

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT****Office of the Assistant Secretary for  
Housing—Federal Housing  
Commissioner****24 CFR Part 235****[Docket No. FR-3927-F-01]****RIN 2502-AG52****Refinancing Mortgages Under Section  
235(r) of the National Housing Act;  
Amendment****AGENCY:** Office of the Assistant  
Secretary for Housing—Federal Housing  
Commissioner, HUD.**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations for refinancing mortgages under section 235(r) of the National Housing Act. Since the enactment of this program in 1988, mortgagees have not expressed an interest in participating in this program. Therefore, HUD seeks to enhance the program by providing for the payment by HUD, rather than by the mortgagee, of the incentive to the mortgagors and of specific refinancing costs, and by limiting the origination of these loans to the number of approved mortgagees that would make the program most attractive. This rule also eliminates obsolete regulations within 24 CFR part 235.

**EFFECTIVE DATE:** December 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Falkenstein, Jr., Office of Insured Single Family, Department of Housing and Urban Development, room 9278, 451 Seventh Street SW., Washington, DC 20410; Telephone number (202) 708-0614, ext. 2214; TDD (202) 708-4594. (These are not toll free numbers.)

**SUPPLEMENTARY INFORMATION:****I. Background**

Congress added section 235 to the National Housing Act (12 U.S.C. 1715z) (the Act) in 1968. This provision authorized the Secretary to insure mortgages so that lower income families could acquire housing. Section 235 also authorized the Secretary to assist the mortgagor by contracting with the mortgagee to make a portion of the mortgage payments on behalf of the mortgagor. Many of the mortgages insured under section 235, which are still outstanding, were made during the high interest rate years of 1980, 1981, and 1982. HUD would be able to save substantial amounts of assistance payments if the mortgages were

refinanced at the current lower interest rates. Congress enacted section 235(r) of the Act in 1988 so that mortgages insured and assisted under section 235 of the National Housing Act could be refinanced at a reduced interest rate.

**A. HUD's Payment of Mortgagors'  
Incentives and Refinancing Costs**

Although HUD published regulations in 1991<sup>1</sup> and 1992<sup>2</sup> to make the 235(r) program attractive to mortgagees and mortgagors, no mortgages have been made nor insured under the program. However, HUD published those regulations on the basis that the mortgagee would have to pay the incentive payment to the mortgagor as well as the refinancing costs, and then recoup these costs through a premium interest rate. Although section 235(r) authorized the Secretary to make such payments, Congress did not appropriate funds for the payments until it passed the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103-327, approved September 28, 1994).

In light of the appropriation, HUD can now amend the 235(r) regulations to provide for the payment of the incentive and refinancing costs by HUD rather than the mortgagee. The mortgagee will not have to recoup any such costs through the maximum interest rate, which will be set by the Secretary. The Secretary has established the maximum rate by reference to the daily Government National Mortgage Association (GNMA) coupon quote as shown on a financial news wire service (such as Telerate), which is described below, plus a margin to be determined by the Secretary.

**B. Limiting Origination to the Efficient  
Number of Mortgagees**

HUD realized that in order to participate in the 235(r) program, most mortgagees would have to create a mechanism to provide for refinancing these loans. The expense of creating the mechanism to refinance a small universe of mortgages may have discouraged participation in this program. However, HUD considered that the mortgagee's expenses in preparing for the program would be most efficiently offset by the mortgagee's fees if participation was limited to one mortgagee. Therefore, HUD prepared and advertised a Request for Proposal (RFP) to contract with a single mortgagee that was approved by the Federal Housing Administration

(FHA). The contract would have provided for the successful mortgagee to handle the disbursement of the funds that HUD is authorized to pay for mortgagor incentives and the refinancing costs, notify the mortgagors of the opportunity to refinance, and originate all the mortgages. However, HUD received no applications under the RFP.

HUD desires to make this program as attractive as possible to encourage mortgagees to make these mortgages, which will in turn save HUD subsidy funds. HUD is currently trying to ascertain the source of the lack of interest in the program and the contract that HUD sought to award. Therefore, the Secretary will decide after the publication of these amendments whether the program would be enhanced by limiting it to less than all HUD-approved mortgagees. The Secretary could then determine if it would be practical to publish another RFP in an attempt to obtain one or more contractors to handle the entire program for HUD.

Accordingly, this rule amends the interest rate provisions, formerly in § 235.1202(b)(3), to provide that the interest rate on these loans shall be negotiated between the parties. The interest rate shall not exceed the GNMA coupon rate, which is based on the closing price for three-month forward delivery contracts, closest to par but not exceeding par, on the date the Direct Endorsement mortgagee's underwriter executes the Mortgage Credit Analysis Worksheet, form HUD-92900 WS, or the date of the closing of the mortgage, whichever rate is higher, plus a margin to be determined by the Secretary. The Secretary will also pay the mortgagee a discount, as part of the refinancing costs. The maximum discount points that HUD will pay on these mortgages is to be determined by the Secretary. The mortgagors shall not be charged discounts. These provisions are located in § 235.1218(c) of this rule. As a result of this rule, HUD will no longer publish a notice in the Federal Register announcing the interest rate for the 235(r) mortgages or the margin.

This rule also amends the refinancing costs provisions, formerly in § 235.1202(b)(4), to eliminate the payment of the financing costs by the mortgagee, and to provide that the Secretary will pay for such costs, to be disbursed by the mortgagee on behalf of the Secretary. These provisions are located in § 235.1218(d) of this rule.

This rule amends the eligible mortgagees provision, formerly in § 235.1202(b)(5), to allow the Secretary to limit participation in the program to

<sup>1</sup> 56 FR 27622; June 14, 1991.<sup>2</sup> 57 FR 62452; December 30, 1992.

a specified number of mortgagees, depending upon the amount of interest generated by these amendments. This provision is located in § 235.1218(e) of this rule.

This rule also makes other miscellaneous amendments to subpart H of part 235, to conform all the regulations with the changes in the program mentioned above.

## II. Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. With this review, HUD has determined that while the 235(r) program is active, HUD can eliminate other portions of 24 CFR part 235 that are obsolete.

First, since HUD is no longer insuring new mortgages under section 235 of the National Housing Act, this rule eliminates all of the eligibility provisions in subpart A except those required for the 235(r) program. The provisions required for the 235(r) program will now be located in subpart H. HUD will maintain a "savings" clause in subpart A, which will provide that the regulations in the subpart in effect before the effective date of this rule will continue to apply to any outstanding mortgages.

Second, subparts D, E, and F implemented the Rehabilitation Sales Projects Program authorized by section 235(j) of the National Housing Act. HUD insured such mortgages in the 1970s, but few of these mortgages remain outstanding. This rule will eliminate these subparts except for a "savings" clause.

Therefore, this final rule will result in the elimination of approximately 14 pages of obsolete regulations.

## III. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary.

Section 235(r)(7) of the National Housing Act provides that this program shall be implemented by a notice published in the Federal Register. However, since implementation of the program has required changes to codified regulations, it has been necessary for HUD to implement this program through rulemaking. The amendments described above would not impose a regulatory burden on the public, but instead would relieve a financial burden on the parties to these mortgages. Therefore, HUD finds that there is good cause for final rulemaking in this case, and that it is unnecessary to solicit prior public comment.

## IV. Other Matters

### A. National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, 451 Seventh Street SW, Room 10276, Washington, DC 20410.

### B. Executive Order 12286

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "National Environmental Policy Act."

### C. Regulatory Flexibility Act

The Secretary, in approving this rule for publication, has certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule does not have a significant economic impact on a substantial number of small entities. If the rule affects small entities at all, the impact will be positive, as the rule is amending a HUD-insured mortgage program in an effort to make it more acceptable in the financial market.

### D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and

the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

### E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. The rule involves the refinancing of mortgages insured under section 235 by mortgages to be insured under section 235(r). The purpose of the refinancing is to lower the interest rate on the mortgages so that the assistance payments being made by HUD will be reduced, thus saving HUD large cash outlays. The potential effect on families would be beneficial in that they would have a potential savings with respect to repayment of assistance payments to HUD and would also receive an incentive payment to refinance. Therefore, no further review under the Order is necessary.

### List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 235 is amended as follows:

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z; 42 U.S.C. 3535(d).

§§ 235.1202, 235.1204, 235.1206, 235.1308, 235.1210, 235.1212, 235.1314, 235.1216, 235.1218, 235.1220, and 235.1222 [Redesignated as 235.1218, 235.1220, 235.1222, 235.1224, 235.1266, 235.1228, 235.1230, 235.1232, 235.1234, 235.1236, and 235.1238].

2. Sections 235.1202, 235.1204, 235.1206, 235.1208, 235.1210, 235.1212, 235.1214, 235.1216, 235.1218, 235.1220, and 235.1222 are redesignated as §§ 235.1218, 235.1220, 235.1222, 235.1224, 235.1226, 235.1228, 235.1230, 235.1232, 235.1234, 235.1236, and 235.1238, respectively.

### § 235.1 [Redesignated as 235.1202]

3. Section 235.1 is redesignated as § 235.1202, and it is amended by

revising the introductory text of paragraph (a) to read as follows:

**§ 235.1202 Cross-reference.**

(a) All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages insured under section 235(r) of the National Housing Act, except the following provisions:

\* \* \* \* \*

3. A new § 235.1 is added to subpart A to read as follows:

**§ 235.1 Applicability of regulations.**

The regulations regarding eligibility requirements for homes for lower income families in force before December 8, 1995, will continue to govern the rights and obligations of mortgagors, mortgagees, and the Department of Housing and Urban Development with respect to loans insured under section 235(i) of the National Housing Act.

**§ 235.2 [Removed]**

4. Section 235.2 is removed.

**§ 235.3 [Redesignated as 235.1204]**

5. Section 235.3 is redesignated as § 235.1204.

**§ 235.3 [Redesignated as 235.1204]**

6. Section 235.5 is redesignated as § 235.1206.

**§ 235.9 [Removed]**

7. Section 235.9 is removed.

**§ 235.10 [Redesignated as 235.1208 and amended]**

8. Section 235.10 is redesignated as § 235.1208, and is amended by removing paragraphs (a) and (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (a), (b), and (c), respectively, and by removing the parenthetical phrase at the end of paragraph (c).

**§ 235.11 [Removed]**

9. Section 235.11 is removed.

**§ 235.12 [Redesignated as 235.1210]**

10. Section 235.12 is redesignated as § 235.1210.

**§§ 235.13, 235.15, 235.16, 235.18, and 235.20 [Removed]**

11. Sections 235.13, 235.15, 235.16, 235.18, and 235.20 are removed.

**§ 235.22 [Redesignated as 235.1212]**

12. Section 235.22 is redesignated as § 235.1212.

**§§ 235.25, 235.30, 235.31, and 235.32 [Removed]**

13. Sections 235.25, 235.30, 235.31, and 235.32 are removed.

**§ 235.33 [Redesignated as 235.1214]**

14. Section 235.33 is redesignated as § 235.1214.

**§§ 235.35, 235.37, 235.38, and 235.39 [Removed]**

15. Sections 235.35, 235.37, 235.38, and 235.39 are removed.

**§ 235.40 [Redesignated as § 235.1216]**

16. Section 235.40 is redesignated as § 235.1216.

**§ 235.45 [Removed]**

17. Section 235.45 is removed.

18. Subpart D is revised to read as follows:

**Subpart D—Rehabilitation Sales Projects**

**§ 235.501 Applicability of regulations.**

The regulations regarding eligibility requirements, contract rights and obligations, and assistance payments for rehabilitation sales projects in force before December 8, 1995, will continue to govern the rights and obligations of mortgagors, mortgagees, and the Department of Housing and Urban Development with respect to loans insured under section 235(j) of the National Housing Act.

**Subparts E and F—[Removed]**

19. Subparts E and F are removed.

**§ 235.1200 [Amended]**

20. Section 235.1200 is amended by removing the second sentence.

21. Section 235.1218 is revised to read as follows:

**§ 235.1218 Additional eligibility requirements.**

(a) *Mortgage amount.* It must be in an amount not exceeding the lesser of:

(1) The unpaid principal balance due on the mortgage being refinanced, including any advances properly made by the mortgagee under the terms of the mortgage and any current interest due and delinquent interest not to exceed two months; and

(2) The original principal amount of the mortgage being refinanced.

(b) *Maturity date.* It must have a maturity not to exceed the remaining term of the section 235 mortgage being refinanced. In the event that the remaining term is measured in years and months, the terms for the refinancing mortgage shall be rounded down to the next whole year.

(c) *Interest rate.* (1) The 235(r) interest rate is the rate negotiated between the

parties. Such rate shall not exceed the GNMA coupon rate plus a margin to be determined by the Secretary. The GNMA coupon rate is based on the closing price for three-month forward delivery contracts closest to par but not exceeding par on one of the following dates, whichever rate is higher:

(i) The date the Direct Endorsement mortgagee's underwriter signs the Mortgage Credit Analysis Worksheet (form HUD-92900 WS); or

(ii) The date the mortgage is closed.

(2) The Secretary will pay the mortgagee a discount as part of the refinancing costs. The maximum discount points will be determined by the Secretary.

(3) For a mortgage to be insurable under this subpart, the interest rate on the mortgage must be less than the interest rate shown on the mortgage being refinanced. The Secretary shall determine how much less the interest rate on the mortgage shall be in order for it to be insured.

(d) *Mortgagors' Incentive and Refinancing Costs.* The incentive to the mortgagors and the refinancing costs that the Secretary will pay for mortgages insured under this subpart are as follows:

(1) An amount determined by the Secretary to be an incentive to the mortgagor to refinance a mortgage insured under section 235; and

(2) Amounts as determined by the Secretary for discounts, loan origination fees, closing costs, and other costs incurred in connection with the refinancing.

(e) *Eligible mortgagees.* The Secretary shall determine whether this program will be open to all approved Direct Endorsement mortgagees, or only to those approved Direct Endorsement mortgagees that meet certain specified requirements. The Secretary may limit the program to a designated number of Direct Endorsement approved mortgagees if such a limitation will facilitate the most expeditious handling of these refinancing mortgages.

(f) *Eligible mortgagor.* (1) It must be executed by a mortgagor who is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced and from whom a recertification was obtained within the preceding twelve months prior to the application for the 235(r) mortgage, or a new recertification was required prior to the execution of the mortgage credit worksheet by the direct endorsement lender, or the firm commitment was issued by HUD.

(2) The mortgagor must be an occupant of the property securing the mortgage.

(3) The mortgagor has not received payments for the costs of refinancing or the mortgagor's incentive, nor have such payments been made on his behalf, as described in paragraph (d) of this section, for a period of 60 months from the date of the first payment of principal and interest on the mortgage to be refinanced; provided, however, that if the mortgagor pays its own cost to refinance, then this prohibition will not apply.

(4) The mortgagor is eligible to continue to receive assistance in connection with the 235(r) mortgage, or the mortgagee has executed a HUD Notice of Suspension form that suspends the assistance payment contract from the date of disbursement of the mortgage loan.

(5) The mortgagor has agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(6) If the property is subject to a recapture mortgage securing the payment to the Secretary of assistance payments made on behalf of the

mortgagor, the mortgagor must agree to modify and subordinate such mortgage to the mortgage to be insured under section 235(r) in accordance with instructions of the Secretary.

(7) If the mortgage submitted for insurance requires an increase in the mortgagor's portion of the monthly payments due under the mortgage by more than \$50.00 over the amount the mortgagor was paying on the mortgage being refinanced, then a mortgage credit analysis must be performed on the mortgagor to establish that his income is or will be adequate to meet his portion of the periodic payment due under the new mortgage and that the mortgagor has a general credit standing satisfactory to the Secretary as required by 24 CFR 203.34.

(8) Cooperative members, who are receiving assistance payments, which in all cases are based on the cooperative member's proportionate share of the obligation under the project mortgage, are not eligible for section 235(r) mortgages.

(g) *Monthly Payments.* The mortgage must have monthly principal and interest payments at the 235(r) interest

rate that are less than the monthly payments of principal and interest on the mortgage being refinanced.

**§ 235.1220 [Amended]**

22. Section 235.1220 is amended by revising the introductory text of paragraph (c) to read as follows:

**§ 235.1220 Processing section 235(r) mortgages under the direct endorsement program.**

\* \* \* \* \*

(c) *Authority to sign.* The mortgagees that have the authority to originate and close mortgages in accordance with § 235.1218(e) shall have the authority to sign for and on behalf of the Secretary, in accordance with procedures established by the Secretary, without further specific approval, the following documents:

\* \* \* \* \*

Dated: September 1, 1995.

James E. Schoenberger,  
Associate General Deputy Assistant Secretary  
for Housing-Federal Housing Commissioner.  
[FR Doc. 95-27430 Filed 11-7-95; 8:45 am]

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