HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| TX0473 | COMFORT INN | P O BOX 28 1307 AVE. A | OZONA | TX 76943 | (915)392-3791 |
| TX0474 | COMFORT INN OF PARIS | 3505 NE LOOP 286 | PARIS | TX 75460 | (903)784-7481 |
| TX0289 | CLARION HOTEL RICHARDSON. | 1981 N. CENTRAL EXPRWY | RICHARDSON | TX 75080 | (214)64 )-4000 |
| TX0477 | ECONO LODGE EAST | 218 SOUTH W.W. WHITE RD | SAN ANTONIO | TX 78219 | (210)333-3346 |
| TX0107 | LA QUINTA INN SAN ANTONIO CONVENTION CENTER. | 1001 E. COMMERCE ST | SAN ANTONIO | TX 782053303 | (210)222-9181 |
| TX0309 | RODEWAY INN FIESTA PARK | 19793 IH-10 WEST | SAN ANTONIO | TX 78257 | (210)698-3991 |
| VA: | | | | | |
| VA0330 | SHERATON NATIONAL HOTEL | 900 S. ORME STREET | ARLINGTON | VA 222040000 | (703)521-1900 |
| VA0064 | COMFORT SUITES | 1550 CROSSWAYS BLVD | CHESAPEAKE | VA 233200000 | (804)420-1600 |
| VA0247 | NORFOLK MARRIOTT WATERSIDE HOTEL. | 235 E MAIN STREET | NORFOLK | VA 235100000 | (804)627-4200 |
| WI: | | | | | |
| WI0066 | COUNTRY INN BY CARLSON | 737 AVON RD | SPARTA | WI 54656 | (608)269-3110 |
| WV: | | | | | |
| WV0001 | KNIGHTS INN | 1599 EDWIN MILLER BLVD | MARTINSBURG | WV 25401 | (304)267-2211 |
| WV0152 | LEISURE INN | INT. I-81 & WV9 EXIT 16 E | MARTINSBURG | WV 25401 | (304)263-8811 |
| **DELETIONS** | | | | | |
| AL: | | | | | |
| AL0229 | PERDIDO BEACH HILTON RESORT. | 27200 PERDIDO BEACH BLVD | ORANGE BEACH | AL 36561 | (205)981-9811 |
| HI: | | | | | |
| HI0051 | HAWAIIAN REGENT HOTEL KALAKAUA. | 2552 KALAKAUA AVE | HONOLULU, OAHU | HI 96815 | (808)922-6611 |
| HI0151 | SHERATON MAUI HOTEL | 2605 KAANAPALI PKWY | LAHAINA, MAUI | HI 967611991 | (808)661-0031 |
| HI0026 | THE WESTIN KAUAI | 3610 RICE ST | LIHUE, KAUAI | HI 96766 | (808)245-5050 |
| NY: | | | | | |
| NY0571 | COMFORT INN AIRPORT | 395 BUELL RD | ROCHESTER | NY 14624 | (716)436-4400 |
| NY0570 | ECONO LODGE ROCHESTER SOUTH. | 940 JEFFERSON STREET | ROCHESTER | NY 14623 | (716)427-2700 |
| TN: | | | | | |
| TN0150 | COREY HOTELS INC. HOLIDAY INN. | PO BOX 14 RT. 1 OLD HWY. 25 W. EXIT 134. | CARYVILLE | TN 37714 | (615)562-8476 |
| TN0015 | WINNERS CIRCLE MOTEL | 3430 FORT CAMPBELL BLVD | LARKSVILLE | TN 37042 | (615)431-4906 |
| TN0058 | ECONO LODGE | 853 UNIVERSITY ST | MARTIN | TN 38237 | (901)587-4241 |
| TX: | | | | | |
| TX0401 | HOLIDAY INN LA PLAZA MALL | 2000 S. 10TH ST | MCALLEN | TX 78501 | (210)686-1741 |

[FR Doc. 94-24221 Filed 9-29-94; 8:45 am]

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federal register

Friday
September 30, 1994

# Part VII

# Federal Emergency Management Agency

State Contacts; Hotel and Motel Fire Safety Act National Master List; Notice

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### State Contacts for the Hotel and Motel Fire Safety Act National Master List

**AGENCY:** United States Fire Administration, FEMA.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA or Agency) gives notice of the State contacts for the Hotel and Motel Fire Safety Act national master list. The offices or officials listed are responsible for compiling the respective State listings of properties which comply with the Hotel and Motel Fire Safety Act, and should be contacted directly for any changes to the national master list.

**EFFECTIVE DATE:** September 30, 1994.

**ADDRESSES:** Comments on the State contact list or the national master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

**FOR FURTHER INFORMATION CONTACT:** John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

**SUPPLEMENTARY INFORMATION:** Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and makes periodic changes to the list.

Each State and Territory or other participating jurisdiction is responsible for compiling its respective listings of properties which comply with the Hotel and Motel Fire Safety Act. If you own or represent a property in compliance with the Act, and want to include the property in the national master list or to make an addition, deletion, or other change to a listing on the national master list, please contact the appropriate office in the State or jurisdiction where the property is located.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The State contacts for the national master list follow below.

Dated: September 27, 1994.

**Spence W. Perry,**

*Acting General Counsel.*

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94

| State/Contact | Office | Address | Phone | FAX |
|---|---|---|---|---|
| AL—John Robison | Fire Marshal's Office | 135 S Union Street, Room 140, Montgomery, AL 36130–3401. | 205/269–3575 | 205/240–3194 |
| AK—Jack McGary | State Fire Marshal's Office. | 5700 E Tudor Road, Anchorage, AK 99507–1225. | 907/269–5604 | 907/338–4375 |
| AZ—Michael Reichling | Office of the State Fire Marshal. | 1540 W Van Buren Street, Room 235, Phoenix, AZ 85007. | 602/255–4964 | 602/255–4961 |
| AR—Ray Carnahan | Arkansas State Police | Fire Marshal's Section, 3 Natural Resources Drive, Little Rock, AR 72215. | 501/221–8258 | 501/224–5006 |
| CA—Penny Williams | State Fire Marshal | 7171 Bowling Drive, Suite 500, Sacramento, CA 95823. | 916/262–2006 | 916/262–1942 |
| CO—Dean Smith | Colorado Division of Fire Safety. | PO Box 158, Palisade, CO 81526–0158. | 303/464–0728 | 303/464–0729 |
| CT—Sheryl Salvatore | Bureau of State Fire Marshal. | Division of Fire and Building Safety, 294 Colony Street, Meriden, CT 06450. | 203/238–6625 | 203/238–6148 |
| DC—Insp. Fenton | DC Fire Prevention Division. | 613 G Street NW, Room 810, Washington, DC 20001. | 202/673–3344 | 202/628–5306 |
| DE—Diane Towns | State Fire Marshal | RD2, Box 166A, Dover, DE 19901 | 302/739–5665 | 302/739–3696 |
| FL—Debbie Crowder | Division of State Fire Marshal. | Department of Insurance, 101 E Gaines Street, Rm 660, Tallahassee FL 23299–0300. | 904/922–3172 x3629 | 904/922–2553 |
| GA—Sonya Scandret | State Fire Marshal | 2 Martin Luther King Jr. Drive, Suite 620 West, Atlanta, GA 30334. | 404/656–0698 | 404/656–7628 |
| GUAM—Frank Cruz | Fire Department | Pedro's Plaza, 287 W O'Brien Drive, Agana, Guam 96910. | 671/477–3473 | 671/477–4385 |
| HI—August Range | State Fire Council | 3375 Koapaka Street, Suite H425, Honolulu, HI 96819–1869. | 808/831–7748 | 808/831–7750 |
| ID—Lorraine Allen | State Fire Marshal | 500 S 10th Street, Boise, ID 83720 | 208/334–4288 | 208/334–2298 |
| IL—Peter Vina | Illinois State Fire Marshal. | 1035 Stevenson Drive, Springfield, IL 62703–4259. | 217/785–5620 | 217/782–1062 |
| IN—Pauline Strashberry | Office of the State Fire Marshal. | 402 W Washington Street, Room E241, Indianapolis, IN 46204. | 317/232–2222 | 317/232–0146 |
| IA—Sue Mallory | Iowa State Fire Marshal. | Des Moines, IA 50319 | 515/281–5821 | 515/242–6299 |
| KS—Chasity Uhl | State Fire Marshal Department. | 700 SW Jackson Street, Suite 600, Topeka, KS 66603–3714. | 913/296–3401 | 913/296–0151 |
| KY—Lisa Mahoney | Division of Fire Prevention. | 1047 US 127 South, Frankfort, KY 40601 | 502/564–3626 | 502/564–6799 |
| LA—Theresa Stevens | Dept. of Public Safety and Corrections. | 5150 Florida Blvd, Baton Rouge, LA 70806. | 504/925–3647 | 504/925–4241 |
| ME—Karen Peterson | State Fire Marshal's Office. | 317 State Street, Station #52, Augusta, ME 04333–0052. | 207/287–3473 | 207/287–5163 |

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94—Continued

| State/Contact | Office | Address | Phone | FAX |
|---|---|---|---|---|
| MD—Kathy Rose | State Fire Marshal's Office. | 106 Old Court Road, Suite 300, Pikesville, MD 21208. | 410/764–4324 | 410/764–4576 |
| MA—Jennifer Meith | State Fire Marshal's Office. | 1010 Commonwealth Avenue, Boston, MA 02215. | 617/566–4500 | 617/566–2600 |
| MI—Cindy Rice | Michigan Fire Marshal Division. | 7150 Harris Drive, Lansing, MI 48913 | 517/322–5469 | 517/322–2908 |
| MN—Theresa Brigleb | State Fire Marshal Division. | 450 N Syndicate, Suite 285, St. Paul, MN 55104. | 612/643–3093 | 612/643–3095 |
| MS—Judy Lowry | Mississippi Emergency Mgmt Agency. | PO Box 4501, Jackson, MS 39296–4501 | 601/960–9013 | 601/352–8314 |
| MO—Theresa Morris | Division Of Fire Safety | 301 W High Street, #860, Jefferson City, MO 65101. | 314/751–2930 | 314/751–1744 |
| MT—Gail Pocha | Fire Prevention and Investigation. | 303 N Roberts, Helena, MT 59620 | 406/444–2050 | 406/444–4722 |
| NE—Lori Lloyd | State Fire Marshal's Office. | 246 S 14th Street, Lincoln, NE 68508–1804. | 402/471–2027 | 402/471–3118 |
| NV—Vicki Stevens | State Fire Marshal's Office. | Capitol Complex, Carson City, NV 89710 | 702/687–4290 | 702/687–5122 |
| NH—John Gregiore | State Of New Hampshire Dept. of Safety. | Division of Fire Service, 91 Airport Road, Concord, NH 03301. | 603/271–3294 | 603/271–3903 |
| NJ—Sue Miller | Bureau of Fire Safety | CN 809, Trenton, NJ 08625 | 609/633–6115 | 609/633–6134 |
| NM—Solomon Gonzales | New Mexico State Fire Marshal's Office. | PO Box Drawer 1269, Santa Fe, NM 87504–1269. | 505/827–3550 | 505/827–3778 |
| NY—Bryant Stevens | Office of Fire Prevention and Control. | 162 Washington Avenue, Albany, NY 12231. | 518/474–6746 | 518/474–3240 |
| NC—Ellen Sullivan | Fire and Rescue Service Division. | 111 Seaboard Avenue, PO Box 26387, Raleigh, NC 27603. | 919/733–5435 | 919/733–9076 |
| ND—Deb Larson | Consumer Protection Division. | PO Box 937, Bismark, ND 58502–0937 | 701/221–6147 | 701/221–6145 |
| OH—Jennifer Bair | Division of State Fire Marshal. | 8895 E Main Street, Reynoldsburg, OH 43068. | 614/752–8200 | 614/752–7213 |
| OK—Caroline Stewart | State Fire Marshal's Office. | 4030 N Lincoln Blvd, Suite 100, Oklahoma City, OK 73105. | 405/424–4371 | 405/424–0926 |
| OR—Benita Cooper | Office of State Fire Marshal. | 4760 Portland Road NE, Salem, OR 97305–1760. | 503/378–3473 | 503/373–1825 |
| PA—Rose Thompson | Pennsylvania Emergency Mgmt Agency. | PO Box 3321, Harrisburg, PA 17105 | 717/783–5061 | 717/772–6917 |
| PR—Eliberto Colon | Puerto Rico Fire Department. | PO Box 13325 | 809/725–3444 | |
| RI—Bill Howe | State Fire Marshal's Office. | 272 W. Exchange Street, Providence, RI 02903. | 401/277–2335 | 401/773–1222 |
| SC—Pam Dewease | Division of State Fire Marshal. | 1201 Main Street, Suite 810, Columbia, SC 29201. | 803/737–0660 | 803/737–0675 |
| SD—Rex Vandenberg | South Dakota Department of Health. | Office of Health Protection, 445 E. Capitol Ave., Pierre, SD 57501–3185. | 605/773–3364 | 605/773–5904 |
| TN—Fred Sims | Division of Fire Protection. | 500 James Robertson Parkway, Volunteer Plaza, 3rd Floor, Nashville, TN 37243. | 615/741–2981 | 615/741–1583 |
| TX—Dennis Frasier | Texas Commission on Fire Protection. | 3006–B Longhorn Blvd, Austin, TX 78768. | 512/873–1875 | 512/873–1740 |
| UT—Deanne Mousley | Office of the Fire Marshal. | 4501 South 2700 West, Salt Lake City, UT 84119. | 801/965–4909 | 801/964–4597 |
| VT—Robert Howe | Fire Prevention Director's Office. | Department of Labor and Industry, Montpelier, VT 05620–3401. | 802/828–2288 | 802/828–2288 |
| VA—Glenn Dean | Dept of Housing & Community Develop.. | 501 N 2nd Street, Richmond, VA 23219–1321. | 804/371–7153 | 804/371–7092 |
| WA—Rubye Mitchell | Department of Community Development. | Fire Protection Services, 4317 6th Avenue SE, PO Box 48350, Olympia, WA 98504–8350. | 206/493–2663 | 206/493–2648 |
| WV—Debbie Hudson | Office of the State Fire Marshal. | Inspection Division, 2100 Washington St. E, PO Box 51040, Charleston, WV 25305–0140. | 304/558–2191 | 304/558–2537 |

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94—Continued

| State/Contact | Office | Address | Phone | FAX |
|---|---|---|---|---|
| WI—Lynn Lecount | Bureau of Buildings and Structures. | Safety and Building Division, 20 E Washington Avenue, Room 103, Madison, WI 53707. | 608/267-2496 | 608/267-2496 |
| WY—Bruce Jasperson | Dept of Fire Prev. and Electrical Safety. | Herschler Building, 1st Floor West, Cheyenne, WY 82002. | 307/777-7288 | 307/777-7119 |

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federal register

Friday
September 30, 1994

# Part VIII

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Housing-Federal Housing Commissioner

## 24 CFR Parts 200 and 203
## Nationwide Pre-Foreclosure Sale Procedure; Interim Rule

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

### 24 CFR Parts 200 and 203

[Docket No. R-94-1749; FR-2682-I-01]

RIN 2502-AE72

### Nationwide Pre-Foreclosure Sale Procedure

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule sets forth the requirements and procedures that govern the Department's Pre-Foreclosure Sale (PFS) Procedure beginning in Federal fiscal year 1995 (October 1, 1994 through September 30, 1995). The requirements and procedures contained in this interim rule are based on the Pre-Foreclosure Sale Demonstration Program established by a notice published in the **Federal Register**. This interim rule takes into consideration the public comments received on that notice. It also incorporates changes in the PFS requirements and procedures based on the experience of the Department under the Demonstration.

**DATES:** Effective Date: October 31, 1994. Comments due date: November 14, 1994.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joseph Bates, Director, Single Family Servicing Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 708-3680. A telecommunications device for deaf persons (TDD) is available at (202) 708-1112. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**. Information on the estimated public reporting burden is provided later in this Interim Rule under *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, D.C. 20503.

### Background

Sometimes, a mortgagor must confront the twin realities of not being able to meet his or her mortgage obligation *and* static or declining property values. Such a situation makes it virtually impossible for a financially distressed mortgagor to sell the home and, using the proceeds, to fully discharge the mortgage debt. Foreclosure of the mortgage is often the method of resolving these difficulties.

Over the past few years, much interest has been expressed by mortgagors and real estate agents in a transaction known as the "pre-foreclosure sale." In a successful pre-foreclosure sale, neither foreclosure nor conveyance of the property to the Department occur. A third party buys the home from a defaulting mortgagor at its approximate fair market value (with certain adjustments, as approved by the Secretary), which is less than the owner's outstanding indebtedness at the time of sale.

Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) amended section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) to authorize HUD to pay a claim to a lender equal to the difference between the fair market sale price and the outstanding indebtedness (with certain adjustments). A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure. Finally, mortgagees also benefit through incorporating this loss-mitigation technique into their overall loan servicing, by frequently being able to file their claim for insurance benefits sooner, following a successful pre-foreclosure sale, than they would following a post-foreclosure conveyance claim.

On May 29, 1991, the Department published in the **Federal Register**, at 56 FR 24324, a notice which announced a limited demonstration program to gauge the demand for, and the efficacy of, pre-foreclosure sales as a means of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages and of saving the Department money.

The Department has decided to implement the pre-foreclosure sale procedure nationwide by incorporating it into the overall approach of servicing FHA-insured loans by FHA-approved lender/servicers. The Demonstration now concluding has been successful in that the demand for this alternative to foreclosure was found to be very substantial; the efficacy of the pre-foreclosure sale transaction was found to be cost-beneficial to HUD; and feedback obtained from participating local HUD offices, program coordinators, mortgagees, homeowners and the general public, was quite favorable. By expanding the options available to financially distressed mortgagors and not adversely affecting any mortgagor rights or interests under existing FHA-insured loan servicing regulations, the Department has not only acted responsibly toward the homeowners with FHA-insured mortgages, but also has operated with an eye to the cost-effectiveness of its own policies and procedures. This interim rule will make pre-foreclosure sales an even more efficient servicing tool by streamlining procedures and, in some respects, reducing the Department's cost of following this course of action.

Among the regulatory changes being implemented is a new § 203.370, which provides for the payment of FHA insurance benefits to mortgagees upon the filing of claims following successful pre-foreclosure sales. (It also contains notification and eligibility provisions, noted below.) Other sections governing claim submission, calculation and payment—24 CFR 200.155, 203.360, 203.365, 203.401, 203.402, 203.403, and 203.410—are being amended to recognize the possibility of a pre-foreclosure sale as an outcome of the servicing of a defaulted mortgage.

## Public Comments

The public was given 60 days to comment on the requirements and procedures set forth in the May 29, 1991 notice that established the Pre-Foreclosure Sale Demonstration discussed above. Comments were received from 22 commenters: 12 mortgagees/servicers, three counseling agencies, two real estate service companies, one national association of real estate sales professionals, one quasi-governmental organization, one financial services company, one local HUD office, and one individual. Below is a listing of the comments received and the Department's responses to those comments.

1. With the exception of one mortgagee, all other comments had at least some positive aspects and were supportive of the fact that HUD was engaging in an effort to mitigate losses through pre-foreclosure sales. Typically, commenters believed that PFS was "overdue," "a much needed program," "an attractive alternative to loan foreclosure," and that the "program nationwide should help reduce foreclosures and encourage sales where the market is not strong." [two mortgage servicers, one real estate service company, one national association of real estate sales professionals]

*Response:* It is because of the overall response of this nature that the Department has decided to implement the pre-foreclosure sale procedure nationwide.

2. Seven commenters stressed the need for trained, proficient professionals to be involved in PFS; e.g., contractors, program administrators, local HUD staff, or HUD Headquarters staff overseeing the Demonstration. [one national association of real estate sales professionals, two real estate service companies, four mortgagees]

*Response:* It has come to HUD's attention that a number of mortgagees have added, or otherwise identified, loss-mitigation teams to their respective servicing staffs, in an effort to improve the responsiveness to mortgagor defaults and to apply alternatives to foreclosure where feasible and cost-beneficial. HUD applauds and encourages these efforts; they comport with the Department's own evolving philosophy regarding foreclosure avoidance and with expanding concepts of "prudent mortgage servicing" and "protecting HUD's interests." The Department expects that the benefits of such an approach will be marked and far-reaching, extending not only to HUD, but also to homeowners and mortgagees. In particular, the move to increase the mortgagees' role in HUD's pre-foreclosure sale procedure is being taken to utilize the mortgagees' growing ability to manage or mitigate loss in a responsible fashion. HUD will provide sufficient information and/or training to its own staff involved in pre-foreclosure sales to enable them to make prudent decisions and to disseminate accurate details about the PFS procedure.

3. One element of the Demonstration that was criticized was the eligibility criterion requiring mortgagors to be at least three months in arrears before they could be considered for the program. It was felt that this was counterproductive to the goal of loss mitigation, and that in many cases, a case-by-case determination of need and qualifications could be performed at virtually any time before allowing mortgagors to become program participants. Several commenters urged that a comprehensive determination be made, using financial statements, etc. [six mortgagees]

*Response:* The experience of the PFS Demonstration has provided the basis for the decision to retain the eligibility criterion pertaining to the defaulted status of a PFS candidate's mortgage loan. There must still be a determination made in every case that the mortgagor is in default, and that, at a minimum, three monthly installments are in arrears. As a practical matter, however, this means that a candidate for PFS could satisfy this criterion as early as the 62nd day of default, i.e., because the third payment can be due and unpaid at that time. Retaining this criterion as the new nationwide PFS procedure as implemented does keep the administration of pre-foreclosure sales from possibly impinging on servicing requirements related to HUD's mortgage assignment program. Notification of the mortgagor of his right to apply for assignment assistance from HUD (which mortgagees are required to perform at or after the third payment is due and unpaid), will occur at a time when homeowners can choose between a course of action directed toward homeownership retention OR one whose objective is to dispose of the property and relieve the mortgagor of his mortgage obligation. It is the Department's intent that defaulting mortgagors make such an informed decision. Permitting participation in the PFS procedure at an earlier juncture will be evaluated in the future, however, and could be implemented if found not to be detrimental.

4. Another element of the Demonstration that received criticism was the allowance of a ten day period for review of the proposed pre-foreclosure sale. [three mortgagees, one real estate service company, one individual]

*Response:* The ten day period for review of the proposed pre-foreclosure sale, as described in the Notice, was reduced to five (5) working days during the Demonstration, and will remain a *maximum* of 5 working days when the function is transferred to the mortgagee. The period might be further reduced (e.g., to three working days) after evaluating the experience of the nationwide PFS procedure.

5. Another criticized provision was the series of cash incentives payable to mortgagors who consummate a pre-foreclosure sale after participating in the program, although several commenters did support this concept. Four commenters opposed seller incentives [two mortgagees, one individual, one quasi-governmental organization]; three supported them [one mortgagee, one real estate services company, one national association of real estate sales professionals]; one supported case-by-case determinations of amounts [a mortgagee]; and one suggested that cash "incentives" be applied toward property improvements only [a real estate services company]. One commenter [a mortgagee] also criticized the expanded deed-in-lieu incentive as being over-generous and inappropriate. Another [a mortgagee] suggested that mortgagors were prepared to pay money towards accomplishing a deed-in-lieu. A third [a mortgagee] suggested that the mortgagor assign any and all refunds of insurance, etc. to HUD as a provision of enrollment in the PFS program.

*Response:* Cash incentives for mortgagors are being reduced for the nationwide implementation of the PFS procedure. The amount payable to a mortgagor who has successfully marketed and sold his home will be $750, with an additional $250 if the time needed to go to closing is 90 days or less from the date the mortgagor was advised that he could participate in the PFS procedure. HUD is retaining the policy of paying incentives to mortgagors in return for a successful pre-foreclosure sale as a means of providing moving assistance or the promise of reimbursement for cosmetic repairs and maintenance undertaken by homeowners who may still be experiencing financial problems. In addition, the Department wishes to encourage the maximum number of interested and qualified mortgagors to take advantage of the PFS option, because of the savings this generates for HUD.

The payment of $500 consideration for a deed-in-lieu of foreclosure to a good-faith participant in the PFS procedure whose participation does not conclude with a pre-foreclosure sale is being retained. Since the commencement of the Demonstration in 1991, HUD has raised the limit for cash consideration payable for *any* deed-in-lieu from $200 to $500. This was done to motivate mortgagors, and to encourage mortgagees to process deeds-in-lieu in as many appropriate cases as possible, because of the saving HUD experiences in most instances. For mortgagors who have made efforts to market their homes, payment of the maximum amount otherwise authorized will underscore HUD's interest in seeing as many appropriate deeds-in-lieu processed as possible instead of normally costlier foreclosures.

The assignment to the mortgagee of all refunds due the mortgagor (for example from hazard insurance refunds) is being incorporated into the application form for participation in the PFS procedure. The provision will apply to mortgagors in the event their participation concludes with either a pre-foreclosure sale or a deed-in-lieu. The mortgagee will deduct any such refunds received from the mortgagor from their claim for FHA insurance benefits submitted to HUD.

6. There was considerable support for payment of one sort or another to the mortgagee/servicer for the inconvenience of administering the case to facilitate participation by the mortgagor in the PFS program. The method of payment varied from calculating the claim using note rate interest, as though there were a formal forbearance in effect, to following the FNMA $500-to-$1000 payment in each case resulting in a closed PFS. [three mortgagees, one real estate services company, one quasi-governmental organization]

*Response:* With the commencement of the nationwide PFS procedure, HUD will pay an administrative fee to the mortgagees of $1000, via the Single Family Claims process, for each pre-foreclosure sale that goes to settlement ("closes"). This should provide the mortgagees ample motivation to utilize this servicing tool whenever it is appropriate to do so. It will also defray mortgagee expenses related to the duties that must be performed with regard to all participants in the PFS procedure, not just the successful ones. Payment of this administrative fee, and the amount paid, are subject to change in the future, in the sole discretion of the Department.

7. One commenter suggested that HUD consider making it possible for original homeowners to benefit from the program by allowing them to have their mortgages modified to reflect the current, lower value of the property, which would result in a more bearable financial obligation for them. [one individual] Two others suggested that we engineer the program to permit assumptions of the existing loans, after HUD has "bought down" the value of the obligation (involving partial payoff of the mortgagee). [one national association of real estate sales professionals, one mortgagee]

*Response:* "Retention of ownership" and assumption provisions are not being considered as part of the Department's pre-foreclosure sale procedure. The PFS procedure is designed to result in an outright sale at the property's current value, and in cancellation of the original mortgage instrument. If HUD were to implement the "buy down" recommendation, it would in effect be insuring the purchase values of the properties and not the mortgages. Properties depreciate in value for various reasons and it is not practicable for HUD to compensate homeowners for losses in that way. The Department is exploring various other servicing activities designed to assist homeowners to avoid foreclosure, retain their properties, and also to mitigate HUD's losses.

8. Another idea that received considerable support was the performance of a title search early on in the participant's exposure to the program, to eliminate many candidates from the program who would not be approved for either a PFS or a deed-in-lieu. [three mortgagees]

*Response:* The desirability of an early title search is stressed in the latest instructions being issued to mortgagees regarding the PFS procedure. This is especially true in cases where suspicions are aroused that significant secondary liens or encumbrances exist.

9. Several commenters supported the idea of relying on Brokers' Price Opinions (BPOs) either singly, severally, or in combination with appraisals conducted under program auspices. [one quasi-governmental organization, two mortgagees, one real estate services company]

*Response:* HUD is not closing the door regarding the use of BPOs, alone or in conjunction with more formal property appraisals, in the future. However, at this time, appraisals are the only method of establishing property valuation under the PFS procedure. The costs are higher for appraisals, but the reliability may also be greater. The Department also values the fact that the appraisers will be credentialed as well as "neutral" parties, otherwise uninvolved with the sale unlike the BPOs, which are frequently provided by real estate brokers that have a relationship with one or more parties to the sale. This reliability and neutrality is especially important during the initial period when mortgagees are becoming acclimated to their central role in facilitating pre-foreclosure sales. The Department may add BPOs to the PFS procedure after evaluating the performance of appraisers, comparing their cost to BPOs, and taking other factors into account.

10. Several commenters criticized the "70% appraisal of the indebtedness" criterion and the "90% net proceeds of the appraised value" criterion as unworkable in many areas, requiring delays for HUD office intervention to decide whether to waive. Most wanted the formula to change, downward, or at least have the discretion to waive them placed firmly in the hands of the coordinator. [three mortgagees]

*Response:* When preparing the legislation which authorized HUD to engage in pre-foreclosure sales, Congress issued a strong warning that HUD should avoid a "fire sale" atmosphere in administering the PFS program. The Department's experience during the Demonstration supports retaining the 70% criterion, which is the ratio of as-is appraised value to outstanding loan indebtedness. In rare instances, it will be possible for the local HUD Office to grant an inquiring mortgagee a variance from the 70% criterion, based on a consideration of the facts of that case.

The expectation of netting 90% of appraised value was an internal rule of thumb. That figure has been reduced to 87% as more workable and realistic, given the typical transactional costs of pre-foreclosure sales during the Demonstration. Mortgagees will be able to request a variance from the local HUD Office with jurisdiction over the property, to permit a sale that would net less than 87%.

11. Two commenters [two mortgagees] supported the idea of parallel processing of foreclosure while a participant was enrolled in the PFS program. Two commenters [two mortgagees] were also concerned that the deadline for initiation of foreclosure be explicitly lifted in cases involving participation in the PFS program, or else HUD would run the risk of non-cooperation from mortgagees who would expect to be penalized for missing this deadline.

*Response:* If participation in the PFS procedure is unsuccessful and does not result in a sale, a mortgagee has nine months after default or sixty (60) days after the date of termination of PFS participation, whichever is later, to initiate foreclosure or accept a deed-in-lieu of foreclosure. The mortgagee must also meet conveyance time requirements. If the pre-foreclosure sale does go to closing, neither foreclosure nor conveyance of the property occur; the mortgagee has 30 days after the sale closing date to file its claim. If these time frames cannot be met, the mortgagee must file Form HUD–50012, Extension Request, with the Loan Management Branch of the local HUD Office.

Apart from the issue of obtaining extensions, and the customary timeframes in which to initiate foreclosure, and submit a claim, it is still possible for mortgagees to opt to continue steps leading to foreclosure while a mortgagor is engaged in marketing the property for sale under the PFS procedure. *This decision must be weighed by the mortgagee in light of the cost-effectiveness (i.e., the "loss mitigation perspective") of such actions.* Proceeding with such steps in the face of a mortgagor's participation in the PFS procedure—which has a high likelihood of ending either in the sale of the property or a deed-in-lieu—is *frequently not justified*, because of the outlay of time and money required to accomplish them. In the meantime, the experiences of the PFS procedure will be observed and evaluated. HUD may in the future direct mortgagees to desist from concurrently taking foreclosure-related steps unless certain criteria are met.

Mortgagees are reminded that they must always explain their concurrent foreclosure-related actions to the mortgagors participating in the PFS procedure, because such actions may be misconstrued by the mortgagor and may jeopardize the pre-foreclosure sale.

12. There was a serious division of opinion as to whether mortgagees should be expected to participate in the mechanics of the program. One commenter [a mortgagee] said that HUD shouldn't ask lenders to, or expect that they would, prepare the PFS sale package for submission to the program coordinator. Two other commenters [two mortgagees] indicated that it was appropriate for HUD to designate the mortgagee as a principal player in the administration of the pre-foreclosure sale, as a means of loss-mitigation and appropriate loan servicing.

*Response:* The difference of opinion over the appropriate level of mortgagee participation in the Pre-foreclosure Sale procedure has been resolved by substantially increasing the mortgagees' engagement in the process over what was expected during the Demonstration, and also by significantly increasing the administrative fee payable to mortgagees for facilitating each pre-foreclosure sale. During the course of the Demonstration, many mortgagees did express a willingness to expand the level of their involvement in the pre-foreclosure sale procedure. HUD has decided to implement its nationwide PFS procedure by using the mortgagees in the central role of PFS "facilitators" because of the mortgagees' existing loan servicing role; the savings generated by authorizing mortgagees to carry out the PFS procedure under express HUD procedures and criteria; and the Department's evolving policy that mortgagees explore alternatives to foreclosure, whenever appropriate.

13. Other recommendations included wider circulation of the program's *Information Sheet* [one mortgagee]; quicker nationwide implementation of the program [one mortgagee]; greater publicizing of the PFS alternative to maximize the number of participants [one mortgagee]; combining mandatory notification by lender with other mandatory HUD correspondence that gets sent to mortgagor [one mortgagee]; and relying on the lender for homeownership counseling [one mortgagee].

*Response:* A new PFS *Information Sheet* will be distributed, and be generally available, to real estate brokers, housing counseling agencies, mortgagees, and local HUD offices. Although nationwide implementation of the PFS option is now imminent, during the Demonstration all local HUD offices other than those "officially" designated as being involved in the PFS Demonstration were nonetheless able to activate the pre-foreclosure sale procedure "unofficially" in their jurisdictions, and a significant number did. There will be more publicizing of the nationwide PFS procedure as it starts up.

Many forms have been eliminated or streamlined, and the mandatory notification forms have been combined with other correspondence that mortgagees must send to mortgagors. While it is not appropriate to depend exclusively on lenders to provide homeownership counseling (there is a network of HUD-approved housing counseling agencies whose duties include homeownership counseling), lenders are free to provide homeownership counseling and other information related to pre-foreclosure sales if requested by the mortgagor to do so.

14. Other recommendations also included allowing participants to select their own brokers independently [one national association of real estate sales professionals], and also deciding on how HUD will determine "qualified" real estate brokers to put on the program's referral list [one HUD field office].

*Response:* PFS participants *are* permitted to select their own brokers—the required list of cooperating brokers has been eliminated as too cumbersome for mortgagees to produce and update, and also as possibly confusing to some PFS participants. Thus the issue of whether and how "qualified" are the brokers on the list is rendered moot.

## This Interim Rule

This interim rule takes into consideration the public comments received on the notice announcing the PFS demonstration published on May 29, 1991, 56 FR 24324. It also incorporates changes in the PFS requirements and procedures based on the Department's experience under the Demonstration.

## Eligibility Criteria

In order to be eligible for the pre-foreclosure sale procedure, a mortgagor must:

(1) be an owner-occupant in a single family residence that is security for a mortgage insured under 24 CFR part 203, unless otherwise prescribed by the Secretary;

(2) have an account in default with at least three monthly installments past due and unpaid; (The default must be the result of a documentable involuntary reduction in income or an unavoidable increase in his or her expenses, including job relocation.);

(3) have been made aware of the assignment program, as discussed below under *Notification of PFS Procedure*, and have been either turned down for it by HUD, or have decided not to apply for it;

(4) have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary; and

(5) have received homeownership counseling, as defined by the Secretary, and have executed a certification to that effect.

These criteria are contained in new section 24 CFR 203.370(c).

The Department has decided to continue a policy begun during the PFS Demonstration, under which those mortgagors who are small investors with only one FHA-insured mortgage (e.g., a former owner-occupant who may be renting out the property) can be considered for PFS eligibility. Under no circumstances, however, will the pre-foreclosure sale option be made available to "walkaways" who have abandoned their mortgage obligations despite their continued ability to pay. Mortgagors determined to be eligible for, and who participate in, the pre-foreclosure sale procedure will *not* be pursued for deficiency judgments by the Department.

**Use of Mortgagees To Facilitate Pre-foreclosure Sales**

The Department is adding the pre-foreclosure sale to the list of existing foreclosure alternatives that can be offered by mortgagees to mortgagors facing financial difficulties and who meet certain qualifying criteria. Although offering the pre-foreclosure sale option to a qualified mortgagor is arguably a part of "normal" servicing under FHA procedures and guidelines which require mortgagees to act prudently and with HUD's interests in mind, the Department is encouraging mortgagees to incorporate pre-foreclosure sales without delay into their overall servicing procedures by paying mortgagees an administrative fee for each successful pre-foreclosure sale that they facilitate. Payment of the administrative fee via the claims process is provided for in 24 CFR 203.402(t), which is being implemented as part of this interim rule.

**Justification of Incentive Paid to Mortgagors**

The Department has decided to retain the practice used during the Demonstration of paying certain cash incentives drawn from sale proceeds to qualified mortgagors who close a pre-foreclosure sale; however, the amount of this incentive is being reduced from that which was used in the Demonstration. Also, in cases where a deed-in-lieu of foreclosure follows bona fide but unsuccessful participation in the PFS procedure, the Department's policy of strongly encouraging mortgagees to offer such mortgagors the full $500 consideration payable for a deed-in-lieu (authorized in HUD Mortgagee Letter 93–16) is being continued.

The Department is aware that other mortgage insurers and financial institutions have not authorized the use of a portion of sale proceeds for consideration payable to the mortgagor, and do not otherwise reward mortgagors who engage in a pre-foreclosure sale or deed-in-lieu of foreclosure, beyond the fact that PFS necessarily precludes the foreclosure. However, the proportion of pre-foreclosure sales occurring in these other agencies and institutions among defaulting mortgagors is generally much lower than the level of participation which HUD would prefer for its nationwide pre-foreclosure sale procedure. Furthermore, although the Department acknowledges that the avoidance of a foreclosure on their credit records is a prime motivation for mortgagors to dispose of their properties via pre-foreclosure sales, HUD has a number of other justifications for offering monetary consideration to participants in the PFS procedure.

—PFS participants must make considerable efforts and undergo significant inconvenience in seeking out buyers, making the property presentable, and allowing the public access to their home as they attempt to reach an approved sale transaction before the participation period has run.

—Cash incentives for expedited pre-foreclosure sales occurring within three months of commencing the PFS procedure represent a small portion of the estimated savings to the Department of interest that would otherwise have to be paid to mortgagees as part of the insurance contract.

—It is HUD's objective to maximize the number of interested participants in pre-foreclosure sales, because of the estimated aggregate savings to the Department that successful pre-foreclosure sales transactions represent. We estimate that the PFS-related consideration will be more than offset by the savings in pre- and post-acquisition costs for the properties affected by participation in the pre-foreclosure sale procedure.

—Mortgagors can request deeds-in-lieu of foreclosure without first attempting to execute pre-foreclosure sales and might request deeds-in-lieu of foreclosure rather than the pre-foreclosure sale option, when they become fully apprised of the efforts involved in the pre-foreclosure sale, as well as possible tax implications. If a mortgagor meets prevailing criteria and the mortgagee is willing to cooperate, a deed-in-lieu of foreclosure can occur. This would benefit the mortgagor but would represent only modest savings to the Department. Therefore, it is in HUD's interest to make the pre-foreclosure sale option as attractive as possible in order to maximize the number of interested participants.

Although payment of such consideration is warranted by the anticipated savings to the Department, HUD acknowledges the need for vigilance to head off abuse of the process by opportunistic parties.

**Deed-In-Lieu of Foreclosure as Feature of the PFS Procedure**

At the time he or she requests to participate in the Pre-Foreclosure Sale procedure, the mortgagor is asked whether there are encumbrances on the mortgage, or whether there are title problems of which he or she is aware. The mortgagee should order a title search during the mortgagor's participation in the PFS procedure. The existence of encumbrances or title problems may preclude or result in a refusal to permit either a pre-foreclosure sale *or* a deed-in-lieu. For those mortgagors who can deliver clear title, but who, despite a good faith effort, do not consummate a pre-foreclosure sale, the mortgagee will customarily process a deed-in-lieu of foreclosure upon the failure of the participant to execute a pre-foreclosure sale. A deed-in-lieu action will leave the mortgagor without a foreclosure on his or her credit history.

**Notification of PFS Procedure**

HUD will circulate an *Information Sheet* on pre-foreclosure sales among mortgagees and housing counseling agencies, and the mortgagees and housing counseling agencies will be encouraged to distribute the document among mortgagors who might be interested in, and possibly qualified to participate in, the Pre-Foreclosure Sale procedure. It will contain basic information about pre-foreclosure sales and will instruct mortgagors or others interested in PFS to contact the homeowner's mortgagee for more information or an application.

Mortgagees are required to notify mortgagors about the pre-foreclosure sale procedure by sending a prescribed communication (HUD–426) when the mortgagors fall two payments behind, and a copy of the *Information Sheet* when the mortgagors become three or more payments in arrears. The requirement that mortgagees provide notification of the pre-foreclosure sale option to mortgagors in default is contained in 24 CFR 203.370(b).

**Commencing the Pre-foreclosure Sale Procedure**

Once a mortgagor is found to be eligible to participate in the pre-foreclosure sale procedure, and is so notified by the mortgagee, the mortgagor may begin marketing the property. Section 203.356(b) requires mortgagees to notify HUD of that change in status of the mortgagor. The mortgagee will also direct the mortgagor to retain the services of a real estate broker in an attempt to market the property within the established time and price guidelines. These brokers are prohibited from sharing a business interest with the mortgagee or mortgagor (seller).

An appraisal will be ordered by the mortgagee from an appraiser who meets standard eligibility requirements for performing FHA Single Family appraisals. The appraisal will contain "as is" and "as repaired" valuations of the property. Reasonable costs for the property appraisal will be reimbursed through the FHA claims process. Section 203.402(l) has been revised to include the cost of an appraisal performed as part of the Pre-foreclosure Sale procedure. The Department reserves the right, in the future, to authorize mortgagees to substitute or add the use of Broker Price Opinions (BPOs) to the valuation process under the Pre-Foreclosure Sale procedure.

### Homeownership Counseling Responsibilities

Before a mortgagor's participation in the Pre-foreclosure Sale procedure can be approved by the mortgagee, either a HUD-approved counseling agency located in the mortgagor's geographic area, the mortgagee, or the local HUD Office will be available to do the following:

(1) Provide mandatory "homeownership counseling" to the mortgagor considering the pre-foreclosure sale option. This will include explaining the alternatives available to the mortgagor, including a payment plan negotiated with the lender, foreclosure and deed-in-lieu of foreclosure, the assignment program (if still an option), and changes in household income, expenses, or composition that might have a bearing on the ability of the mortgagor to retain ownership of the property. The homeownership counseling and certification requirement is contained in § 203.370(c)(5).

(2) Advise mortgagors considering a pre-foreclosure sale that they may wish to contact a financial or tax counselor to assess the specific tax consequences (if any) to them of a pre-foreclosure sale.

(3) Assist in executing certifications for the mortgagors to sign before they can be permitted to participate in the pre-foreclosure sale procedure. These certifications shall include statements that:

(a) Homeownership counseling has been received;

(b) The mortgagor understands that any proposed pre-foreclosure sale must be an "arm's length" transaction; i.e., a sale between two unrelated parties that is characterized by a selling price and other conditions which would prevail in an open market environment, without hidden terms or special understandings between any of the parties connected to the transaction, including the appraiser, sales agent, closing agent and mortgagee; and

(c) If the mortgagor has not made application for mortgage assignment, that the assignment program has been explained to him and that he desires to waive any right he has to apply for the program. The provision regarding consideration of (and for) mortgage assignment is contained in 24 CFR 203.370(c)(3). (This waiver applies to assignment rights arising only from his present mortgage default, and only if he is permitted to participate in the Pre-foreclosure Sale procedure.)

### Responsibilities of the Real Estate Broker or the Mortgagor's Attorney

The real estate broker or the mortgagor's attorney should forward to the mortgagee a copy of the contract of sale made conditional upon approval by HUD or the mortgagee, acting under the Secretary's instructions. The contract package should identify the sales commission, and include the necessary certifications (if they are in the broker's or attorney's possession) that have been signed by the mortgagor. The mortgagee will review the package and render a decision within five (5) days of receiving the completed package.

### Monitoring Responsibilities of HUD Personnel

The determination by the mortgagee of the mortgagor's eligibility to pursue a pre-foreclosure sale or a deed-in-lieu, as well as the mortgagee's final approval of a proposed sale, shall be reviewed by the appropriate HUD personnel. These reviews may occur at any time, and will be performed on-site by local HUD office or Headquarters personnel. Mortgagees' submission of data pertaining to individual participants in the PFS procedure, as well as monthly Single Family Default Monitoring System (SFDMS) reports, will also be subject to review. The speed and effectiveness with which mortgagees incorporate the pre-foreclosure sale procedure into their overall servicing techniques will be evaluated on-site during mortgagee reviews conducted by HUD staff. A pre-foreclosure sale component will also be incorporated into HUD's regular claim reviews.

### General Responsibilities of Mortgagees

(1) Mortgagees will be responsible for implementing correct notification procedures (in particular, sending appropriate notices to defaulting mortgagors and providing information as requested to mortgagors about the PFS procedure).

(2) Mortgagees will be responsible for determining the eligibility of mortgagors to participate in the pre-foreclosure sale procedure, including those whose assignment applications are turned down or for whom the opportunity for assignment has expired or been waived.

(3) Mortgagees will be responsible for responsive and timely servicing in taking the necessary steps for, and cooperating with all aspects of, the PFS procedure, including the expediting of sale transactions; the processing of deeds-in-lieu of foreclosure from qualified participants who did not close a pre-foreclosure sale despite a good faith effort; and the timely resumption of appropriate servicing of those loans when participation in the PFS procedure ends and neither a sale nor a deed-in-lieu has occurred.

(4) The mortgagee will have the authority, on a case-by-case basis, to determine the mortgagor's participation deadline (up to four months to obtain a signed contract of sale, or up to six months to go to closing) when it determines that granting that period is in the best interest of the Department.

(5) In determining the eligibility of a mortgagor to participate in the Pre-foreclosure Sale procedure, the mortgagee shall arrange for the valuation of the property according to instructions issued by the Secretary, to assist in determining whether the property's as-is appraised value is at least 70% of the outstanding mortgage indebtedness (principal and accrued interest only) at the time application is made to pursue a pre-foreclosure sale. In cases where the appraised value is less than 70% of the outstanding debt, the mortgagee must obtain local HUD Office approval for a "variance" from this criterion before the mortgagor can be permitted to participate in the pre-foreclosure sale procedure.

(6) The offer to purchase the property should net HUD at least 87% of the appraised value of the property. However, the mortgagee may exercise discretion in cases where the net proceeds would be less than 87%, if the mortgagee believes that it would still be in HUD's best interest to permit the sale to occur. In such cases, the mortgagee must refer the matter to the Chief of Loan Management at the local HUD Office with the recommendation that the sale be approved by granting a "variance" in that case from the "net proceeds" criterion.

### Consideration

Mortgagors who qualify for the pre-foreclosure sale procedure and who close an approved sale shall be able to retain from the sales proceeds before disbursement to the mortgagee, the base amount of $750 (seven hundred fifty dollars).

In addition to the base amount, the mortgagor will be able to retain an additional amount of $250 (two hundred fifty dollars) from the proceeds of sale if the closing of an approved pre-foreclosure sale occurs within three (3) months of the commencement of the mortgagor's participation in the pre-foreclosure sale procedure (i.e., from the time the mortgagor is advised in writing that he may participate in the procedure).

If, despite a good faith effort—as determined by the mortgagee—a property does not sell during the mortgagor's period of participation in the PFS procedure, the mortgagee will authorize a title search of the participant's mortgage for title problems and encumbrances (if one was not already performed during the period of participation). If any obstacles to obtaining clear and marketable title are resolved pursuant to instructions from the Secretary, the mortgagee will process a deed-in-lieu of foreclosure from the mortgagor. The mortgagee shall follow prescribed methods of processing the deed-in-lieu and will disburse consideration in the amount of $500 to the mortgagor upon completion of the deed-in-lieu transaction. This consideration is 100% reimbursable to the mortgagee through the FHA claims process.

### Other Provisions

(1) All sales contracts submitted for consideration under the pre-foreclosure sale procedure shall contain a clause which provides that HUD approval (directly or through the mortgagee, as prescribed by the Secretary) is a pre-condition of the sale.

(2) Purchasers in approved pre-foreclosure sales may qualify for FHA mortgage insurance.

### The Closing of the Pre-Foreclosure Sale; Payment of Claims

Prior to closing the sale:

(1) The mortgagee will provide to the Closing Agent a list of those parties entitled to receive financial consideration and the amounts payable out of sale proceeds.

(2) The Closing Agent will calculate the net sale proceeds and communicate this data to the mortgagee, so that the mortgagee can ascertain that the actual terms of the transaction are in accordance with the proposed sale that the mortgagee had approved earlier.

If the mortgagee approves the transaction, and closing occurs, the Closing Agent will pay the consideration set forth in the list previously provided by the mortgagee, and will send the net proceeds of sale and a form HUD-1 to the mortgagee.

Upon receipt of the payoff funds, the mortgagee will file a claim for the balance due to it under the terms of the contract for insurance. In addition, an administrative fee of $1,000 will be payable, as part of the claim, to the mortgagee for each approved pre-foreclosure sale that goes to closing. Payment of this fee, which is not subject to debenture interest, will be made under the provisions of Section 204(a) of the National Housing Act (12 U.S.C. 1710(a)), as amended by Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (P.L. 100-628).

For proposed pre-foreclosure sales that "fall through," or are sought without positive result, the mortgagee should file its claim under existing procedures for conveyance claims, and in compliance with any additional provisions which may be applicable to conveyance claims that follow a mortgagor's unsuccessful participation in the PFS procedure. Section 203.355 has been amended to include definitions of the "end of participation" in the Pre-foreclosure Sale procedure, so mortgagees can calculate the appropriate timeframe within which they must initiate foreclosure or accept a deed-in-lieu of foreclosure where no actual pre-foreclosure sale has resulted.

### Other Changes

A conforming amendment is also being made to § 200.155(a). That section provides for the various methods by which a mortgagee may perfect a claim for the payment of mortgage insurance benefits. The case of a pre-foreclosure sale is being added to this list.

Section 203.501 is being added to set forth the Department's policy that mortgagees must consider the financial consequences of their elective servicing action and that HUD expects mortgagees to take those appropriate actions which will generate the smallest financial loss to the Department.

### Other Matters

*Justification for Interim Rule and for the 45-day Comment Period*

The Department has determined that it is impracticable and contrary to the public interest to have notice and public procedure before making the provisions of this interim rule effective, and that expeditious promulgation of this interim rule provides a benefit to all the parties involved.

A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure. Mortgagees also benefit through incorporating this loss-mitigation technique into their overall loan servicing, by earning an additional administrative fee and by frequently being able to file claims for insurance benefits sooner, following a successful pre-foreclosure sale, than they would following a post-foreclosure conveyance claim.

Because the requirements and procedures contained in this interim rule are based on the Pre-Foreclosure Sale Demonstration Program established by a notice published in the **Federal Register** on May 29, 1991, at 56 FR 24324, and because this interim rule takes into consideration the public comments received on that notice, the Department believes there is adequate justification for shortening the public comment period to 45 days.

*Sunset Provision*

The Department has adopted a policy of setting a date for expiration of an interim rule unless a final rule is published before that date. Therefore, this interim rule will expire on a date 18 months from the date of publication.

*Environmental Finding*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

*Information Collection Requirements*

The collection of information requirements contained in this interim rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The public reporting burden for the collection of information requirements contained in this interim rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN—NATIONWIDE PRE-FORECLOSURE SALE PROCEDURE

| Description of information collection | Number of respondents | Number of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Disclosure by Applicants | 14,040 | 1 | 14,040 | .50 | 7020 |
| Certifications by Participants | 10,800 | 1 | 10,800 | .05 | 540 |
| Transactional: | | | | | |
| Mortgagees (approving Participation) | 10,800 | 1 | 10,800 | .15 | 1620 |
| Variance Requests | 2,700 | 1 | 2,700 | .25 | 645 |
| Closings | 6,480 | 2.30 | 14,904 | .75 | 11,178 |
| Reporting | 10,800 | 1 | 10,800 | .30 | 3240 |
| Total (annual) burden | 55,620 | | 64,044 | | 24,273 |

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule does not have a significant economic impact on a substantial number of small entities because this interim rule pertains to a limited number of single-family mortgage situations. It expands the options available to financially distressed mortgagors and does not adversely affect any mortgagor rights or interests under existing FHA-insured loan servicing regulations.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The purpose of this interim rule is to implement the requirements and methods of pre-foreclosure sales as a means of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages and of saving the Department money.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this interim rule does not have potential significant impact on family formation, maintenance, and general well-being.

*Semiannual Agenda*

This interim rule was listed as item 1587 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20440), pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the Department amends parts 200 and 203 in chapter II of title 24 of the Code of Federal Regulations as follows:

## PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18, 1701s, and 1715z–11; 42 U.S.C. 3535(d), 3543, and 3544.

2. In § 200.155, paragraph (a) is amended by adding at the end the following sentence, to read as follows:

**§ 200.155 Claim requirements.**

(a) * * * The mortgagee may also perfect its claim for the payment of the insurance benefits in the case of a Pre-Foreclosure Sale conducted in accordance with 24 CFR 203.370.

* * * * *

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for Part 203 is revised to read as follows:

**Authority:** 12 U.S.C. 1701q, 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

4. Section 203.355 is amended by revising the introductory sentence of paragraph (a); by revising the first sentence of paragraph (c); and by adding a new paragraph (g), to read as follows:

**§ 203.355 Acquisition of property.**

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (g) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345, 203.346, or 203.650 through 203.660: * * *

* * * * *

(c) *Law prohibiting foreclosures within nine months.* If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of foreclosure within the time limits described in paragraphs (a), (b), and (g) of this section, the mortgagee must commence foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited. * * *

* * * * *

(g) *Pre-foreclosure sale procedure.* Within 60 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, *or* nine (9) months after default, whichever is later, if no closing of an approved pre-foreclosure sale has occurred, the mortgagee must obtain a deed-in-lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or commence foreclosure. The end-of-participation date is defined as:

(1) Four months after the date of commencement of participation, if there is no signed Contract of Sale at that time, unless extended by the Commissioner;

(2) Six months after the date of commencement of participation, if there is a signed contract but settlement has not occurred by that date, unless extended by the Commissioner;

(3) The date the mortgagee is notified of the mortgagor's withdrawal from the Pre-foreclosure Sale procedure; or

(4) The date of the letter sent by the mortgagee to the mortgagor prior to the expiration of the customary participation period, terminating the mortgagor's opportunity to participate in the Pre-foreclosure Sale procedure.

5. Section 203.356 is amended by revising the section heading; by redesignating the existing text as paragraph (a); and by adding a new paragraph (b), to read as follows:

**§ 203.356 Notice of foreclosure; reasonable diligence requirements; notice of pre-foreclosure sale.**

* * * * *

(b) The mortgagee must give written notice to the Secretary within the time frame prescribed by the Secretary of the acceptance of any mortgagor into the pre-foreclosure sale procedure.

6. Section 203.360 is amended by revising the section heading; by redesignating the existing text as paragraph (a); and by adding a new paragraph (b), to read as follows:

**§ 203.360 Notice of property transfer or pre-foreclosure sale and application for insurance benefits.**

* * * * *

(b) Within 30 days of the closing of an approved pre-foreclosure sale, the mortgagee shall notify the Commissioner on a form prescribed by him of the pre-foreclosure sale.

7. Section 203.365 is amended by revising paragraph (a), to read as follows:

**§ 203.365 Documents and information to be furnished the Secretary; claims review.**

(a) *Items to be furnished the Secretary.* Within 45 days after the deed is filed for record, in the case of a conveyance claim; or, in the case of a claim arising from a pre-foreclosure sale, within 30 days after the closing of the pre-foreclosure sale, unless extended by the Commissioner, the mortgagee must forward to the Secretary:

(1) A copy of the deed to the Secretary that has been filed for record and the title evidence continued so as to include recordation of the deed; or evidence, as prescribed by the Secretary, of the closing of the pre-foreclosure sale.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Any additional information or data that the Secretary may require.

* * * * *

8. A new § 203.370 is added immediately after § 203.369 and before the undesignated center heading, "Condition of Property", to read as follows:

**§ 203.370 Pre-foreclosure sales.**

(a) *General.* HUD will pay FHA insurance benefits to mortgagees in cases where, in accordance with all regulations and procedures applicable to pre-foreclosure sales, the mortgaged property is sold by the mortgagor, after default and *prior to* foreclosure, at its current fair market value (less adjustments as the Commissioner may deem appropriate) but for less than the mortgage loan amount currently outstanding.

(b) *Notification of mortgagor.* The mortgagee shall give notice, according to prescribed procedures, of the opportunity to be considered for the pre-foreclosure sale procedure to each mortgagor in default. All notices to mortgagors must be in an accessible format, if requested, or if required by the person's known disability, as required by 24 CFR part 9.

(c) *Eligibility for the Pre-foreclosure Sale Procedure.* In order to be considered for the pre-foreclosure sale procedure, a mortgagor:

(1) Must be an owner occupant in a single family residence that is security for a mortgage insured under this part, unless otherwise prescribed by the Secretary.

(2) Must have an account in default, for such period as determined by the Secretary, which default is the result of an adverse and unavoidable financial situation.

(3) Must have been provided notice of the Mortgage Assignment Program (24 CFR 203.650, *et seq*), and either have been found ineligible by HUD, or have made an informed decision not to apply for an assignment.

(4) Must have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary.

(5) Must have received homeownership counseling, as defined by the Secretary, and have executed a certification to that effect.

9. Section 203.401 is amended by redesignating paragraph (c) as paragraph (d); by adding a new paragraph (c); and by revising the newly redesignated paragraph (d), to read as follows:

**§ 203.401 Amount of payment—conveyed and non-conveyed properties.**

* * * * *

(c) *Pre-foreclosure Sales.* Where a claim for insurance benefits is filed in accordance with this subpart, based on a pre-foreclosure sale approved by or on behalf of the Secretary (under the provisions of § 203.370), the amount of insurance benefits shall be computed by adding to the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of closing of the pre-foreclosure sale, the amount of all applicable items set forth in § 203.402; provided however that appropriate adjustment shall be made for any such items covered by proceeds of the pre-foreclosure sale.

(d) *Final Payment.* (1) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the Commissioner of the final payment except for:

(i) Cases where the Commissioner requests or requires a deficiency judgment.

(ii) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

(2) For the purpose of this section, the term *final payment* shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to § 203.365. In the case of claims filed under claims without conveyance of title, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.368 and 203.401(b). In the case of claims filed pursuant to pre-foreclosure sales, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information

filed pursuant to §§ 203.370 and 203.401(d).

10. Section 203.402 is amended by revising the introductory paragraph; by adding a new paragraph (k)(3); by revising paragraph (l); and by adding new paragraphs (s) and (t), to read as follows:

**§ 203.402 Items included in payment—conveyed and non-conveyed properties.**

The insurance benefits paid in connection with foreclosed properties, whether or not conveyed to the Commissioner; and those properties conveyed to the Commissioner as a result of a deed in lieu of foreclosure; and those properties sold under an approved pre-foreclosure sale shall include the following items:

* * * * *

(k) * * *

(3) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, an amount equivalent to the sum of:

(i) The debenture interest which would have been earned, as of the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(ii) The debenture interest which would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(l) Reasonable costs of appraisal under § 203.368(e) or pursuant to § 203.370;

* * * * *

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by the Secretary, to determine the status of a mortgagor meeting all other criteria for approval to participate in the Pre-foreclosure Sale procedure.

(t) The administrative fee as authorized by the Secretary and payable to the mortgagee for its role in facilitating a successful pre-foreclosure sale, said fee not to be subject to the payment of debenture interest thereon.

11. Section 203.403 is amended by adding a new paragraph (d), to read as follows:

**§ 203.403 Items deducted from payment—conveyed and non-conveyed properties.**

* * * * *

(d) With regard to claims filed pursuant to successful pre-foreclosure sales, all amounts received by the mortgagee relating to the sale of the property.

12. Section 203.410 is amended by revising the introductory text in paragraph (a); by removing the word "or" from the end of paragraph (a)(1)(ii); by removing the period at the end of paragraph (a)(1)(iii), and adding in its place "; or"; and by adding a new paragraph (a)(1)(iv), to read as follows:

**§ 203.410 Issue date of debentures.**

(a) Conveyed properties, claims without conveyance, pre-foreclosure sales—Where the property is conveyed to the Commissioner, or the mortgagee or other party acquires title to the property under the claim without conveyance procedure or the pre-foreclosure sale procedure, debenture shall be dated:

* * * * *

(1) * * *

(iv) The property was acquired after default by a third party under the pre-foreclosure sale procedure.

13. A new § 203.501 is added to read as follows:

**§ 203.501 Loss mitigation.**

Mortgagees must consider the comparative effects of their elective servicing actions, and must take those appropriate actions which can reasonably be expected to generate the smallest financial loss to the Department.

Dated: September 12, 1994.

**Jeanne K. Engel,**

*General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.*

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