Office of the Secretary of Defense

§ 239.5 Benefit elections.

Section 3374 of title 42, U.S.C., as amended by section 1001 of the ARRA, Public Law 111–5, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling owned by designated individuals.

(a) General benefits. (1) If an applicant is unable to sell the primary residence after demonstrating reasonable efforts to sell (see Definitions, §239.4(i) of this part), the Government may purchase the primary residence for the greater of:

(i) The applicable percentage (identified by applicant type in §239.5(a)(4) of this part) of the Prior Fair Market Value (PFMV) of the primary residence, or

(ii) The total amount of the eligible mortgage(s) that remains outstanding; however, the benefit payable (excluding allowable closing costs) shall not exceed $729,750.

(2) If an applicant sells, has sold, or otherwise has transferred title of the primary residence, the benefit calculation shall be the amount of closing costs plus an amount not to exceed the difference between the applicable percentage of the PFMV and the sales price.

(3) If an applicant is foreclosed upon, the benefit will pay all legally enforceable liabilities directly associated with the foreclosed mortgage (e.g., a deficiency judgment).

(b) Applicable percentages.

(i) If an applicant is eligible under §239.6(a)(1) or (2) of this part, and sells the primary residence, the applicable percentage shall be 95 percent of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.

(ii) If an applicant is eligible under §239.6(a)(1) or (2) of this part, and is unable to sell the primary residence after demonstrating reasonable efforts to sell, the applicable percentage shall be 90 percent of the PFMV. Closing costs incurred on the sale may be reimbursed.

(iii) If an applicant is eligible under §239.6(a)(3) or (4) of this part and sells the primary residence, the applicable percentage shall be 90 percent of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.
§ 239.6 Eligibility.

(a) Eligibility by Category. Those eligible for benefits under the Expanded HAP include the following categories of persons:

(1) Wounded, Injured, or Ill. (i) Members of the Armed Forces:

(A) Who receive a disability rating of 30% or more for an unfitness condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities), or who are eligible for Service member’s Group Life Insurance Traumatic Injury Protection Program, or whose treating physician (in a grade of at least captain in the Navy or Coast Guard or colonel in Army, Marine Corps, or Air Force) certifies that the member is likely, by a preponderance of the evidence, to receive a disability rating of 30 percent or more for an unfitness condition (using the Department of Veterans Affairs Schedule for current fair market value (i.e., upside down) will be accomplished as follows:

(i) Commission will be at the normal and customary rate for the area (normally six percent) on the price agreed upon by the applicant and the buyer and to whom the Government will then sell the home. While the commission payment is the responsibility of the applicant, the Government will make the commission payment for the applicant when the home is sold by the Government to the applicant’s buyer contingent upon both the Government acquisition and Government sale contract transactions being completed and recorded. Commissions will be paid to the broker listing the property. The allocation of dollars to real estate agents will be the responsibility of the listing broker.

(ii) After Government acquisition, the Government will then sell the property to the buyer found by the applicant.

(iii) No other payment of fees or commissions will be made without the prior approval of HQUSACE.

(2) Government purchase: Benefit is paid directly to the lender in exchange for government possession of the property. Since the benefit reimburses the applicant a percentage of the applicant’s purchase price, if the benefit exceeds the mortgage payoff amount, the applicant will receive a benefit payment for the difference between the mortgage payoff and the total benefit payment. If the applicant has a buyer for the home, the payment of real estate commissions when an applicant’s mortgage exceeds the property’s current fair market value (i.e., upside down) will be accomplished as follows:

(i) Commission will be at the normal and customary rate for the area (normally six percent) on the price agreed upon by the applicant and the buyer and to whom the Government will then sell the home. While the commission payment is the responsibility of the applicant, the Government will make the commission payment for the applicant when the home is sold by the Government to the applicant’s buyer contingent upon both the Government acquisition and Government sale contract transactions being completed and recorded. Commissions will be paid to the broker listing the property. The allocation of dollars to real estate agents will be the responsibility of the listing broker.

(ii) After Government acquisition, the Government will then sell the property to the buyer found by the applicant.

(iii) No other payment of fees or commissions will be made without the prior approval of HQUSACE.

(3) Foreclosure: In the case of a foreclosure, benefit is paid to lien holder for legally enforceable liabilities.

(d) Tax Implications. 26 U.S.C. 132(n) exempts Expanded HAP benefits from Federal taxes and is not subject to withholding.