.all aforementioned documents will be furnished or made available upon request of an authorized official of HUD or of the Comptroller General of the United States.

A determination made upon review that certification to the above was false may result in the imposition of substantial financial penalties.

F.Receipt Of HUD's Payment. When a billing is submitted to HUD in accordance with outstanding instructions and within the time frame shown in Paragraph 10-21, payment should reach the mortgagee on or about the first day of the following month.

G.Monthly Billing. HUD will process payment for only one monthly billing form. Duplicate requests will be returned to the mortgagee unprocessed.

1.Monthly billings must be submitted on the current Form HUD-93102, dated March 1988 (see Appendix 46) which may be obtained from the Government Printing Office. Obsolete Forms HUD-93102 will be returned unprocessed.

2.Recertifications of income which accompany the billing must be submitted on the current Form 93101-A, dated March 1990 (see Appendix 32).

3.Monthly billings should include:

a.the assistance amount due for the current billing period on Line 1 of the appropriate Block 1, 2, 3 or 5; plus

b.the assistance amount for any prior months the mortgagor was entitled to assistance but for which the assistance amount was not paid on a previously submitted Form HUD-93102 or included on an outstanding Form HUD-93102 on Line 2 of the appropriate Block 1, 2, 3 or 5; minus

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c.adjustments for overpaid amounts due HUD which is also on Line 2 of the appropriate Block 1, 2, 3 or 5;

d.the net total of Line 1 and Line 2 on Line 3 of the appropriate Blocks 1, 2, 3 or 5; and

e.the summary total from Line 3 of Blocks 1, 2 and 3
in Block 4.

NOTE:Overpaid subsidy identified in response to HUD
conducted mortgagee reviews requiring retroactive
assistance payments reviews to be performed by
mortgagees should not be included on the regular
monthly billing.

The required review must be completed within the
time frame specified by HUD's (or its agent's)
mortgagee review report. Overpayment must be
submitted on a separate billing clearly denoted in
large print at the top of the billing as a
"Retroactive Review Billing".

This billing must be accompanied by:

(1)a check made payable to HUD for the total
overpayment amount; and

(2)a mortgagee review findings report which
lists in columns, the following information:

(a)the name of each overpaid mortgagor:

(b)the FHA case number;

(c)the month and year of the beginning
and
ending period of overpaid subsidy (i.e.,
3/86-5/88);

(d)the overpayment amount;

(e)an explanation of:

i.the cause of overpayment

(using
explanations of adjustment codes
from Paragraph 10-21);

ii.the date of the event which

resulted in the overpayment; and

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iii.the effective period of the
adjustment.

(f)the mortgagee's calculation of the
overpayment amount; and

(g)attachments Forms HUD-93101-A,
HUD-93101, HUD-93114 (one HUD-93114 to
suspend the assistance payments and one
to reinstate the assistance payments for
retroactive suspensions resulting in
overpayments) and/or escrow analyses as
applicable to the explanation given for
overpayment.

Copies of the check and Forms HUD-93102 and HUD-300 must
also be sent to the appropriate HUD local Office that
conducted the review.

H.Rounding Off Billing Amounts. At the option of the
mortgagee, assistance may be billed in either of the
following ways:

1.using the exact amount to which the mortgagor is
entitled; or

2.using the amount arrived at after rounding off the
exact amount to the nearest dollar (i.e., \$.01-\$.49
round down to zero; \$.50-\$.99 round up to \$1.00).

Regardless of which method is used when billing HUD,
mortgagees must be consistent and must use the same method
(i.e., rounding off or using the exact amount) must be used
for all amounts billed and used when crediting the
individual mortgagor's account.

I.Billing Of Handling Charges. The mortgagee is entitled to a
\$3.00 handling fee per month, per active Section 235
mortgage account.

10-22ASSUMPTIONS. Assistance may be continued on behalf of an
assumptor if that assumptor meets all qualifying requirements as
of the day the mortgage assumption actually takes place (i.e.,
the day the mortgage is executed by the assumptor at closing).

A.Assistance Eligibility. The information on Form HUD-93100-4
(Appendix 53) must reflect that, on the day of closing, the
assumptor's status qualified him/her for assistance based on
the eligibility criteria for new mortgagors.

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NOTE:The assumptor's household is not required (as the
original mortgagor was) to have five or more
members if the property has four or more bedrooms.

B.Additional Underwriting Requirements For Section 235
Assumptions. Assumptions of Section 235 mortgages are

treated the same as those insured under any other section of the Act (See Handbook 4155.1 REV-3 and Chapter 6 of this Handbook) except for the following additional underwriting requirements:

- 1.where subsidy eligibility must be determined, the assistance application (Form HUD 93100-4) is to be reviewed before the credit application and, if assistance is to be authorized, the amount of assistance is to be used as income in the credit evaluation; and

- 2.if the firm commitment to insure the original mortgage or direct endorsement underwriter's credit approval was issued on or after May 27, 1981, the assumptor must sign, at closing, a note agreeing to pay any recapture of assistance that may be due HUD in order to satisfy this lien on the property (24 CFR 235.12). (See Chapter 11).

C.Mortgagee Responsibility. In addition to enforcing the creditworthiness requirements outlined in Handbook 4155.1 REV-4 and in Chapter 6 of this Handbook, when the mortgagee becomes aware there has been or will be an assumption, the following action must be taken: (NOTE: See Paragraph 4-4A, Number 3 for allowable Section 235 fees and charges.)

- 1.make the assumptor aware that he/she may be eligible for assistance;

- 2.prepare the necessary documents to determine eligibility for assistance (if assumptor wishes to be considered for assistance);

- 3.where the assumptor appears to be eligible for assistance, processing must be delayed until the local HUD Office has determined whether assistance can be approved in order that any assistance may be considered in the credit analysis;

- 4.make the assumptor aware of his/her recapture responsibilities (as listed below) if the firm commitment (or direct endorsement credit approval) was issued on or after May 27, 1981:

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- a.there is an existing lien against the property in favor of HUD which shall remain there until satisfied;

- b.the recapture will become due immediately due if

he/she does not:

(1)qualify for assistance;

he/she qualifies;

(2)agree to accept the assistance for which

(3)agree to execute a new note at closing;

c.the recapture becomes due once the assumptor acquires title to the property. He/she will be held liable for the full amount required to satisfy HUD's lien on the property;

5.where appropriate, take the necessary action to obtain and prepare the required documentation and collect the amount due HUD to satisfy the recapture lien in accordance with Chapter 11; and

6.suspend the assistance payments contract if the mortgage is assumed before HUD approves the assumptor for assistance.

D.HUD Responsibility. In addition to enforcing the creditworthiness requirements outlined in Handbook 4155.1 REV-4 and in Chapter 6 of this Handbook when HUD becomes aware that there has been or will be an assumption, it will:

1.determine the assumptor's eligibility for assistance;

2.if eligible, determine the initial amount of assistance for which the assumptor qualifies;

3.where appropriate, determine whether the assumptor's credit qualifies (if the case is not being processed by a direct endorsement mortgagee);

4.where appropriate, take the necessary action to:

a.obtain and prepare the required documentation to determine the recapture amount due in order to satisfy the Section 235 lien;

b.collect and deposit the amount due HUD;

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c.prepare the satisfaction of the recapture lien in accordance with instructions provided in Chapter 11;

d.obtain the signatures of an authorized HUD official and get the satisfaction notarized; and

e.forward the executed and notarized satisfaction to the mortgagee in accordance with instructions outlined in Chapter 11.

E.Cut-off/Start-up Dates For Assistance. Assistance should be cut off and started as follows:

1.When assumptors are approved before acquiring title:

a.subsidy will cease on behalf of the seller effective the first day of the month after he/she moves out of the property;

b.subsidy will begin on behalf of the approved assumptor effective the first day of the following month (i.e., the month after the seller moved out) PROVIDED the assumptor has moved into the property and has acquired title to the property by the effective date.

NOTE:For this purpose, the acquisition date may be considered as the date the deed was recorded unless the mortgagor can demonstrate an earlier date.

c.if the assumptor does not acquire title and occupy the property within 90 calendar days after the seller moves out, the assistance payments must be suspended.

NOTE:Suspension will continue until the first day of the month after the assumptor has moved into the property and has acquired title to the property.

2.When assumptors are approved after acquisition of title:

a.subsidy will cease on behalf of the seller effective with the first day of the month after occupancy ends;

b.subsidy will begin on behalf of the assumptor effective (depending on the length of delay

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between the assumption and application for assistance) as follows:

(1)Delay of 90 Days or Less. If no more than 90 days elapse between title acquisition and application for assistance, payments shall be made retroactive to the first day of the month following title acquisition or occupancy of the property, whichever is later.

(2)Delays of More Than 90 Days. If more than 90 days elapse between title acquisition and application for assistance, payments shall be made effective from the first day of the month following application, PROVIDED the assumptor has title and occupies the property when the application is submitted and through the time that the application for assistance is approved.

10-23DELINQUENCIES AND DEFAULTS. Mortgagees are expected to treat Section 235 mortgages in the same manner as other insured mortgages when they become delinquent. The mortgagor remains eligible for assistance until the mortgagee takes the first legal action required to initiate foreclosure or until some other event requires suspension or termination of the assistance payments contract.

A.Partial Payments. Assistance payments for periods when the mortgagor fails to make his/her share of the mortgage payment are not to be considered partial payments of the mortgagor's share of the full monthly mortgage amount. HUD assistance payments must be accepted regardless of the amount or the length of the delinquency. Before foreclosure may be started, all partial payments of the mortgagor's share must be applied toward the unpaid monthly installments, beginning with the earliest unpaid installment.

1.All assistance payments earned up to the time of the action to foreclose the mortgage must be billed for and applied to complete the monthly installments in the order in which they become due, e.g., to MIP, escrow, interest, and principal, beginning with the earliest unpaid installment. All unearned assistance payments should be applied as a reduction towards the amount billed HUD monthly on Form HUD-93102.

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2.Reinstatement of the account by the mortgagor may not be delayed pending receipt of earned but unpaid assistance payments, and those payments must be billed

for promptly when the mortgagee decides to accept reinstatement from the mortgagor.

NOTE:The rules governing return of partial payments in Paragraph 7-9 apply only to the mortgagor's share of the payment, not to the portion that is paid by HUD.

B.Forbearance. Assistance payments are not affected by forbearance agreements. They are treated as partial payments as described in the preceding paragraph. During these periods, however, the mortgagor must maintain eligibility for assistance (i.e., by continuing to occupy the property, providing required recertifications, etc.) and the mortgagee must continue to make adjustments to the amount of assistance for which the mortgagor is entitled as though the mortgagor were making his/her portion of the monthly payments as required.

C.Special Forbearance. Assistance payments are not affected by special forbearance agreements. The special forbearance agreement:

1.shall be prepared in accordance with instructions outlined in Paragraph 8-4; and

2.shall include an additional provision recognizing that the assistance payments will continue to be adjusted as required under the Section 235 program;

D.Recasting. When a Section 235 mortgage is recast, the monthly payment due under the mortgage as recast becomes the base for calculating both "Formula One" and "Formula Two" assistance payments. The new principal amount after recasting is considered the original mortgage amount for amortization purposes and the new maturity date governs.

NOTE:MIP is not affected by recasting. Regardless of the new unpaid principal balance, the MIP continues to be calculated on the original scheduled unpaid balances.

10-24ASSIGNMENT TO HUD. Assistance payments are not affected by an assignment of the mortgage to HUD. The assistance payment contract shall remain in effect up to the date the assignment is filed for record.

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NOTE:The last assistance payments for which the mortgagee should bill HUD are those for the month immediately preceding the month in which the mortgage is assigned.

10-25 PREPAYMENTS. Section 235 prepayments shall be as follows:

A.Partial. If partial prepayments have been applied to reduce future monthly payments (see Paragraph 5-3A2), both "Formula One" and "Formula Two" must be recalculated based on the revised payments.

B.In Full. The last assistance payment payable will be for the month the mortgage was paid in full presuming the mortgagor was in occupancy and was the legal owner on the first day of the month.

10-26TRANSFER OF SERVICING. A transfer of servicing has the following affect on a Section 235 mortgage:

A.Assistance Eligibility. A mortgagor's eligibility for assistance will not be affected;

B.Recertifications. Annual recertification may be affected if:

1.the mortgagees involved in the transfer use different anniversary dates for recertification; and

2.the transfer would result in a lapse of more than 15 months between recertifications.

C.Additional Recertification Required. Where the situation described in Paragraph 10-26B occurs, the new mortgagee or servicer must require recertification twice in the first year after acquisition -- one on the anniversary date used previously by the former mortgagee or servicer and the second one on the anniversary date that is being used by the new mortgagee or servicer.

D.Additional Notice To Mortgagor. Within 10 days of the transfer, the new mortgagee or servicer must:

1.advise the mortgagor of the transfer of the mortgage;
and

2.provide the mortgagor with the new recertification schedule.

NOTE:The above disclosures may be included with the notice of servicing transfer required by

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Paragraph 6-11B or sent as a separate notice. However, if the above disclosure is sent as a part of the normal notice required by Paragraph 6-11B

when a mortgage is transferred, the notice must be received by the mortgagor at least 10 days before the due date of the first payment to the new mortgagee or servicer.

E.Seller's/Purchaser's Servicing Responsibility. When an insured mortgage is sold, the purchasing mortgagee succeeds to all rights and becomes bound by all of the obligations of the selling mortgagee under the contract of mortgage insurance. Purchasing mortgagees should be aware that they will be held fully responsible to HUD financially for errors or omissions on the part of the selling mortgagee (or its agents), discovered after the transfer is reported, even though those errors or omissions may have taken place before it was reported to HUD. (Also, see Paragraphs 10-17, 10-33, 1-4E, and 6-12C.)

10-27POSSIBLE VIOLATIONS OF LAW OR REGULATIONS. Mortgagees are not expected to seek out evidence of wrongdoing on the part of mortgagors. Neither are they expected to extensively investigate allegations of wrongdoing brought to their attention. However, if a matter can be reasonably explained and/or resolved without extensive investigation, those facts should be used in computing assistance.

A.Mortgagee Responsibility.

1.General. The mortgagee's actions taken independently of instructions from HUD must always be exercised with due care, using the best information available including recent information reflected in the mortgagor's recertification, with its supporting verifying data.

2.Report Clues/Evidence of Mortgagor's Possible Wrongdoing. Possible clues and/or evidence of possible wrongdoing on the part of the mortgagor are to be forwarded to the local HUD Office for whatever action it deems appropriate. Until notified by the local HUD Office as to the action that will be taken (if any), the mortgagee should make the appropriate adjustments in assistance payments as instructed in Paragraph 10-27A1. Such clues and/or evidence may include, but are not limited to, the following:

a.a verification of income showing a date of employment or an increase in income much

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earlier than the date(s) certified to by the mortgagor which cannot be reconciled;

b.an application for another type of loan which shows a new spouse with income and/or other additional sources of income not shown in the recertification;

c.a disclosure, during negotiation of a repayment plan to cure a default, that the mortgagor or other family members have income not reported in the recertification;

d.a name change of the person or a different person signs the recertification for which no reason is known;

e.the receipt of allegations from either identified or anonymous sources containing enough specific information that would lead a person to believe that the recertification might contain false information; and

3.Information Not to be Reported. The mortgagee is charged with acting on its own initiative, basing its actions on the best information available (as outlined in Paragraph 10-27A1), and for documenting its files as to why a particular action was taken.

The following are the examples of cases where the mortgagee shall take appropriate action including completion of all required retroactive recertifications and therefore, need not refer the case to HUD include, but not limited to, the following:

a.where the mortgage was insured before January 5, 1976, and the mortgagor did not report an increase in income caused by a change in the source of income of any adult family member until the first normal recertification following the increase; and

NOTE:Reason for Not Reporting to HUD--A \$50 increase (or more) per month on these mortgages does not require an additional recertification. The assistance payments are adjusted at the time of the annual recertification effective as of the date the income increase occurred.

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b.where the mortgage was insured on or after January 5, 1976, and the mortgagor failed to notify the mortgagee of changes in total family income as

noted in (a) above or the mortgagor did not report a \$50 increase (or more) per month in adult family income until the annual recertification and overpaid assistance resulted.

NOTE:Reason for Not Reporting to HUD--While the mortgagor is obligated to report a \$50 increase (or more) per month in adult family income when they are received, it was reported at the time of the annual recertification. Once the mortgagee learns that such an increase did go into effect and went unreported by the mortgagor, the mortgagee is to take the necessary steps to determine when the \$50 (or more) income increased per month. Assistance must then be recomputed and the overpaid assistance refunded to HUD.

B.HUD Field Office Responsibility. The HUD Field Office Manager will review any information sent in with respect to possible wrongdoing on the part of a mortgagor and will determine whether further investigation is warranted.

1.Where An Investigation Is Warranted. Where it is warranted, the Field Office Manager will take the necessary steps to refer a case to the appropriate HUD office for investigation.

2.Where An Investigation Is Not Warranted. Where administrative action is appropriate and former investigation is not warranted, the Field Office Manager will notify the mortgagee, in writing, of its decision. Written instructions will also be provided to the mortgagee as to how it should proceed with the adjustment of the assistance payments.

C.Office Of The HUD Inspector General. The actual conduct of investigations into possible fraud or referral of information to other agencies for further investigation and decisions relating to prosecution is the responsibility of the Inspector General. Mortgagees will not normally be advised of the progress of investigations and should make no assumptions as to

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their possible outcome and its impact on assistance payments.

10-28CAUSES OF OVERPAID ASSISTANCE. Overpaid assistance exists

anytime assistance is billed and paid for any amounts greater than those for which a mortgagee/mortgagor is entitled. Listed below are the most common situations which result in overpaid assistance:

A.Mortgagee's Failure To Meet Contractual Obligations. This occurs when the mortgagee fails to meet its obligations under the assistance payments contract as follows:

1.requesting a handling charge on cases when recertifications have not been requested timely;

2.failing to act in a timely manner when:

a.requesting a required recertification at the proper time;

b.recalculating assistance payments;

c.submitting Form HUD-93101-A and HUD-93114, as applicable;

d.adjusting subsidy payments when a recertification Form HUD-93101 is received containing information which requires suspension or adjustment of assistance payments billed;

e.retroactively calculating adjustments in assistance payments from the date of income increases and crediting overpaid assistance amounts to HUD when annual or interim recertifications reflect income increases;

f.timely requesting HUD to suspend assistance payments when mortgagors fail to respond to recertification requests within the specified time frame;

g.requesting reinstatements to be non-retroactive when suspensions were due to mortgagors failure to timely respond to certification requests; and/or

h.verifying recertified income in the manner set forth in Paragraph 10-10.

B.Mortgagee Fraud Or Misrepresentation. This occurs when:

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1.mortgagees falsify certifications on monthly billing Form HUD-93102 submitted to HUD for assistance payments (see Paragraph 10-21E); or

2.any other fraud and/or misrepresentation in the Section 235 program.

C.Mortgagor Errors Or Omissions. The most common mortgagor errors are failures (for whatever reason) to:

1.report increases of adult family income of \$50 or more per month when the mortgage was insured on or after January 5, 1976;

2.advise the mortgagee when the property is sold;

3.advise the mortgagee when he/she no longer meets occupancy or some other basic eligibility requirement; and/or

4.include an income source on a required recertification.

D.Mortgagor Fraud Or Misrepresentation. When a mortgagor fails to include income amounts or sources, and/or misrepresents occupancy or other eligibility data, on a recertification in an attempt to receive assistance for which he/she is not eligible.

10-29 REPAYMENT OF OVERPAID ASSISTANCE (24 CFR 235.361).

A.Overpayments Caused By The Mortgagee. The mortgagee must refund to HUD all overpaid assistance and all handling charges for each month during which there was an overpayment, plus interest computed at the rate of seven percent per annum on the entire amount from the date of the first overpayment when an overpayment results from the following circumstances:

1.fraud or misrepresentation on the part of the mortgagee; and/or

2.the mortgagee's failure to meet a contractual obligation, as described in Paragraph 10-28.

The total overpayment amount must be credited on the next month's billing on Form HUD-93102 and should include return of handling charges paid for each period of overpayment for each case. Form HUD-300, Column 3, must reflect an explanation of the overpayment cause and the affected beginning and ending period (month and year).

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The 7% interest amount must be sent in a separate check made payable to HUD with an itemized listing of the 7%

calculation and total interest due for each overpaid case. The check with the itemized listing should accompany the Form HUD-93102 billing.

B. Overpayment Caused By Error. When an overpayment is caused by an error on the part of the mortgagee or the mortgagor only the overpaid assistance need be refunded. The mortgagee shall refund the overpaid assistance by:

1. reimbursing HUD the total overpaid amount on the next month's billing (on Form HUD-93102); and

2. collecting the overpaid assistance from the mortgagor in a lump sum or in installments while exercising due caution not to cause a default by the manner of collection selected (24 CFR 235.361(c)).

3. Only as a last resort should the mortgagee apply a mortgage payment or payments to the recovery of the overpaid amount.

NOTE: If the error which created the overpaid assistance was caused by the mortgagee then the mortgagee must repay HUD, however, HUD does not require the mortgagee to collect repayment from the mortgagor.

C. Mortgagor No Longer Obligated Under The Mortgage.

1. On cases where the mortgagor is no longer obligated under the mortgage, the mortgagee must send the mortgagor's last known address to the HUD Office having jurisdiction over the mortgage.

2. The Claims Collection Officer in the HUD Field Office is responsible for the collection activities. Chapter 5, HUD Handbook 1900.25 REV-3, contains the procedures which the Claim Collection Officer must implement for collection of the debt.

10-30 CAUSES OF UNDERPAYMENTS. Listed below are circumstances which may result in underpayments and are the only causes for which a mortgagee may bill for underpaid assistance:

A. math errors;

B. using a wrong factor in calculating the "Formula Two" assistance payment;

C. underestimating escrow requirements; and/or

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D.the mortgagee's failure to initiate an optional recertification after notification from a mortgagor of a reduction of income.

NOTE:Failure of a mortgagor to request an optional recertification at the time of a reduction in the income of an adult family member is not a justification to bill for an underpayment at a later date.

10-31COLLECTING UNDERPAID ASSISTANCE. The total underpayment amount may be added to the next month's billing (on Form HUD-93102). Retroactive billings for underpaid subsidy must be accompanied by Forms HUD-93101-A and 93101, Form HUD-93114 requesting reinstatement of a suspension in error, or an escrow analysis with support documents as defined in Paragraph 10-21D.

NOTE:Underpayment requests will not be paid when the required documentation does not accompany Form HUD-93102, or the explanation of adjustment is not provided on Form HUD-300 with documentation required as defined in Paragraph 10-21B3.

10-32RECORDS MAINTENANCE (24 CFR 235.365 and 235.830). HUD Field Offices will periodically review mortgagee records to establish that assistance is being billed properly. These reviews will normally cover recertifications, verifications, billings, suspensions, terminations, documentation, and escrow analysis. In addition to the records maintenance required on other types of mortgages, mortgagees must have complete records to support the amounts billed each month on each mortgage from the time of origination through termination of assistance payments (also see Paragraph 10-17), including recapture of assistance where applicable (see Chapter 11). These records must be adequate to support every dollar of assistance billed. Where records do not exist to substantiate the amount of assistance billed, assistance will be considered overpaid and must be refunded unless the mortgagee can reconstruct adequate records to support the payments. For each case, the records must include:

A.all initial applications (Forms HUD-93100-4) and required recertifications (Form HUD-93101 and 93101-A), with supporting verifications and other related documentation;

B.all optional recertifications that resulted in changes in assistance, with supporting verifications and other related documentation;

C.for each suspension, reinstatement, or termination:

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1.a Form HUD-93114;

2.all individual escrow analyses related to overpaid or underpaid assistance; and

3.individual ledgers (or other records) showing application of assistance to the account;

D.all monthly billings (Forms HUD-93102) for assistance payments with supporting documentation for all adjustments for overpaid or underpaid assistance;

E.for each monthly billing (Form HUD-93102), a case-by-case summary showing, for each case included in the billing, the following data elements:

1.the date of endorsement for insurance;

2.the original mortgage amount;

3.the certified adjusted annual income used that month;

4.the total mortgage payment that month;

5.the "Formula One" calculation;

6.the "Formula Two" calculation;

7.the amount of assistance due;

8.the explanation of adjustment code as provided in Chapter 10-21B3;

9.the beginning and ending effective dates (month and year) of adjustment transactions Code 2;

10.the handling charge; and

11.the total bill.

10-33RESPONSIBILITY FOR TRANSFERRING RECORDS. Mortgagees acquiring mortgages from other mortgagees and/or changing servicers are fully responsible for records that should have been maintained by the selling/transferring mortgagee or servicer. (See Paragraphs 1-4E, 10-17 and 10-26.)

NOTE:If it is determined after a change of servicers that assistance has been overpaid, the servicer at the time of the discovery will be responsible for refunding the overpayment.

10-34REPORTING TO HUD. For monitoring purposes, the following Section 235 reports are to be submitted to HUD Headquarters.

NOTE:These reports should not be submitted to Field Offices unless specifically requested.

A.Reports On Recertifications. A Form HUD-93101-A must be submitted on each case recertified. The appropriate address is printed on the form.

B.Ad Hoc Reporting. As needed, HUD will request information on the cumulative assistance paid on an account to date (i.e., from origination through termination of the assistance contract) to determine the amount of recapture due HUD in order to satisfy the recapture lien. Records must be maintained in such a manner as to enable the mortgagee to provide this information. Such information must be made available to HUD upon request. (Also see Paragraphs 10-17, 9-16 and 1-4D.)

10-35INFORMATION TO MORTGAGORS (24 CFR 203.508(c) and 235.1001). Within 30 days after the end of each calendar year, the mortgagee must provide the mortgagor with a statement advising the following:

A.the total amount of assistance applied to the mortgagor's account during the preceding year;

B.the taxes and interest paid on the mortgagor's behalf during the year (also see Paragraph 2-10); and

C.a notice as to the probable deductibility of interest payments using substantially the language shown below:

"If you itemize deductions on your income tax returns, please read this notice. Under Section 1.163-1(d) of Federal Income Tax Regulations, you, as the mortgagor, may deduct for Federal income tax purposes, only that part, if any, of mortgage interest payments made during the year which exceeded the amount of assistance payments made by HUD during the year. You are urged to contact your tax advisor or State and local tax offices for guidance regarding the deductibility of payments on your State or local income tax returns." (With respect to Servicers Responsibility -- End-of-Year Statement, see Paragraph 1-5C.)

10-36REVISED/RECAPTURE/10 PROGRAM (24 CFR 235.12). The Appropriations Act of 1984 reactivated the Section 235 Program

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as revised by the Housing and Urban Rural Recovery Act of 1983.

Mortgages insured under Section 235 beginning in early 1985 are identified with case number suffixes (the last three numbers) 246, 346, and 546. The assistance payments contract on these mortgages is limited by the Housing and Urban Rural Recovery Act of 1983 to 10 years after mortgage origination. When the 10 year period ends, the mortgagee must terminate the assistance payment contract, if there is not a request by the Department to continue such assistance. The assistance paid during the contract period is subject to recapture by HUD under certain circumstances. Procedures and requirements of these mortgages are the same as for other Section 235 mortgage except as indicated below:

A.Documentation At Origination. Assistance payments on these mortgages are disbursed and monitored using an automated system. In order to set up a new case in the automated system, the HUD Field Office must have:

1.the completed Mortgage Insurance Certificate indicating the FHA/HUD case number;

2.the separate assistance payments contract which has been executed by both HUD and the mortgagee and the "Acknowledgement of Mortgagors", signed by the mortgagors;

3.the mortgage interest rate;

4.the due date of the first principal and interest payment;

5.the mortgagee and/or servicer's complete name, address and mortgage number assigned by HUD;

B."Formula One" Assistance. Under this program, the "Formula One" assistance payment is the difference between the full monthly mortgage payment and 28 percent of the mortgagor's adjusted monthly family income (as opposed to 20 percent under earlier versions of the program). The actual assistance paid is still the lesser of the "Formula One" and "Formula Two" payments.

C.Recapture Of Assistance (24 CFR 235.12). In addition to the limited term of assistance, these mortgages are distinguished by a provision for recapture of assistance when the property is sold. (See Chapter 11 for detailed recapture procedures.)

D.Mortgage Assumptions. Mortgages insured under this program are assumable under the same conditions as are

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any other insured mortgages (See Chapter 6). However,

mortgagors will not be eligible for assistance after the tenth anniversary of the first payment due under the original mortgage. Assumptors and potential assumptors should be advised of these limitations and how these limitations shall affect them.

NOTE: Allowable fees for assumptions of Section 235 mortgages are found in Chapter 4, Paragraph 4-4A3.

10-37ALIEN MORTGAGORS. To be eligible for assistance, a mortgagor must be a citizen of the United States or an alien admitted for permanent residence.

A. Citizenship/Permanent Alien Status Proof Required. Evidence of this eligibility must be submitted to the mortgagee whenever:

1. there is a new application for assistance;
2. an existing cooperative membership is purchased;
3. an assisted mortgage is assumed;
4. an assisted mortgage is assigned to HUD; or
5. an assisted mortgage that has been in default is reinstated under 24 CFR 203.608.

B. Forms Of Acceptable Proof. When any of the events in the preceding paragraph occur, the mortgagee must ask the mortgagor to provide proof of eligibility based on citizenship. Acceptable proof may include:

1. a Birth Certificate;
2. a United States Passport
3. an Alien Registration Card (i.e., "Green Card"); or
4. a Naturalization Certificate.

C. Mortgagee Certification. The mortgagee must then certify that acceptable proof as stated in the preceding paragraph has been submitted by all persons from whom it is required.

NOTE: If the mortgagee cannot make this certification, the assistance payments contract must be suspended and the mortgagor notified of the consequences.

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D. Fraudulent Or Invalid Documentation (24 CFR 235.361(b)). If

the documentation should prove to be fraudulent, invalid or inadequate, the mortgagor will be required to repay all assistance payments to HUD. In addition, the mortgagee may be required to refund overpaid assistance payments, plus handling charges and interest.

E. When Assistance May Be Reinstated. Assistance payments may be resumed at HUD's discretion if all aliens not able to establish eligibility have moved from the property or have established eligibility.