

CHAPTER 11. RECAPTURE OF SECTION 235 ASSISTANCE PAYMENTS

- 11-1 GENERAL. The Housing and Community Development Acts of 1980 and 1981 changed Section 235 of the National Housing Act to allow the Secretary of the Department of Housing and Urban Development (HUD) to require recapture of all, or a portion of, the assistance payments made on behalf of mortgagors under Section 235(i) who obtain FHA-insured mortgages.
- 11-2 MORTGAGES AFFECTED BY RECAPTURE PROVISION (24 CFR 235.12(a)). Section 235 mortgages are subject to a recapture where a firm commitment (or, under the Direct Endorsement Program, where the underwriter's approval of the Mortgage Credit Analysis Worksheet) was dated on or after May 27, 1981.
- A. If the Firm Commitment date is on or before May 26, 1981, the first mortgage is not under the Section 235 Recapture Program, even though the settlement date occurred after May 26, 1981. The suffix of the FHA case number of mortgages insured under the first and second Section 235 Assistance Program allocations ends in the number five (5).
 - B. If the Firm Commitment date is on or after May 27, 1981, the first mortgage is under the Section 235 Recapture Program, even though the suffix of the FHA case number may end in the number five (5). The suffix for mortgages insured under the Section 235 Recapture Program ends in the numbers fifty-six (56) and sixty-six (66).
 - C. If the Firm Commitment date is on or after October 22, 1984, the first mortgage is under the Section 235 Revised/Recapture/10 Program. The suffix of the FHA case number for mortgages insured under the Section 235 Revised/Recapture/10 Program ends in the number forty-six (46). (Refer to paragraph 10-36).
- 11-3 METHOD OF SECURING REPAYMENT (24 CFR 235.12(d)). The mortgagor is required to execute, at the time of closing of the first mortgage, a second note and mortgage or deed of trust (referred to as the security instrument or the HUD lien), with addendum, in favor of the Secretary to secure repayment of the assistance. The property is pledged as security for the second mortgage (i.e.,

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the recapture lien).

11-4MORTGAGEE'S RESPONSIBILITY PRIOR TO INSURANCE ENDORSEMENT. Upon making application with the mortgagee for assistance under the Section 235 program, the mortgagee shall make the mortgagor aware of the recapture provision by providing a copy of the "Notice To Buyer" (Appendix 44).

A.Contents Of "Notice To Buyer". This notice describes:

1.the provisions of the law which requires the repayment of all, or a portion of, the assistance payments which are paid on the mortgagor's behalf (and any subsequent assumptor of the mortgage) prior to the release of the second mortgage on the property;

2.the events which will "trigger" the recapture;

3.the formula used by HUD to determine the amount of recapture due to satisfy the second mortgage;

4.the importance of retaining all paid receipts and/or bills relating to improvements made to a property; and

5.the financial responsibility that is acquired by an assumptor if the mortgage is assumed.

B.Mortgagor's Written Acknowledgement Required. At closing, the mortgagor must acknowledge that he/she has been made aware of the recapture provision by signing and dating an original and two copies of the "Notice To Buyer".

C.Position Of Lien. It is the mortgagee's responsibility to assure that the recapture lien, drawn in favor of the Secretary, is properly recorded in the appropriate position. The recapture lien may not be junior to any lien other than an FHA-insured first lien, unless:

1.there is a second lien held by a state or local government agency required by law to hold a second lien (such as a lien to secure repayment of funds advanced under a housing assistance program to

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make the initial cash investment or to assist in making mortgage payments); or

2.HUD has determined that it would be in the Secretary's best interest to accept a junior lien position.

D.Preparation Of Closing Documents. Upon approval of Form HUD-93100-4 (Appendix 53) on Section 235 cases subject to

the recapture provision, the HUD Field Office will add the following paragraph as a condition to its firm commitment:

"Second mortgage with addendum, and note in the format prescribed by HUD to be executed and recorded for the maximum amount of assistance as established by Formula II which could be paid over the term of the mortgage. \$_____ (Amount to be entered on second note and mortgage (or deed of trust))."

1. Security Instruments. Upon issuance of a firm commitment, the HUD Field Office having jurisdiction over the mortgage will instruct the mortgagee to modify the HUD-approved mortgage or deed of trust document (Appendix 54, sample deed of trust) for insured mortgages in that particular State to include the information for the Section 235 recapture mortgage or deed of trust, as follows:

a. under the document caption, insert the words "with Addendum, for Repayment of Section 235 Assistance";

b. enter the words "the Secretary of Housing and Urban Development" as the mortgagee and delete any reference to a corporation;

c. delete any reference to monthly installments;

d. enter a statement that the principal sum of the mortgage will not exceed the amount computed under the note. The following language is acceptable:
". . . but not to exceed an amount computed under the terms of a note executed by the mortgagor on _____; with interest, if any, according to the terms of the note.";

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e. delete the two paragraphs relating to the payment of escrow items; and

f. an addendum should also be added to provide for the special repayment provisions required by Section 235 (Appendix 55).

NOTE: The Note must be reproduced locally (see Appendix 56 for an acceptable sample). HUD Field Office Counsel shall review model security instruments to be used to determine that they comply with local

law and meet HUD requirements.

2.Information to be Inserted. The mortgagee completes these documents by inserting the following information:

a.appropriate dates;

b.names;

c.property description;

d.interest rate (which will be the same as the rate on the first mortgage); and

e.the maximum amount of assistance that may be paid over the full term of the mortgage.

NOTE:The maximum amount will be the "Formula II" assistance payment shown on the Application for Assistance, Form HUD-93100-4, Line G-7.

E.Title Insurance. The title insurance does not need to recognize the junior recapture lien.

F.Hazard Insurance. The Secretary does not need to be named as a payee in the hazard insurance policy.

11-5REQUIREMENTS AT CLOSING. The originating mortgagee is responsible for the following at the time of closing:

A.Execution Of Lien Documents (24 CFR 235.12(d)). The documents creating the lien in favor of the Secretary

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shall be executed at the same time as those creating the first lien.

B.Identifying Costs. Costs associated with the transaction may be paid by either the buyer or the seller, subject to the usual underwriting restrictions on such costs. Costs associated with both mortgages may be shown on the same HUD-1, Settlement Statement, as long as the HUD-1 clearly reflects what the costs were for and which costs were paid by the seller and which were paid by the purchaser.

11-6RECORDING THE LIENS. The documents creating the second lien should be delivered for recording at the same time as those creating the first lien. It is the mortgagee's responsibility to assure that the liens are recorded in the proper order.

NOTE:Should the recapture lien be inadvertently recorded in first-lien position, HUD will agree to subordinate its lien to correct this error as the mortgagee's lien will not be insurable if it is not in first-lien position.

11-7INSURANCE ENDORSEMENT. The mortgagee's lien is submitted for mortgage insurance endorsement in the normal manner, accompanied by the following documents: the executed, original "Notice to Buyer"; a copy of the Note in favor of the Secretary; and copies of the executed security instruments with evidence that the originals have been delivered for recording (unless the original, recorded documents have been returned before the case is submitted for insurance endorsement).

NOTE:The application for FHA insurance will not be processed unless it is accompanied by the Notice to Buyer.

A.Where it is not customary for recorders to provide receipts for documents accepted for recording, the mortgagee's certification will be accepted as adequate evidence that the original documents have been delivered for recording.

B.When the original documents have been recorded and returned, they are to be forwarded immediately to the appropriate HUD Field Office with the original note in

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favor of the Secretary. They will be retained by that HUD Field Office until the lien is satisfied.

11-8GENERAL SERVICING. Servicing of the mortgage is governed by the procedures outlined in Chapter 10 until one of the events described in Paragraph 11-9 occurs which will "trigger" the recapture provision.

NOTE:Should the mortgagee find at any time that a case is not under the Recapture Program, but that a second mortgage (or deed of trust) with addendum and a note was executed by the mortgagor and recorded by the mortgagee, the mortgagee must contact the HUD Field Office, single Family Loan Management Branch. The insurance binder must be reviewed by HUD and a justification prepared for satisfying the HUD lien without calculating a recapture amount.

11-9EVENTS TRIGGERING RECAPTURE PROVISION (24 CFR 235.12(a)). The recapture provision is "triggered" when any one of the following events occurs:

A.a property is sold to a party not eligible for assistance;

B.the mortgage is assumed by a party eligible for assistance but does not agree to accept assistance and/or assume liability for repayment of assistance paid on behalf of the seller (and previous mortgagors);

C.a property is rented (or, in the case of properties with more than one unit, the owner's unit is rented) for more than one year; or

D.the mortgagor (or the mortgagor's agent) requests that the Secretary's lien be released.

11-10FORMULA FOR CALCULATING RECAPTURE (24 CFR 235.12(b) and (c)).
When the recapture provision is "triggered", the amount of recapture shall be determined by HUD to be THE LESSER OF:

A.the total amount of assistance paid on behalf of the mortgagor (and any previous mortgagors); or

B.50 percent of the net appreciation (as determined by HUD) of a property.

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NOTE:Net appreciation is any increase in the value of a property over the original purchase price, minus reasonable costs of sale, costs of refinancing the first mortgage or cost of the appraisal when paying off the HUD lien, and minus the reasonable costs of improvements made to a property.

11-11MORTGAGEE'S ROLE IN RECAPTURE PROCESS. Whenever one of the events described in Paragraph 11-9 occurs, the mortgagee is charged with the responsibility for the following:

A.Advising both the HUD Field Office having jurisdiction over the mortgage and the HUD Headquarters Office of Finance and Accounting, Subsidy Accounting Branch that an event has occurred which "triggers" the recapture provision. This notification shall include as much information as the mortgagee has available (i.e., FHA case number, the date of a prepayment associated with a sale; the name and address of the assumptor, if the assumptor is not living at the property address; the date the mortgage was assumed and the fact that the assumptor elected not to receive or did not qualify for assistance, etc.).

B.Providing both the local HUD Field Office and the HUD Headquarters Office of Finance and Accounting, Subsidy

Accounting Branch, a statement in writing, signed by an officer of the company, of the total amount of assistance paid on behalf of the original mortgagor and all assumptors, if any, less handling charges and the total of any assistance payments which may have been inadvertently applied to the mortgagor's account.

C. Providing copies of original documents (i.e., signed settlement statements, sales contracts, etc., which are contained in the mortgagee's case file) that the mortgagor cannot provide, but are needed by HUD to determine the amount of recapture due to satisfy the HUD lien.

D. Serving as the "go-between" where necessary and advising the mortgagor of the documentation required to calculate the recapture amount due HUD.

NOTE: THE MORTGAGEE MUST NOT CALCULATE THE RECAPTURE AMOUNT.

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NOTE: If the mortgagee receives the recapture amount due either directly from the mortgagor or as a disbursement from closing, the mortgagee shall promptly forward these funds directly to the local HUD Office.

THE MORTGAGEE MUST NOT ASSUME ANY DUTIES CONCERNING THE CALCULATION OF THE RECAPTURE AMOUNT.

E. Verifying and certifying that all appropriate recertifications (from the time of inception through the time of termination of the assistance payments contract) have been correctly processed and billed.

At the request of a Field Office, the mortgagee shall submit recertifications for review by that Field Office before the recapture process begins.

F. Repaying any overpaid assistance (that may have been discovered as a result of Paragraph 11-11E) as described in Chapter 10.

NOTE: Any amounts of overpaid assistance paid to HUD because of this requirement are to be so indicated and subtracted from the amount reported in compliance with Paragraph 11-11B.

Any overpaid assistance should be handled as a separate

transaction from the recapture amount when processing a recapture case for satisfaction of HUD's lien.

NOTE: If a check for an overpaid assistance amount is received or if the overpaid assistance is included in the same check as the recapture amount, the check must be forwarded to HUD Headquarters, Office of Finance and Accounting and a copy should be sent to the HUD Field Office having jurisdiction over the mortgage immediately along with the back-up documentation for the overpaid assistance amount.

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G.Terminating the assistance payment contract in accordance with Chapter 10, Paragraph 10-19.

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* NOTE: If the mortgagor is refinancing the first mortgage, the mortgagee is charged with the responsibility for items B, D, E, F, and G.

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11-12HUD'S ROLE IN THE RECAPTURE PROCESS. When the local HUD Field Office is advised by a mortgagee, an attorney, a title company or other settlement party, of a pending or accomplished event which triggers recapture (as listed in Paragraph 11-9), the HUD Field Office may request the following items in order to compute the recapture amount due to satisfy the HUD lien:

A.a copy of the recorded second mortgage (or deed of trust) with addendum and executed note (should the HUD Field Office not have the original documents in its files);

B.a copy of the executed sales contract and HUD-1 settlement statement (signed by the settlement attorney) where the original mortgagor purchased the property;

C.a copy of the executed sales contract and HUD-1 settlement statement (signed by the settlement attorney) of any assumptor who purchased the property prior to the last mortgagor;

D.a copy of the executed sales contract and HUD-1 settlement statement (signed by the settlement attorney) when the last mortgagor (i.e., the last one receiving assistance) sold the property;

E.copies of paid receipts and/or bills marked "paid in full" for any improvements made to a property (by the original mortgagor and/or any assumptor);

F.a letter from the mortgagee, signed by an officer of the company, stating the total amount of assistance paid on behalf of the original mortgagor and all assumptors (if any).

* G. an appraisal report on the property and a statement of the cost of the appraisal, if needed; and

H.a statement of the costs of refinancing the first mortgage, when needed.

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11-13 DETERMINING THE RECAPTURE AMOUNT. To determine the recapture amount for a Section 235 recapture case, the documentation requested in Paragraph 11-12 must be

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reviewed. A formula is used to calculate the recapture amount. The cost of sale (or the cost of refinancing the first mortgage) and the cost of improvements to a property are subtracted from the appreciation of the property to arrive at net appreciation. See Paragraph 11-10.

11-14 REASONABLE COSTS OF SALE. Since the title of the property changes when the property is sold, the costs of sale must clearly indicate which costs were paid by the seller and which were paid by the purchaser and are subject to the usual underwriting restrictions on such costs. Costs of sale shall also conform to what is considered by the local HUD Field Office to be reasonable and customary for that area of the country. Otherwise, the excess will be disallowed. Costs of sale must be clearly identified on a HUD-1, Settlement Statement, signed by the appropriate person. If there is no HUD-1, the costs of sale must be itemized and supported by receipts.

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A.Costs Allowed. Costs of sale items which HUD will allow to be claimed against the net appreciation of a property if the costs are paid by the original mortgagor and/or subsequent assumptors of the mortgage are:

1.broker's commission;

2.discount points (not origination fee);

3.property survey;

4.appraisal fee;

5.State and local taxes (charged in connection with the transaction, such as transfer taxes (not property taxes or amounts escrowed for the future payment of taxes);

6.attorney fees;

7.fees for the preparation and recording of documents;

8.notary fees;

9.costs of advertising the property for sale (but not if these costs are paid by the broker and included in the commission);

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10.title search, but not if included in attorney's fee;

11.title insurance;

12.pest control inspection;

13.pumping out septic tank as a condition of sale (where required by State law);

14.buyer's protection plans providing the buyer with a warranty as to the condition of the property and covering repair or replacement of certain elements of the property for a limited time; and/or

15.any other costs resulting from a State and/or local requirement.

B.Costs Not Allowed.

1.buydown fee (If there are no discount points allowed (see A.2. above), the buydown fee can be claimed against the appreciation of the property);

2.tax funding service fee; and

3.VA funding fee.

11-15 REASONABLE COST OF REFINANCING THE FIRST MORTGAGE. Since the title to a property does not change when the first mortgage is refinanced, the costs of refinancing do not include all of the costs allowed for costs of sale when a

* property is sold. Refinancing costs must be clearly identified on a HUD-1, Settlement Statement, signed by the appropriate person. If there isn't a HUD-1, the cost of refinancing should be itemized and supported by receipts.

A.Costs Allowed. If there are any prior assumptors of a mortgage that is being refinanced, the costs of assuming the mortgage (for each transaction) can be claimed against the appreciation of a property if the charges are documented. Costs of refinancing the first mortgage which HUD will allow to be claimed against the appreciation of a property (if the costs are paid by the last eligible mortgagor) are:

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1.appraisal fee;

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2.one discount point (not origination fee);

3.property survey;

4.pest control inspection;

5.title search;

6.lender's title insurance; and

7.fees for the preparation and recording of documents.

B.Costs Not Allowed.

1.Buydown fee (if there are no discount points, one point of the buydown fee can be claimed against the appreciation of the property);

2.tax funding service fee;

3.VA funding fee; and

4.mortgagor's title insurance (title of property).

11-16 REASONABLE COSTS OF IMPROVEMENTS.

A.To qualify As An Improvement. Improvements must be over and above deferred or routine maintenance to be allowed as claims against the appreciation of a property. They must be:

1.acceptable to HUD;

2.improvements that were not present or a part of a property at the time the mortgage was originated, unless it is an upgrade (see Paragraph 11-16B9 below);

3.considered to be permanent improvements in that they will remain with a property when it is sold as they cannot be removed from the property without causing damage to existing structures and/or the property; and

4.improvements for which the mortgagor can substantiate the cost with documented proof that such improvements were done to the mortgaged

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property site and for which the mortgagor has receipts marked "paid-in-full" as required in Paragraph 11-12E.

B.Allowable Improvements. Acceptable types of improvements which HUD will allow to be claimed against the appreciation of a property when computing the recapture amount include, but are not necessarily limited to, the following:

1.room additions and other permanent additions, such as, but not necessarily limited to, porches, patios, decks, garages and carports;

2.permanent landscaping and/or other site improvements that tend to increase the value of a property, such as fences, trees, shrubbery, lawns (if no lawn was provided initially) retaining walls, etc.;

3.built-in bookshelves, cabinets, etc.,

4.appliance additions (stoves, refrigerators, built-in dishwashers, built-in microwave ovens, clothes washers and dryers, and attic and ceiling fans) which are conveyed to buyer by seller;

NOTE:If items in #4 above are replacement items, they are not allowed against the appreciation of a property.

If the mortgagor bought original appliances after purchase of a new property, original costs of appliances can be claimed against the appreciation of a property. (In some sections of the country, appliances are not furnished by the builder, unless requested by the mortgagor.)

Portable appliances are not allowed against the appreciation of a property.

The Field Office Evaluation staff shall be notified on a case-by-case basis to determine whether washers and dryers or other such permanent fixtures that are considered to be regional appreciation value assets

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can be claimed against the appreciation of a property.

5. finishing or refinishing of basements or other rooms when the area was unfinished at the time of origination or the refinishing substantially alters the nature of the area and enhances the value of a property;

6. the addition of storm windows and/or doors or replacing regular windows with replacement windows (for the purpose of saving energy);

7. installation of permanent heating or cooling systems where none existed, the addition of a solar heating system or replacing a conventional heating system with a solar heating system;

8. carpeting areas where floors were previously without finished coverings (such as, a room addition, or a basement area);

9. upgrading: appliances, cabinets, carpeting, electrical and plumbing fixtures, etc.

NOTE: If the mortgagor upgraded an item that the builder was to install at the time the structure was erected, the cost of the improvement is the difference in price for upgrading. If such items are replaced, the replacements cannot be claimed against the appreciation of a property.

10. television dish. (If the dish is listed in the sales contract and/or appraisal report and cannot be removed from the property without damaging the landscape, it can be claimed against the appreciation of the property.)

11. sheds and outbuildings. (If structures enhance a

property and cannot be removed without damaging the landscape, they can be claimed against the appreciation of a property.)

12. building permits and inspection fees for property additions;

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13. swimming pools are allowed as improvements on a case-by-case basis if:

* a. the swimming pool is below ground and enhances the value of a property (per appraisal) and/or is taxed by the municipality, its cost can be claimed against the appreciation of a property;

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b. the swimming pool is above ground, it may or may not be allowed against the appreciation of a property depending on the area of the country it is located. If the pool is not taxed by the municipality or is not given a value in the appraisal of the property, its cost cannot be claimed against the appreciation of a property;

c. a swimming pool or other such fixture, i.e., outdoor hot tub, is affixed to a property and cannot be moved without damaging the fixture or the landscape, is taxed by the local municipality and/or enhances the value of the property (per appraisal), its cost can be claimed against the appreciation of a property;

14. special assessments, such as water and sewer lines connecting a property to the water and sewer lines of a municipality, the paving of streets, sidewalks and alleys, wiring for electricity and telephones and piping for gas must be handled on a case-by-case basis; and

15. land issues (those considered to be improvements must be handled on a case-by-case basis).

NOTE: The HUD Field Office must be contacted for guidance in handling special assessments and land issues as improvements and their costs as claims against the appreciation of a property.

C. Miscellaneous Improvements Of Less Than \$100 Per Project. Miscellaneous improvements which are less than \$100 per project are to be considered incidentals and are not to be allowed as a claim against the appreciation of a property. Included in this category

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are such items as molding, weatherstripping, sod, grass seed, fertilizer, etc.

D. Group Improvements As Projects. When a major improvement which involve the purchase/rental of numerous items of equipment and/or materials is claimed, it must be grouped together as one project. However, each item purchased for that project must reflect its own separate cost.

E. "Sweat Equity". Where the work is performed by the mortgagor (i.e., "sweat equity"), no monetary value will be given for the "sweat equity" with respect to being used as a claim against the appreciation of a property. However, the cost of building permits, inspections, renting items of equipment and purchasing the supplies and materials necessary to accomplish the work can be allowed.

F. Rental Equipment. Costs of renting equipment for the specific use in completing an acceptable improvement (as described in Paragraph 11-16B) may be used as claims against the appreciation of a property.

1. Rental equipment which may qualify as claims against the appreciation of a property includes, but is not necessarily limited to, backhoes, bulldozers, cement mixers, jackhammers, electric or air driven nail/brad/staple guns, posthole augers, fence wire stretchers, etc., which were rented for the sole use in completing a specific home improvement listed in Paragraph 11-16B.

2. Equipment which does not qualify as a claim against the appreciation of the property includes miscellaneous tools and equipment purchased for use in completing an improvement as described in Paragraph 11-16D and will also be used for performing other tasks and/or home improvements. Such items may include, but are not necessarily limited to, shovels, picks, ladders, carpenter levels, saws, drills, hammers, utility knives, screwdrivers, wire cutters, wrenches, caulking guns, cement trowels, etc.

G. Where The Cost Of An Improvement Is Paid Using A Monthly

Installment Payment Plan. Where an improvement is paid for on a monthly installment plan

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(whether paid to the company providing the service, a bank, a credit card company, etc.) only the initial cost of the improvement (excluding any interest, finance charges or late charges) may be used as a claim against the appreciation of a property.

H.Receipts/Documentation Of Improvements. In order to support the cost of an improvement, the mortgagor must present receipts or invoices on company letterhead marked "paid-in-full" for each allowable home improvement. Receipts which are written on paper without a business letterhead, or without specific (or legible) entries as to what service was provided, who provided the service, the date the service was provided, and/or what type of material was purchased, and where appropriate, at what property address the service was performed, etc., may be subject to further scrutiny and/or rejection by the HUD Field Office.

* I. Replacements. Items such as roof replacements, heating system replacements (except solar heating systems), and exterior and interior painting are home maintenance. They must not be claimed against the appreciation of a property as improvements.

J.Items Not Allowed As Improvements.

1.Draperies, curtain rods, window shades and blinds are never allowed as improvements unless they are approved by Headquarters.

2.Plumbing fixtures (such as faucets and water purifiers) and light fixtures cannot be claimed against the appreciation of a property unless they are installed as part of a major improvement or they are approved by Headquarters.

3.Intercommunications systems must not be claimed against the appreciation of a property. *

11-17FRAUD AND ABUSE. Careful scrutiny is to be given where substantial improvements have been made over a short period of time, shortly after purchase of a property, and/or over an extended period, which exceed \$10,000 while assistance was still being paid.

NOTE:Occurrences such as these, will lead to the HUD Field Office questioning the mortgagor's need for

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assistance and/or the possibility of fraud in the original application process.

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11-18 CALCULATING THE RECAPTURE AMOUNT.

A.Calculating The Recapture Amount. The HUD Field Office shall calculate the amount of recapture due in order to satisfy the lien using the formula shown in Paragraph 11-10 and on the Recapture of Assistance Payments Worksheet. Only the HUD Field Office shall calculate the amount of assistance to be recaptured.

B.Selling Price. If the HUD Field Office feels that the reported selling price is substantially below the property value or discovers that the property is being sold for less than the amount for which it was purchased, the HUD Field Office has the option of requesting that the mortgagee obtain an appraisal of the property.

NOTE:If the appraised value is five (5) percent or more above the sales contract price, the recapture will be based on the appraised value rather than the selling price shown on the sales contract.

11-19DISPOSITION OF THE RECAPTURE CHECK. The HUD Field Office has the responsibility of collecting the recapture amount from the mortgagor or the mortgagor's representative. Should the recapture amount be collected by the mortgagee, the check must be forwarded to the appropriate HUD Field Office and the Office shall forward it to a lockbox in Atlanta, Georgia.

11-20RELEASING THE RECAPTURE LIEN. Upon receiving the full recapture amount required to satisfy the second mortgage, or second deed of trust, the HUD Field Office will prepare, execute, record and forward the recorded Satisfaction of Lien to the mortgagee or the agent representing the mortgagor. The mortgagee or mortgagor's agent will then be responsible for forwarding the document * to the mortgagor.

11-21SATISFYING THE LIEN BEFORE OBTAINING RECAPTURE AMOUNT. If the settlement on a property is imminent, the second mortgage or second deed of trust has not been satisfied, and there is a request to satisfy the lien before closing,

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the mortgagor must be informed that since there is not enough time to do the recapture formula to determine the recapture amount, the full amount of assistance paid on the mortgagor's behalf must be submitted to HUD so that the HUD lien can be satisfied before settlement of the mortgage. When the recapture calculation has been completed, if there is an overpayment, the overpayment shall be refunded to the mortgagor.

11-22ASSIGNMENT TO HUD. In those cases where the HUD Field Office has decided to accept an assignment of the first mortgage, the recapture lien shall remain in place. The mortgagee must advise both the HUD Field Office and the HUD Headquarters Office of Finance and Accounting, GPA - Subsidized Housing Programs Division, Attention: Accounts Payable Section (the mailing address on Form HUD-93102, Appendix #46), in writing, signed by an officer of the company, of the total amount of assistance paid through the date of assignment.

11-23FORECLOSURES - HUD-ACQUIRED PROPERTIES. For those properties conveyed to HUD as a result of foreclosure, the mortgagee must advise the HUD Field Office, in writing, signed by an officer of the company, of the total amount of assistance paid over the term of the mortgage. It will not be necessary for HUD to prepare a satisfaction of lien for the HUD lien. A foreclosure that is properly processed by the mortgagee's foreclosing attorney will wipe out all existing liens on the property, including HUD's lien. However, if the HUD lien exists after foreclosure of the first mortgage, the HUD Field Office must satisfy the lien at the request of the foreclosing attorney.

11-24DEED-IN-LIEU OF FORECLOSURE. For the mortgage that is conveyed to HUD as a result of a deed-in-lieu of foreclosure, the recapture lien shall remain in place. The mortgagee must advise the HUD Field Office, in writing, signed by an officer of the company, of the total amount of assistance paid over the term of the mortgage.

NOTE:Once the property is in HUD's Property Disposition inventory, the HUD Field Office will prepare and record a satisfaction of the recapture lien in order to provide a clear title when the property is sold by HUD.

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* 11-25 RELOCATION OF MORTGAGOR BY EMPLOYER.

A.Termination Of Assistance. If an employer requires a Section 235 mortgagor to relocate, and the employer assumes the responsibility of selling the mortgagor's property, the mortgagee must terminate the assistance at the appropriate time. (Chapter 10, Paragraph 10-19.) The mortgagee must furnish the HUD Field Office with a statement of the total amount of assistance paid on behalf of the original mortgagor and any assumptors of the mortgage.

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B.Value Of Property. The mortgagee must provide the HUD Field Office with an appraisal to determine the fair market value of a property or the HUD Field Office must request an appraisal of the property.

11-26 DISLOCATION OF MORTGAGOR (EMINENT DOMAIN).

A.Relocate To Another Property. If a State or local government dislocates a Section 235 mortgagor because it needs the property for public use, the mortgagor may relocate to another property under the same mortgage. The FHA case number must remain the same for the purpose of paying assistance on the mortgagor's behalf.

1.The State or local government must NOT pay the first mortgage in full.

2.The mortgagee must agree to transfer the first and second mortgages or first and second deeds of trust to a new property.

3.The mortgagee must amend the first and second mortgages or deeds of trust security instruments to read the legal description of the new property.

4.The new property must be equal in value to the old property.

5.The mortgagee must transfer the Section 235 assistance with the first mortgage or deed of trust to the new property.

6.The amended mortgages or deeds of trust must be executed, dated, and recorded to reflect the transfer of these documents to the new property.

7.The mortgagee must send the recorded, amended second mortgage or deed of trust to the HUD Field Office where it will be filed with the original security instruments.

B.Unable To Transfer Mortgages. If the mortgagor is unable to get the first and second mortgages or first and second deeds of trust on a property transferred to another property of equal value, the Sate or local government must purchase the property from the mortgagor. The mortgagee must contact the HUD Field Office of the pending sale of the property. The HUD Field Office must take the appropriate steps to satisfy the HUD lien on the property. *

11-27SUBORDINATION OF THE HUD LIEN. If subordination of the HUD lien on a property is in the best interest of the Secretary, the HUD Field Office may approve subordination of a recapture lien in the case of refinancing a first mortgage or securing a Title I loan for improving the property. The mortgagee must contact the HUD Field Office for details on subordinating the HUD lien.

11-28SUMMARY. The appropriate HUD Field Office should be notified if any one of the following events occurs:

A.The first mortgage on a property has been paid in full through sale of the property.

B.The first mortgage has been assumed by a mortgagor not eligible for assistance or the new mortgagor does not want to participate in the Section 235 Assistance Program.

C.The first mortgage has been refinanced.

D.The first mortgage has been assigned to HUD.

E.The property has been rented for more than a year. (If more than one unit, the owner's unit is rented.)

F.The assistance has been terminated after a 36-month suspension.

G.The mortgagor has been relocated or dislocated from a property under circumstances beyond his/her control.

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* H. The mortgagor has requested that the HUD lien be subordinated to a lessor position when the first mortgage is refinanced.

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Explanations of A through H above.

In A., above, the mortgagor must be notified that the Recapture Provision becomes effective.

In B., above, the mortgagor must be notified that the Recapture Provision becomes effective.

In C. above, the mortgagee refinancing the first mortgage should notify the HUD Field Office if it (the mortgagee) wants the HUD lien satisfied due to the fact that the HUD lien moves into first-lien position when the original first mortgage is paid-in-full.

In D. above, if the first mortgage is assigned to HUD, the mortgagee must submit a statement of the full amount of assistance paid by HUD on behalf of the original mortgagor and all assumptors of the mortgage to the HUD Field Office.

In E. above, the HUD Field Office must calculate the recapture amount and maintain a file on the case.

In F. above, the HUD Field Office must request a decision from the mortgagor as to whether he/she wants the HUD lien satisfied after termination of the assistance.

In G., above, there are specific procedures to follow for processing the relocation case. For the dislocation case, there are special conditions that must be considered to retain the original first mortgage and Section 235 assistance by transferring both to another property of equal value.

In H., above, there are special conditions under which a Section 235 Recapture mortgage can be subordinated.