

from the requirements of notice and comment and a delayed effective date, 5 U.S.C. 553(b), (d), and is made effective upon issuance; (2) the Department certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities and further that no Regulatory Flexibility Analysis was required to be prepared for this final rule since the Department was not required to publish a general notice of proposed rulemaking; and (3) this action is not a "regulation" or "rule" as defined by Executive Order 12866, "Regulatory Planning and Review," § 3(d) and, therefore, this action has not been reviewed by the Office of Management and Budget.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, "Federalism," it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation meets the applicable standards set forth in Executive Order 12988, "Civil Justice Reform." This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority for citation for part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

### Subpart J—Civil Rights Division

■ 2. Section 0.50 is amended by adding a new paragraph (n) to read as follows:

#### § 0.50 General functions.

\* \* \* \* \*

(n) Upon request, certification under 18 U.S.C. 249, relating to hate crimes.

### Subpart K—Criminal Division

■ 3. Section 0.55 is amended by adding a new paragraph (v) to read as follows:

#### § 0.55 General functions.

\* \* \* \* \*

(v) Upon request, certification under 18 U.S.C. 249, relating to hate crimes, in cases involving extraterritorial crimes that also involve charges filed pursuant to the Military Extraterritorial Jurisdiction Act (18 U.S.C. 3261 *et seq.*), or pursuant to chapters of the Criminal Code prohibiting genocide (18 U.S.C. 1091), torture (18 U.S.C. 2340A), war crimes (18 U.S.C. 2441), or recruitment or use of child soldiers (18 U.S.C. 2442).

Dated: November 8, 2010.

**Eric H. Holder, Jr.,**

*Attorney General.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 239

[DOD–2009–OS–0090; RIN 0790–AI58]

#### Homeowners Assistance Program—Application Processing

**AGENCY:** Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Under Secretary of Defense (Installations and Environment), DoD.

**ACTION:** Final rule.

**SUMMARY:** This part continues to authorize the Homeowners Assistance Program (HAP) to financially compensate eligible military and civilian Federal employee homeowners when the real estate market is adversely affected directly related to the closure or reduction-in-scope of operations due to Base Realignment and Closure (BRAC).

The American Recovery and Reinvestment Act of 2009 (ARRA) expanded the HAP to provide assistance to: Wounded members of the Armed Forces (30 percent or greater disability), surviving spouses of fallen warriors, and wounded Department of Defense (DoD) civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with their disability; Base Realignment and Closure (BRAC) 2005 impacted homeowners relocating during the mortgage crisis; and Service member homeowners undergoing Permanent Change of Station (PCS) moves during the mortgage crisis.

**DATES:** *Effective Date:* January 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Deanna Buchner, (703) 602–4353.

#### SUPPLEMENTARY INFORMATION:

The prompt implementation of the Final Rule is of critical importance in meeting the goals of the Department of Defense to provide financial stability and increase quality of life for those impacted by the mortgage crisis. The Department of Defense will provide financial assistance to offset financial losses of homeowners who need to sell their homes in conjunction with PCS moves, base closures, combat injuries, or loss of spouse in the line of duty.

The Under Secretary of Defense for Acquisition, Technology, and Logistics has overall responsibility and provides oversight for this program through the Deputy Under Secretary of Defense for Installations and Environment (DUSD(I&E)). The Army, acting as the DoD Executive Agent for administering the HAP and Expanded HAP, uses the Headquarters, U.S. Army Corps of Engineers (HQUSACE), to implement the program.

**Comments:** The Interim Final Rule was published in the **Federal Register** on September 30, 2009 (74 FR 50109–50115). In response to the Interim Final Rule, the DoD received 56 comments during the 90-day comment period. While many comments crossed several subject areas, generally they can be placed into three categories: Benefits, eligibility, or general.

1. **Benefit comments:** There were 16 comments relating to benefits. These comments concern: benefit percentage, government acquisition, short sale, closing costs, and application processing.

a. **Benefit percentage.** Three comments received concerning the restriction of 90 percent of the primary fair market value for Base Realignment and Closure (BRAC) 2005 and Permanent Change of Station (PCS)

applicants as opposed to the 95 percent offered in the American Recovery and Reinvestment Act (ARRA) legislation. Changing this restriction would increase program costs by at least five percent overall and place expanded program applicants in the same benefit category as those where a DoD action (closing an installation) caused the market decline. ARRA expansion of HAP is designed to assist eligible applicants from catastrophic financial loss, not protect a homeowner's investment in real property.

b. *Government acquisition.* One comment received. The comment concerned providing private sale augmentation at 100 percent of mortgage. Private Sale Augmentation is not authorized by law.

c. *Short sale.* Two comments received concerned applicants receiving benefits after being forgiven the outstanding mortgage by lender and with deficiency being subtracted from the final amount due. Changing the current requirement would enable an applicant to profit by receiving benefits for amounts forgiven by lenders. The requirement is further clarified in § 239.5(c)(1).

d. *Closing costs.* Five comments were received regarding clarification of what constitutes closing costs. A definition has been added to § 239.4 (Definitions) that clarifies what is included in closing costs.

e. *Application processing.* Five comments were received regarding how applications are processed and applicants subsequently notified of eligibility. Clarification has been added to § 239.9 (Application Processing Procedures) to ensure applicants understand that applications must be mailed or otherwise delivered to the Corps of Engineers district office.

2. *Eligibility comments:* There were 50 comments relating to eligibility criteria. These comments concern: BRAC 2005 purchase date, BRAC 2005 definition, Automated Valuation Model (AVM) methodology, Retiree and Reservist eligibility, Fannie Mae/Freddie Mac conforming loan limit, PCS purchase date, market decline, and Coast Guard eligibility.

a. *BRAC 2005 purchase date.* Six comments received suggesting changing the requirement for the home to be purchased as of the BRAC announcement date of May 13, 2005. This requirement remains unchanged. While language in the ARRA gives the Secretary of Defense the discretion to allow ownership until July 1, 2006, the basic HAP law, Demonstration Cities and Metropolitan Development Act of 1966, established that BRAC impacted individuals should own homes prior to

announcement dates. For example, the two conventional homeowners assistance programs in effect under the prior law, which are now being executed at Naval Air Station (NAS) Brunswick, Maine, and Fort Monmouth, New Jersey, require ownership by May 13, 2005.

b. *BRAC 2005 eligibility.* Four comments received. One requested that eligibility for BRAC 2005 include those who were assigned to a BRAC installation but required to relocate for other than a BRAC action; one that recommended BRAC eligibility be expanded to include other Federal agency employees; one requesting BRAC eligibility include employees at non-BRAC sites but are affected by BRAC unit relocations; and one requesting a clarification of who is eligible for BRAC 2005 assistance. Current requirement remains unchanged. BRAC eligibility will continue to be only for those assigned to BRAC organizations where their positions are eliminated or relocated.

c. *AVM methodology and process.* Ten comments received expressing concern that the AVM does not represent current market conditions and requesting an explanation of the process and data behind the AVM uses to determine market value. The use of AVM to determine market value has been eliminated from the rule by no longer requiring owners to show a ten percent market loss.

d. *Retiree and Reservist eligibility.* Three comments received; two requesting voluntary retirement and one requesting Reservists be included as eligible for benefits. The primary focus of the Expanded HAP is helping those members where a DoD-ordered move caused the financial distress experienced by homeowners. Voluntary retirement is not a DoD-ordered move. Involuntary retirement, however, is a DoD-ordered move. Reservists called to active duty, who are not expected to move their household goods, have an option to remain in the areas where they live and are generally not eligible for the HAP benefit.

e. *FannieMae/FreddieMac (FM/FM) Conforming Loan Limit.* Twelve comments received. Some comments requested that this loan limit be lifted as an eligibility requirement because it does not capture what is occurring in today's market. Other comments requested that the focus of this limit be placed on the loan as opposed to purchase price. § 239.6(3) has been changed to remove the requirement for the Prior Fair Market Value (PFMV) or qualifying mortgage to be within the FM/FM conforming loan limit for

eligibility purposes. The Final Rule removes the FM/FM limit as an eligibility requirement and specifies a cap on benefit payments. Benefits cannot exceed an amount equal to the highest 2009 FM/FM conforming loan limit (as amended by the ARRA of 2009), which is \$729,750. For home purchase prices or qualifying mortgages that exceed this amount, the benefit calculation will use \$729,750 as the purchase price or qualifying mortgage amount.

f. *Permanent Change of Station home purchase date.* Four comments received requesting information on how the date was chosen and/or requesting that the date be changed. The requirement to have purchased the home prior to July 1, 2006, is based on market trends documented by S&P/Case-Shiller Home Price Indices, which indicates over ten percent market decline through the second quarter of 2006 nationwide. The July 1, 2006, date is a statutory requirement and remains unchanged.

g. *Personal loss/Market loss requirement.* Nine comments received that suggested the requirement to show a ten percent market loss is too restrictive. The need to show a ten percent county/parish/city market decline has been eliminated from the rule; however, the requirement to show a ten percent decline in individual home value remains.

h. *Coast Guard eligibility.* Two comments received that expressed concern that because of Coast Guard PCS procedures, ending the PCS eligibility on December 31, 2009, unfairly excludes most Coast Guard applicants from qualifying for the HAP benefit. The end date for PCS eligibility for members of all services was extended to September 30, 2010.

3. *General comments:* Received 12 comments of a general nature in the following categories: tax, marketing, definition of purchase date, rulemaking process, and the appeal process.

a. *Tax.* Four comments were received requesting that tax implications be explained more clearly. 26 U.S.C. 132(n) exempts HAP benefits from Federal tax. This change has been made in § 239.5(d).

b. *Marketing.* Two comments were received requesting that the requirement to list houses on the market prior to obtaining HAP benefit be lifted. It is important to retain this requirement because it helps establish a home's current fair market value and will reduce the number of homes purchased and held in the Government's inventory which would increase program costs significantly.

*c. Purchase date definition.* Four comments were received requesting clarity on what determines a purchase date, e.g., deed recording, signed contract. The Final Rule has been changed to add a definition of the term purchase. According to that definition, purchase occurs when the applicant enters into a contract for the purchase of the home or, in the event there is no contract for purchase, when the applicant closes on the property.

*d. Rulemaking process.* One comment received suggesting that extensions to public comment period be announced by a press release. The Department of Defense published a notice in the **Federal Register** on November 16, 2009 (74 FR 58846) extending the public comment period by an additional 60 days.

*e. Appeal process.* One comment received requesting information on appeal process. Section 239.11 (Appeals) explains the appeal process.

**a. Executive Order 12866, “Regulatory Planning and Review”**

Under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), a “significant regulatory action” is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This rule is an economically significant regulatory action under section 3(f) of Executive Order 12866 because it is expected to have an annual effect on the economy of more than \$100 million and materially alter the budgetary impact of the Homeowners Assistance Program. Accordingly, OMB has reviewed this rule.

**b. Sec. 202, Public Law 104–4, “Unfunded Mandates Reform Act”**

It has been certified by the DUSD(I&E) that 32 CFR part 239, does not contain a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

**c. Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

It has been certified by the DUSD(I&E) that 32 CFR part 239, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**d. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been certified by the DUSD(I&E) that 32 CFR part 239, does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These requirements have been approved by the Office of Management and Budget under OMB Control Number 0704–0463.

**e. Executive Order 13132, “Federalism”**

It has been certified by the DUSD(I&E) that 32 CFR part 239, does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the Federal Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 239**

Government employees; Grant programs—housing and community development; Housing; Military personnel.

■ Accordingly, 32 CFR part 239, is revised to read as follows:

**PART 239—HOMEOWNERS ASSISTANCE PROGRAM—APPLICATION PROCESSING**

- Sec.
- 239.1 Purpose.
  - 239.2 Applicability and scope.
  - 239.3 Policy.
  - 239.4 Definitions.
  - 239.5 Benefit elections.
  - 239.6 Eligibility.
  - 239.7 Responsibilities.
  - 239.8 Funding.
  - 239.9 Application processing procedures.
  - 239.10 Management controls.
  - 239.11 Appeals.
  - 239.12 Tax documentation.
  - 239.13 Program performance reviews.

- 239.14 On-site inspections.
- 239.15 List of HAP field offices.

**Authority:** 42 U.S.C. 3374, as amended by Section 1001, ARRA, Public Law 111–5.

**§ 239.1. Purpose.**

This part:  
 (a) Continues to authorize the Homeowners Assistance Program (HAP) under Section 3374 of title 42, United States Code (U.S.C.), to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected directly related to the closure or reduction-in-scope of operations due to Base Realignment and Closure (BRAC). Additionally, in accordance with section 1001, American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, this part temporarily expands authority provided in section 3374, of title 42 U.S.C., to provide assistance to: Wounded, Injured, or Ill members of the Armed Forces (30 percent or greater disability), wounded Department of Defense (DoD) and Coast Guard civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with their disability, surviving spouses of fallen warriors, Base Realignment and Closure (BRAC) 2005 impacted homeowners relocating during the mortgage crisis, and Service member homeowners undergoing Permanent Change of Station (PCS) moves during the mortgage crisis. This authority is referred to as “Expanded HAP.”

(b) Establishes policy, authority, and responsibilities for managing Expanded HAP and defines eligibility for financial assistance.

(c) In accordance with this part, the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) has overall responsibility and, through the Deputy Under Secretary of Defense for Installations and Environment (DUSD(I&E)), provides oversight for this program. The Army, acting as the DoD Executive Agent for administering the HAP, uses the Headquarters, U.S. Army Corps of Engineers (HQUSACE) to implement the program.

**§ 239.2 Applicability and scope.**

This part applies to the Office of the Secretary of Defense, the Military Departments (including the U.S. Coast Guard), the Chairman of the Joints Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter

referred to collectively as the “DoD Components”). This part for Expanded HAP is applicable until September 30, 2012, or as otherwise extended by law.

### § 239.3 Policy.

It is DoD policy, in implementing section 3374 of title 42, United States Code, as amended by section 1001 of the ARRA (Pub. L. 111–5), that those eligible (*see* section 239.6 of this part) to participate in the HAP and Expanded HAP are treated fairly and receive available benefit as quickly as practicable.

### § 239.4 Definitions.

(a) *Armed Forces.* The Army, Navy, Air Force, Marine Corps, and Coast Guard (*see* section 101(a) of title 10, U.S.C., as stipulated in section 1001(p) of Public Law 111–5).

(b) *Closing costs.* Sellers’ closing costs typically include: loan payoff fees; the real estate commission; title insurance; all or part of transfer taxes and escrow fees, if there are any; attorney’s fees where applicable; and other fees set by local custom. HAP pays sellers’ closing costs that are customary for the region where the home is located. Applicant’s realtor or lender can provide the applicant with the normal closing costs for his/her region. HAP will reimburse the seller for limited contributions made to the buyer’s portion of closing costs, including appraisal cost and realtor fees.

(c) *Deficiency judgment.* Judicial recognition of personal liability under applicable state law against a Service member whose property was foreclosed on or who otherwise passed title to another person for a primary residence 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>) 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.

(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.

(iv) If an applicant is eligible under § 239.6(a)(3) or (4) of this part and is unable to sell the primary residence after demonstrating reasonable efforts to sell, the applicable percentage shall be 75 percent of the PFMV. As noted under paragraph (a)(1) of this section, however, the applicant may instead be eligible for payment of the eligible mortgage outstanding.

(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 applicant. In the case of a short sale, if an applicant remains personally liable for a deficiency between the outstanding mortgage and the sale price, that deficiency shall 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 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.

#### § 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.)

(2) *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

(ii) Who relocates from the member's or civilian employee's primary residence within two years of the death of spouse.

(3) *BRAC 2005 members and civilian employees.* Members of the Armed Forces and civilian employees of the Department of Defense and the United States Coast Guard (not including temporary employees or contractors) and employees of non-appropriated fund instrumentalities meeting the assignment requirements of § 239.6(b)(4)(i)(A) of this part and who have not previously received HAP benefit payments:

(i) Whose position is eliminated or transferred because of the realignment or closure; and

(ii) Who accepts employment or is required to relocate because of a transfer beyond the normal commuting distance from the primary residence (50 miles). The new residence must be within 50 miles of the new duty station.

(4) *Permanently reassigned members of the Armed Forces.* Members who have not previously received HAP benefit payments and who are reassigned under permanent PCS orders:

(i) Dated between February 1, 2006, and September 30, 2012 (subject to availability of funds),

(ii) To a new duty station or home port outside a 50-mile radius of the member's former duty station or home port.

(b) *Eligibility based on economic impact, timing, price, orders, and submission of application.* (1) *Minimum economic impact.* (i) BRAC 2005 Members and Civilian Employees as well as permanently reassigned members of the Armed Forces whose primary residence have suffered at least a 10 percent personal home value loss from the date of purchase to date of sale. Market value of the home will be verified by the USACE.

(ii) Applicants qualifying as Wounded, Injured, or Ill or as surviving spouse do not need to show minimum economic impact.

(2) *Timing of purchase and sale.*

(i) BRAC 2005 Members and Civilian Employees must have been the owner-occupant of their primary residence before May 13, 2005, the date of the BRAC 2005 announcement or have vacated the owned residence as a result of being ordered into on-post housing after November 13, 2004. An owner-occupant is someone who has both purchased and resides in the residence.

(ii) Permanently reassigned members of the Armed Forces must have purchased their primary residence before July 1, 2006.

(iii) Wounded, injured, or ill members and employees and Surviving Spouses are eligible for compensation without respect to the date of purchase.

(iv) BRAC 2005 Members and Civilian employees and permanently reassigned members must have sold their primary residence between July 1, 2006 and September 30, 2012.

(3) *Maximum home prior fair market value and eligible mortgage.* When calculating benefits, both the PFMV and the eligible mortgage will be capped at \$729,750.

(4) *Date of assignment; report date; basis for relocation.* (i) *Date of assignment, report date.* (A) BRAC 2005 Members and Civilian Employees must have been assigned to an installation or unit identified for closure or

realignment under the 2005 round of the Base Realignment and Closure Act of 1990 on May 13, 2005; transferred from such an installation or unit, or employment terminated as a result of a reduction in force, after November 13, 2004; or transferred from such an installation or activity on an overseas tour after May 13, 2002. BRAC 2005 Members transferred from such an installation or activity after May 13, 2005, are also eligible if, in connection with that transfer the member was informed of a future, programmed reassignment to the installation.

(B) For initial implementation, permanently reassigned members of the Armed Forces must have received qualifying orders to relocate dated between February 1, 2006, and September 30, 2010. These dates may be extended to September 30, 2012, at the discretion of the DUSD(I&E) based on availability of funds.

(ii) *Basis for relocation:* Permanently reassigned members of the Armed Forces who are reassigned or who otherwise relocate for the following reasons are not eligible for Expanded HAP benefits:

(A) Members who voluntarily retire prior to reaching their mandatory retirement date.

(B) Members who are a new accession into the Armed Forces or who are otherwise entering active duty.

(C) Members who are voluntarily separated or discharged.

(D) Members whose separation or discharge is characterized as less than honorable.

(E) Members who request and receive voluntary release from active duty (REFRAD).

(F) Members who are REFRAD for misconduct or poor performance.

(c) *Applications will be processed according to eligibility category in the following order:* (1) *Wounded, injured, and ill.* Within this category, applications will generally be processed in chronological order of the wound, injury, or illness.

(2) *Surviving spouses.* Within this category, applications will generally be processed in chronological order of the date of death of the member or employee.

(3) *BRAC 2005 members and civilian employees.* Within this category, applications will generally be processed in chronological order of the date of job elimination.

(4) *Permanently reassigned members of the Armed Forces.* Within this category, applications will generally be processed beginning with the earliest report-not-later-than date of PCS orders.

#### § 239.7 Responsibilities.

(a) The DUSD(I&E), under the authority, direction, and control of the USD(AT&L), shall, in relation to the Expanded HAP:

(1) Prescribe and monitor administrative and operational policies and procedures.

(2) Determine applicable personnel benefits and policies, in coordination with the Under Secretary of Defense (Comptroller) and the Under Secretary of Defense for Personnel and Readiness.

(3) Serve as senior appeals authority for appeals submitted by applicants.

(b) The Under Secretary of Defense (Comptroller) shall, in relation to the Expanded HAP:

(1) Implement policies and prescribe procedures for financial operations.

(2) Review and approve financial plans and budgets.

(3) Issue financing and obligation authorities.

(4) Administer the DoD Homeowners Assistance Fund.

(c) The Deputy Assistant Secretary of the Army for Installations and Housing (DASA(I&H)), subject to review by the DUSD(I&E), as the DoD Executive Agent for administering, managing, and executing the HAP, shall:

(1) Establish detailed policies and procedures for execution of the program.

(2) Maintain necessary records, prepare reports, and conduct audits.

(3) Publish regulations and forms.

(4) Disseminate information on the program.

(5) Forward copies of completed responses to congressional inquiries and appeals to the DUSD(I&E) for information.

(6) Serve as the initial approval authority for HAP appeals. The DASA(I&H) may approve appeals and shall forward recommendations for Expanded HAP denial to the DUSD(I&E) for decision.

(d) The Heads of the DoD Components and the Commandant of the Coast Guard, by agreement of the Secretary of Homeland Security, shall:

(1) Designate at least one representative at the headquarters level to work with DASA(I&H) and HQUSACE HAP offices.

(2) Require each installation to establish a liaison with the nearest HAP field office to obtain guidance or assistance on the HAP.

(3) Supply the HQUSACE HAP office a copy of any internal regulation, instruction, or guidance published relative to the Expanded HAP program.

(4) Disseminate information on the Expanded HAP and, upon request, supply HAP field offices with data pertaining to the Expanded HAP.

(e) HQUSACE. (1) *Real Estate Community of Practice (CEMP-CR)*. The Director of Real Estate, acting for the Chief of Engineers, has been delegated authority and responsibility for the execution of HAP. CEMP-CR, as the central office for HAP, is responsible for the following:

(i) Supervision, interagency coordination, development of procedures, policy guidance, and processing of appeals forwarded from the districts and HQUSACE Major Subordinate Commands (MSC).

(ii) Maintaining an Expanded HAP central office and Expanded HAP field offices.

(iii) Processing appeals from the MSC where applicant agreement cannot be reached. Such appeals will be forwarded, in turn, to DASA(I&H) for consideration.

(2) *Districts*. Districts designated by the Director of Real Estate, and their Chiefs of Real Estate, have been delegated the authority to administer, manage, and execute the HAP on behalf of all applicants. Districts (as identified in § 239.9 of this part) are responsible for the following:

(i) Accepting applications (DD Form 1607) for HAP and Expanded HAP benefits.

(ii) Determining the eligibility of each applicant for Expanded HAP assistance using the criterion established by the DUSD(I&E).

(iii) Determining and advising each applicant on the most appropriate type of assistance.

(iv) Determining amounts to be paid, consistent with DoD policy, and making payments or authorizing and arranging for acquisition or transfer of the applicant's property.

(v) Maintaining, managing, and disposing of acquired properties or contracting for such services with private contractors.

(vi) Processing all appeals, except where applicant agreement cannot be reached. Such appeal cases will be forwarded, in turn, to the MSC, CEMP-CR, and DASA(I&H) for consideration.

(3) *HQUSACE Major Subordinate Commands (MSC)*. MSCs have been delegated the authority to perform oversight and review of district program management and based upon that review, or in response to specific requests, to provide local policy guidance to the districts and recommend program changes or forward appeals to CEMP-CR for consideration.

#### § 239.8 Funding.

(a) *Revolving fund account*. The revolving fund account contains money appropriated in accordance with the

ARRA, and receipts from the management, rental, or sale of the properties acquired.

(b) *Appropriation, receipts, and allocation*. Funds required for administration of the program will be made available by DoD to the HQUSACE. Funds provided will be used for purchase or reimbursement as provided herein and to defray expenses connected with the acquisition, management, and disposal of acquired properties, including payment of mortgages or other indebtedness, as well as the cost of staff services, contract services, Title Insurance, and other indemnities.

(c) *Obligation of funds*. For government acquisition of homes under the authority of this Rule, funds will be committed prior to the Government's offer to purchase is conveyed to the applicant. The obligation will occur upon timely receipt of the accepted offer returned by the applicant.

#### § 239.9 Application processing procedures.

(a) *Acceptance of applications*. The district will accept applications (DD Form 1607) for HAP and Expanded HAP benefits submitted through the U.S. Mail or other delivery system direct to the appropriate district office. See § 239.15 of this part for a list of District field offices.

(b) *Application Form (DD Form 1607)*. Should the DD form 1607 not provide all the information required to process Expanded HAP applications, Districts must provide applicants appropriate supplemental instructions.

(c) *Assignment of application numbers*. (1) *Assignment of application numbers*. When a District receives an application, it will assign the application number and develop and maintain an individual file for each property. Applications for programs located in another District will not be assigned a number, but will be forwarded immediately to the District having jurisdiction. An application number, once assigned, will not be reassigned regardless of the disposition of the original application. Reactivation or reopening of a withdrawn application does not require a new application or application number.

(2) *Method of assignment*. An application will be numbered in the following manner:

(i) *Agency code*. Code to indicate the Federal agency accountable for installation being closed or applicant support:

- (A) 1—Army
- (B) 2—Air Force
- (C) 3—Navy

- (D) 4—Marine Corps
- (E) 5—Defense Agencies
- (F) 6—Non-Defense Agencies
- (G) 7—U.S. Coast Guard
- (i) *District code*.

(A) Sacramento: L2

(B) Savannah: K6

(C) Fort Worth: M2

(iii) *Applicant category code* (military/civilian/wounded/surviving spouse/PCS):

(A) 1 = Civilian (BRAC)

(B) 2 = Military (BRAC)

(C) 3 = Non-appropriated Fund

Instrumentalities

(D) 4 = Military Wounded

(E) 5 = Civilian Wounded

(F) 6 = Surviving Spouse (military deceased)

(G) 7 = Surviving Spouse (civilian employee deceased)

(H) 8 = Military PCS

(iv) *State*: State abbreviation.

(v) *Installation number*: The five digit ZIP Code of the applicant's present (former, if they have already moved) installation, offices, or unit address. Examples are:

(A) For a BRAC 05 applicant moving from the closing Saint Louis, Missouri, DFAS office to Minneapolis, Minnesota, use the ZIP Code of the city from which he or she is moving, e.g., 63101, for St. Louis, Missouri.

(B) For wounded warrior or surviving spouse who moved from primary residence, use present installation or home town.

(C) For Service members who are eligible based on PCS criteria, use ZIP Code of installation from which they depart.

(vi) *Application Number*: Sequential beginning with 0001.

*Example 1:*

2 K6 2 NH0 3 8 0 30 0 0 1

Air Force-SAS Dist.-Mil BRAC-NH-Pease AFB-Applicant #

*Example 2:*

1-K 6- 4- NY-1 3 6 0 2-0 0 0 2

Army-SAS Dist-Mil Wounded-NY-Ft Drum-Applicant #

(d) *Real Estate Values*. (1) Because the PFMV is the purchase price for Expanded HAP, no appraisal of the property is required. Supporting documentation to establish purchase price must be furnished by the applicant. Generally, Form HUD-1 will suffice.

(2) Districts are responsible for ensuring primary residence values are appropriate and applicants receive deserved benefit payments. Districts will use the CoreLogic AVM to determine the valuation of individual primary residences.

**§ 239.10 Management controls.**

(a) *Management systems.* Headquarters, USACE has an existing information management system that manages all information related to the HAP program.

(1) *HAPMIS.* The Homeowners Assistance Program Management Information System (HAPMIS) provides program management assistance to field offices and indicators to managers at field offices, regional headquarters and HQUSACE at the Service Member level of detail. The Privacy Act applies to this program and the management information system to protect the privacy of Expanded HAP applicant information.

(2) *CEFMS.* The Corps of Engineers Financial Management System (CEFMS) provides detailed funds execution and tracking, to include:

(i) Funds issued to field offices for execution accountability.

(ii) Funds committed and obligated by applicant category, installation, state and county.

(b) *System of Records Notice (SORN).* The Privacy Act limits agencies to maintaining “only such information

about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive order of the President.” 5 U.S.C. 552a(e)(1). The SORN for the Homeowners Assistance Program can be found at [http://www.defenselink.mil/privacy/notices/army/A0405-10q\\_CE.shtml](http://www.defenselink.mil/privacy/notices/army/A0405-10q_CE.shtml). The Privacy Impact Assessment for the system can be reviewed at: <http://www.army.mil/ciog6/privacy.html>. Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Chief of Engineers, Headquarters U.S. Army Corps of Engineers, Attn: CERE-R, 441 G Street, NW., Washington, DC 20314-1000.

**§ 239.11 Appeals.**

Applicant appeals will be processed at the district level and forwarded through HQUSACE for review. The HQUSACE may approve an appeal but must forward any recommendation for denial to the DASA(I&H) for review and consideration. DASA(I&H) may approve an appeal but must forward recommendations for denial to the

DUSD(I&E) for decision. The DUSD(I&E) is the senior appeals authority for appeals submitted by applicants.

**§ 239.12 Tax documentation.**

For disbursed funds, tax documents (if necessary) will be certified by HQUSACE Finance Center and distributed to applicants and the Internal Revenue Service (IRS) annually.

**§ 239.13 Program performance reviews.**

HQUSACE will prepare monthly program performance reviews using the HAPMIS; HQUSACE Annual Management Command Plan and Management Control Checklist. In addition, program monitoring will also be conducted (through HAPMIS and CEFMS reports) at the Headquarters Department of the Army and at the DUSD(I&E) levels.

**§ 239.14 On-site inspections.**

The HQUSACE and its major subordinate commands may conduct periodic on-site inspections of district offices and monitor program execution through HAPMIS and CEFMS reports.

**§ 239.15 List of HAP field offices.**

Field office	For installations located in:
U.S. Army Engineer District, Sacramento, CESP, 1325 J Street, Sacramento, CA 95814-2922, (916) 557-6850 OR, 1-800-811-5532, <i>Internet Address: http://www.spk.usace.army.mil.</i>	Alaska, Arizona, California, Nevada, Utah, Idaho, Oregon, Washington, Montana, Pacific Ocean Rim, and Hawaii.
U.S. Army Engineer District, Savannah, CESAS, Attn: RE-AH, P.O. Box 889, Savannah, GA 31402-0889, 1-800-861-8144, <i>Internet Address: http://www.sas.usace.army.mil.</i>	Alabama, Georgia, North Carolina, South Carolina, Florida, Ohio, Illinois, Indiana, Maryland, Delaware, Michigan, Kentucky, District of Columbia, Virginia, Pennsylvania, Tennessee, New Hampshire, Rhode Island, New York, Vermont, Mississippi, Massachusetts, Connecticut, Maine, New Jersey, West Virginia and Europe.
U.S. Army Engineer District, Fort Worth, CESWF, P.O. Box 17300, Fort Worth, TX 76102-0300, (817) 886-1112, 1-888-231-7751, <i>Internet Address: http://www.swf.usace.army.mil.</i>	Arkansas, Louisiana, Oklahoma, Texas, New Mexico, Colorado, Iowa, Nebraska, Michigan, Minnesota, North and South Dakota, Wisconsin, Wyoming, Kansas, and Missouri.

HAP CENTRAL OFFICE,  
Homeowners Assistance Program, HQ  
U.S. Army Corps of Engineers Real  
Estate Directorate, Military Division,  
441 G Street, NW., Washington, DC  
20314-1000.

Dated: November 10, 2010.

**Morgan F. Park,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 2010-28756 Filed 11-15-10; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF HOMELAND  
SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2010-1006]

**Drawbridge Operation Regulation;  
Neuse River, New Bern, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Neuse River Railroad Bridge across Neuse River, mile 34.2, at New Bern, NC. This closure is necessary to facilitate mechanical repairs.

**DATES:** This deviation is effective from 8 a.m. on November 16, 2010 through 8 a.m. on November 18, 2010.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2010-1006 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-1006 in the “Keyword” box and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District; telephone 757-398-6222, e-