through a sale that realized less than the full outstanding mortgage balance.

(d) Deployment. Performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison or installation duty at the member’s permanent duty station, or home port, as the case may be.

(e) Eligible mortgage. A mortgage secured by the primary residence that was incurred to acquire or improve the primary residence. For a mortgage refinancing the original mortgage(s) or for a mortgage incurred subsequent to purchasing the property, funds from the refinanced or subsequent mortgages must be traced to the purchase of the primary residence or have been used to improve the primary residence. Home improvements that are documented (even if not financed through a subsequent mortgage or line of credit) may be added to the purchase price of the primary residence. Funds from a refinanced or subsequent mortgage that were used for other purposes are not eligible and may not be considered. Benefits will be calculated using the amount of $729,750 for primary residences with an eligible mortgage that exceeds $729,750. The total benefit payable (excluding allowable closing costs) shall not exceed $729,750. The ARRA expanded HAP calculates PFMV as the purchase price plus improvements. Improvements are identified in the Internal Revenue Publication #523 ([http://www.irs.gov/publications/p523/ar02.html](http://www.irs.gov/publications/p523/ar02.html)) which outlines items considered home improvements and distinguishes improvements from repairs and maintenance.

(f) Forward deployment. Performing service in an area where the Secretary of Defense or the Secretary’s designee has determined that Service members are subject to hostile fire or imminent danger under section 310(a)(2) of title 37, U.S.C.

(g) Primary residence. The one- or two-family dwelling from which employees or members regularly commute (or commuted) to their primary place of duty. Under §239.6(a) and (b) of this part, the relevant property for which compensation might be offered must have been the primary residence of the member or civilian employee at the time of the relevant wound, injury, or illness. The first field grade officer (or civilian equivalent) in the member or employee’s chain of command may certify primary residence status.

(h) Prior Fair Market Value (PFMV). The PFMV is the purchase price of the primary residence. Benefits will be calculated using the amount of $729,750 as the PFMV for primary residences with a PFMV that exceeds $729,750.

(i) Purchase. Purchase occurs when the applicant enters into a contract for the purchase of the property. In the absence of a contract for purchase, the purchase occurs when the applicant closes on the property.

(j) Reasonable effort to sell. Applicant’s primary residence must be listed, actively marketed, and available for purchase for a minimum of 120 days. With regard to marketing, applicant must demonstrate that the asking price was within the current market value of the home as determined by the HQUSACE automated value model (AVM) for no less than 30 days. It is the applicant’s responsibility to explain marketing efforts by detailing how the asking price was gradually reduced until it reached the true current fair market value (e.g., maintaining a log containing date and asking price recorded over period of time indicating number of visits by prospective buyers and offers to purchase). If an applicant is unable to sell the primary residence, the HQUSACE will determine whether efforts to sell were reasonable.

(k) Permanent Change of Station (PCS). The assignment or transfer of a member to a different permanent duty station (PDS), to include relocation to place of retirement, when retirement is mandatory, under a competent authorization/order that does not specify the duty as temporary, provide for further assignment to a new PDS, or direct the military service member return to the old PDS.

§ 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).

(4) 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.

(b) Rules applicable to all benefit calculations. (1) Prior to making any payment, the Government must determine that title to the property has been transferred or will be transferred as the result of making such payment. If the Government determines that making a benefit payment will not result in the transfer of title to the property, no payment will be made.

(2) A short sale will be treated as a private sale. If an applicant remains personally liable for a deficiency between the outstanding mortgage and the sale price, the amount of this deficiency may be included in the benefit, provided that the total amount of the benefit does not exceed the difference between 90 percent of the PFMV and the sales price.

(c) Payment of benefits. (1) Private sale: Where a benefit payment exceeds funds required to clear the mortgage and pay closing costs, the amount exceeding the mortgage and closing costs will be paid directly to the lender on behalf of the applicant. If the applicant was fully released from liability after a short sale, no benefit shall be paid to either the applicant or lender.

(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...
§ 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 unfitting 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 unfitting condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities) for wounds, injuries, or illness incurred in the line of duty while deployed, on or after September 11, 2001, and

(B) Who are reassigned in furtherance of medical treatment or rehabilitation, or due to retirement in connection with such disability, and

(C) Who need to market the primary residence for sale due to the wound, injury, or illness. (For example, the need to be closer to a hospital or a family member caregiver or the need to find work more accommodating to the disability.)

(ii) Civilian employees of DoD or the United States Coast Guard (excluding temporary employees or contractors, but including employees of non-appropriated fund instrumentalities):

(A) Who suffer a wound, injury, or illness (not due to own misconduct), on or after September 11, 2001, in the performance of duties while forward deployed in support of the Armed Forces, whose treating physician provides written documentation that the individual, by a preponderance of the evidence, meets the criteria for a disability rating of 30 percent or more. As described in paragraph (a)(1) of this section, this documentation will be certified by a physician in the grade of at least captain in the Navy or Coast Guard or colonel in Army, Marine Corps, or Air Force.

(B) Who relocate from their primary residence in furtherance of medical treatment, rehabilitation, or due to medical retirement resulting from the wound, injury, or illness, and

(C) Who need to market the primary residence for sale due to the wound, injury, or illness. (For example, the need to be closer to a hospital or a family member caregiver or the need to find work more accommodating to the disability.)

(ii) Surviving spouse. The surviving spouse of a Service member or of a civilian employee:

(i) Whose spouse dies as the result of a wound, injury, or illness incurred in the line of duty while deployed (or forward deployed for civilian employees) on or after September 11, 2001, and