

**Waiver of Requirements of  
24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620**

To help residential care facilities install needed fire safety equipment, HUD's Fire Safety Equipment Loan Program (FSEL) was created in 1974. In the thirty-seven years since then, however, there has been no demand for the program (as revealed by a search of the records). Particular program regulatory provisions—promulgated in 1974 and not amended since then—have been very unattractive to lenders. In particular, provisions at 24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620 have been problematic.

Pursuant to section 7(q) of the Department of Housing and Urban Development Act (42 USC 3535(q)) and 24 CFR §5.110, I hereby waive 24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620 of the Federal Housing Administration (FHA) regulations. These regulations set forth pre-approval for projects and determination of compliance of installed improvements by the U.S. Department of Health and Human Services (HHS). Further, the regulations specify the maximum fees and charges by lender, amortization period and form of construction contract for the Fire Safety Equipment Loan Program (FSEL) as authorized under 24 CFR §232 Subpart C. Due to the waiver of these regulations, mortgagees will be able to apply for insurance for a fire safety equipment loans under program procedures comparable to those authorized under the National Housing Act (NHA) §232 pursuant to §223(f) . The 232 pursuant to 223(f) Program, which has construction costs that would typically exceed those of the FSEL, operates quite well without such burdensome restrictions, demonstrating that such restrictions are unnecessary. In support of this waiver, I make the following Findings and Determinations.

**Findings**

1. Although the FSEL's regulations were promulgated and its handbook (4600.2 Fire Safety Equipment Loan Insurance Program) was issued in 1974, there has been no demand for the program (as revealed by a search of the records).
2. Demand for FSEL may occur because of recent events.
  - a. In July 2004, Report GAO-04-660 titled "Nursing Home Fire Safety – Recent Fires Highlight Weakness in Federal Standards and Oversight" outlined the critical need for fire sprinkler system upgrades in existing Nursing Homes. The report outlined how basic upgrades or introduction of fire sprinkler systems will reduce the loss of lives of residents by fire in nursing homes.
  - b. On August 13, 2008, the HHS's Centers for Medicare and Medicaid Services (CMS) issued a final rule which required all CMS certified long term care facilities have fire sprinkler systems no later than August 13, 2013. It is expected that CMS-certified long term care facilities will need programs like FSEL to meet this requirement.
3. Mortgagees may only submit applications to HUD for fire safety equipment loans that have the prior approval by the Secretary of HHS as described in 24 CFR Section §232.505(a), which states:

Prior approval. An application for insurance of a fire safety loan under this part shall be considered only in connection with a proposal which has been approved by the Secretary of Health and Human Services, or his designee, based upon (1) his determination of need for such equipment to be installed in the facility as a condition for participation for providers of services under title XVIII and title XIX of the 24 CFR Ch. II (4–1–09 Edition) Social Security Act, and (2) his determination that upon installation of such equipment the project will meet the fire safety requirements prescribed by the Secretary of HHS for participation under titles XVIII and XIX of the Social Security Act, and (3) his judgment that the cost estimate for purchase and installation of the equipment is a reasonable cost estimate.

4. Mortgagees must follow the maximum fees and charges by lender requirements as described in 24 CFR §232.520, which states:

The lender may collect from the borrower the amount of the fees provided for in this subpart. The lender may also collect from the borrower an initial service charge in an amount not to exceed one and one-half of one percent of the original principal amount of the loan to reimburse the lender for the cost of originating and closing the transaction. Any additional charges shall be subject to the prior approval of the Commissioner.

5. Mortgagees must follow the amortization period as described in 24 CFR Section §232.505(a), which states:

Amortization period. (1) The loan shall have an amortization of 5, 10, or 15 years by providing for 60, 120, or 180 monthly amortization payments. No fire safety loan shall have an amortization period in excess of 15 years unless the amount of the loan exceeds \$50,000.00, in which event the amortization period may be increased to 20 years, with a provision for 240 monthly amortization payments. (2) In any event, the loan shall have a maturity satisfactory to the Commissioner of not less than 5 or more than 20 years from the date of the beginning of amortization or the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

6. Under 24 CFR §232.605, the form of the contract is mandated as follows:

Contract requirements. (a) The contract between the mortgagor and the general contractor may be in the form of a lump sum contract or a cost plus contract. Either form of contract shall include the cost of fire safety equipment, its installation, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary of Health and Human Services and the Commissioner. A lump sum contract shall provide for the payment of a specified amount. A cost plus contract shall provide for the payment of the contractor's actual cost of compliance with the requirements of the contract, plus such allowance for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed an upset price as approved by the Commissioner. (b) If agreed to by the general contractor and

borrower, a lump sum form of contract between the borrower and the general contractor may be used unless the Commissioner determines that a cost plus contract with a maximum upset price is necessary to protect the interests of the borrower or the Commissioner .

7. Under 24 CFR §232.620 a determination of compliance by HHS is required. That provision states:

An application under this subpart must be accompanied by a statement from the Secretary of Health and Human Services, or his designee, that the Secretary has determined that the physical plant of the facility, when the fire safety equipment has been installed, will be in compliance with the HHS requirements for fire safety and § 232.625 will meet other pertinent health and safety requirements of HHS for providers of services under title XVIII and XIX of the Social Security Act (Medicare and Medicaid). In lieu of a facility being able to meet HHS's requirements for other pertinent health and safety requirements at the time of application, HHS may accept a list of deficiencies from the State Agency responsible for determining compliance with HHS's requirements for other pertinent health and safety requirements for providers of such services along with a plan prepared by the applicant for correcting those deficiencies. In such event, HHS will inform HUD that, if the facility complies with such plan, the facility will meet the applicable health and safety requirements of HHS for providers of services under titles XVIII and XIX of the Social Security Act upon the installation of the fire safety equipment. The architectural exhibits, as approved, by HHS, together with any commitment requirements HHS deems appropriate, must accompany the statement. In the case of Intermediate Care Facilities, the statement by HHS to HUD will be based upon a determination that the facility has been approved in accordance with applicable HHS statutes and regulations, subject to the proper installation of the proposed equipment.

8. FHA currently operates the program authorized under the NHA §232 pursuant to §223(f) without the burdensome and prescriptive requirements of 24 CFR §232.505(a), 232.540(b), 232.605 and 232.620. The 232 pursuant to 223(f) Program, which has construction costs that would typically exceed those of the FSELP, operates quite well without such burdensome restrictions, demonstrating that such restrictions are unnecessary. Under this program, FHA collects documentation to determine the facility improvement's compliance with HHS (or applicable governing authority). In addition, amortization schedules are developed to match the cash flows of each project and its risk to HUD, rather than through a "one size fits all" amortization schedule approach.
9. FHA has determined that the one and one half percent initial service fee described in 24 CFR §232.520 would not reimburse the lender for the cost of originating and closing the transaction. Thus, unless this requirement is changed, the program is not workable. However, FHA will issue handbooks, mortgage letters and/or other directives to lenders that will establish the maximum fees and charges. The established limits cannot be exceeded without FHA's approval.

10. HUD is proposing a permanent change to regulations 24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620.

### **Determinations**

1. 24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620 must be waived in the areas of prior approval for the project from HHS, maximum fees and charges by lender, amortization period, form of contract and the determination of compliance of installed improvements by HHS. The waiver of these regulations will allow mortgagees to apply for insurance for fire safety equipment loans under a process that, in these matters, is comparable to that for the program authorized under the NHA §232 pursuant to §223(f), and collect sufficient fees to cover the costs of originating and closing the transaction. The 232 pursuant to 223(f) Program, which has construction costs that would typically exceed those of the FSELP, operates quite well without such burdensome restrictions, demonstrating that such restrictions are unnecessary. FHA will issue handbooks, mortgage letters and/or other directives to lenders that will establish the maximum fees and charges. The established limits cannot be exceeded without FHA's approval.
2. HUD anticipates proposing a permanent change to regulations 24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620.
3. All other FHA requirements and policy guidance would remain in effect.
4. A waiver of 24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620 will not violate any statutory requirements.
5. The above findings constitute good cause for the waiver, as required by 24 CFR §5.110. Granting of this waiver will help ensure that the Department is able to efficiently and effectively administer the fire safety equipment loan program. If FHA determines that this waiver does not forward the Department's goals, FHA may, at its discretion, withdraw this waiver immediately.

### **Waiver**

Regulations 24 CFR §232.505(a), 232.520, 232.540(b), 232.605 and 232.620 in the areas of prior approval by HHS, maximum fees and charges by lender, amortization period, form of contract and the determination of compliance by the HHS, are hereby waived for a period of one year from the execution date of this document. This waiver is effective from the date of issuance.

  
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Carol J. Galante, Acting Assistant Secretary for  
Housing –Federal Housing Commissioner

**MAR 14 2012**

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