

**§ 235.355**

amounts of total income prior to adjustments reported for all family members (other than minors) by the applicant-homeowner in his most recent federal income tax return, if he is required to file such a return. If separate returns are filed by separate members of the family, the total income prior to adjustments included in all such returns (except returns of minors) shall be reported. If the income so reported is more than 25 percent above the income reported on the recertification the mortgagee shall obtain from the homeowner a new recertification or a written explanation of the difference in income reported on the two forms.

(c) Mortgagors who fail to disclose their actual income in accordance with the requirements of this part will be required to reimburse the Secretary for all overpayments made on their behalf.

(d) The homeowner must meet the disclosure and verification requirements for Social Security Numbers in connection with any recertification under this section, as provided by part 200, subpart T, of this chapter. For requirements regarding the signing and submitting of consent forms by homeowners for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 200, subpart V, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0267, 2502-0268, and 2577-0083)

[41 FR 1178, Jan. 6, 1976, as amended at 43 FR 60156, Dec. 26, 1978; 54 FR 39695, Sept. 27, 1989; 55 FR 11905, Mar. 30, 1990; 56 FR 7530, Feb. 22, 1991; 60 FR 14833, Mar. 20, 1995]

**§ 235.355 Mortgagor's optional recertification.**

Upon request of the mortgagor or cooperative member, the mortgagee must accept recertification whenever the mortgagor, his or her spouse, or an adult (21 years or older) member of the family changes or loses employment which results in a decrease in the family income reported in the most recent certification or recertification. This recertification must be on a form prescribed by the Secretary. See 24 CFR 200.1015(d)(2)(i) for the requirements for the disclosure and verification of So-

**24 CFR Ch. II (4-1-10 Edition)**

cial Security Numbers for recertifications involving new family members.

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[54 FR 39595, Sept. 27, 1989, as amended at 55 FR 11905, Mar. 30, 1990]

**§ 235.360 Adjustment in assistance payments.**

The mortgagee shall make appropriate adjustments in the amount of the requested assistance payments to reflect changes in family income reported in any required or optional recertification of the homeowner or cooperative member. The adjustment shall not be retroactive except at the discretion of the Secretary. The adjustment shall apply only to assistance payments beginning with the payment due no earlier than the first day of the month following and no later than the first day of the second month following the date the mortgagor's recertification is received by the mortgagee.

**§ 235.361 Recovery of assistance payments.**

(a) The mortgagee shall refund to the Secretary all overpaid assistance payments except where the mortgagee has filed a claim for mortgage insurance benefits or the mortgage has been paid in full or the mortgagor has sold the property to an assumptor, and the overpayment did not result from the fraud, misrepresentation or failure to meet contractual obligations, on the part of the mortgagee.

(b) The mortgagee shall refund to the Secretary all overpaid assistance payments, together with the handling charges paid for each month of overpayment and interest on the amount refunded at the rate of 7% per annum, in any case where the overpayment resulted from fraud, misrepresentation or failure to meet contractual obligations, on the part of the mortgagee.

(c) The mortgagee may increase the mortgagor's required monthly payments in an amount which will reimburse the mortgagee (except handling charges and interest) within a reasonable time without causing undue hardship to the mortgagor, except where the overpayment resulted from fraud

or misrepresentation on the part of the mortgagee.

(d) For purposes of this section *overpaid assistance payments* means assistance payments which the Secretary paid to the mortgagee on behalf of a mortgagor in excess of the amount of benefits to which the mortgagor was entitled and *failure to meet contractual obligations* means failure to request a required recertification or failure to act on a recertification as required in this part.

[43 FR 60156, Dec. 26, 1978]

#### **§ 235.365 Mortgagee records.**

The mortgagee shall maintain such records as the Secretary may require with respect to the mortgagor's payments, the mortgage assistance payments received from the Secretary, and the annual recertifications of financial status from the homeowner or mortgagor. Such records shall be kept on file for a period of time and in a manner prescribed by the Secretary and shall be available, when requested, for review and inspection by the Secretary or the Comptroller General of the United States.

#### **§ 235.370 Effect of assignment of mortgage with an assistance payment contract.**

Where a mortgage covered by an assistance payment contract is sold to another approved mortgagee, the buyer shall succeed to all the rights and become bound by all the obligations of the seller under such contract.

#### **§ 235.375 Termination, suspension, or reinstatement of the assistance payments contract.**

(a) *Termination.* The assistance payments contract shall be terminated when any of the following events occur:

(1) The contract of mortgage insurance is terminated, except when the mortgage has been assigned to the Secretary.

(2) The property is purchased by a homeowner not qualified to receive assistance payments.

(3) The cooperative member transfers his membership and occupancy rights to a new cooperative member not qualified to receive assistance payments.

(4) When the assistance payments contract has been suspended for a period of three years without reinstatement.

(b) *Suspension.* The assistance payments contract shall be suspended when any one of the following events occur:

(1) The homeowner or cooperative member ceases to occupy the property, except in the following instances:

(i) The property is purchased by a homeowner who immediately assumes the mortgage obligation with respect to which assistance payments have been made on behalf of the previous owner, and who meets the income and asset requirements prescribed by the Secretary.

(ii) The cooperative member transfers his membership and occupancy rights to a new member who assumes the mortgage obligation and who meets the income and asset requirements prescribed by the Secretary.

(2) The mortgagee determines that the mortgagor or cooperative member ceases to qualify for the benefits of assistance payments by reason of his income increasing to an amount enabling him to pay the full monthly mortgage payment by using 20 percent of the family income.

(3) Foreclosure is instituted.

(4) The mortgagee is unable to obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a required recertification of occupancy, employment, income, and family composition, and (if required) disclosure and verification of Social Security Numbers, as prescribed in § 235.350, and (if required) signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as prescribed in § 235.350.

(5) At such other times as the Secretary may require.

(6) Failure to provide evidence of citizenship or eligible immigration status in accordance with 24 CFR part 5:

(i) For a new member of the family, except with respect to a mortgagor described under § 235.1.

(ii) At the first recertification of an assistance contract, except with respect to a mortgagor described under § 235.1; or