

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Secretary; Nonjudicial
Foreclosure of Single Family
Mortgages**

24 CFR Part 29

[Docket No. R-95-1776; FR-3799-P-01]

RIN 2501-AB86

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to implement recent legislation which authorizes the Secretary of Housing and Urban Development, as a matter of Federal law, to exercise a statutory nonjudicial power of sale with respect to any defaulted single family mortgage held by the Secretary under titles I or II of the National Housing Act or under section 312 of the Housing Act of 1964.

DATES: Comments due date: Comments on this proposed rule must be submitted on or before June 6, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication 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: Bruce S. Albright, Office of the General Counsel, Room 9258, Department of Housing and Urban Development, Washington, DC 20410, (202) 708-0303. A telecommunications device for the hearing impaired (TDD) is available at (202) 708-3259.

SUPPLEMENTARY INFORMATION:

Authority

HUD's Fiscal Year 1995 Appropriations Act (Pub. L. 103-327, approved September 28, 1994) incorporated by reference, through conference amendment 54 of H.R. 4624, the Single Family Mortgage Foreclosure Act of 1994 (the Act), which appeared in title VIII of S. 2281, as reported on July 13, 1994. This statute, codified at 12 U.S.C. 3751-3768, establishes a nonjudicial procedure which HUD may follow to foreclose, as a matter of Federal law, any defaulted single family mortgage HUD holds under titles I or II of the National Housing Act, 12 U.S.C.

1701 *et seq.*, or section 312 of the Housing Act of 1964, 42 U.S.C. 1452b. The procedure is similar to that used in those States whose laws authorize nonjudicial foreclosures. The new authority is patterned after the Multifamily Mortgage Foreclosure Act of 1981 (Multifamily Act), 12 U.S.C. 3701-3717, which was implemented in 1984.

The Department intends to publish a delegation of authority to delegate to the General Counsel of HUD the authority under the Act to appoint a foreclosure commissioner or commissioners, to fix the compensation of commissioners, and to promulgate implementing regulations.

Need for Nonjudicial Foreclosure

Various factors precipitated the need for this statute and its implementation. First, the multiplicity of State laws under which HUD forecloses defaulted mortgages presents a burden to the programs involved which can be detrimental to the properties and to the communities in which they are located. Second, long periods of time to complete foreclosures under certain State laws lead to deterioration in the condition of the properties involved. This delay necessitates substantial Federal management and holding expenditures, increases the risk of vandalism, fire loss, depreciation, damage and waste, which adversely affects the neighborhoods in which the properties are located. Third, these conditions seriously impair HUD's ability to protect the Federal financial interest in the affected properties and frustrates attainment of the objectives of the underlying program authorities. Fourth, the availability and the use of a uniform and more expeditious nonjudicial foreclosure procedure will help to alleviate these conditions. Fifth, providing HUD with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing judicial foreclosures from court calendars. Sixth, use of this new nonjudicial procedure will further the objectives of the HUD Reform Act and the National Affordable Housing Act by ensuring that the Department administers its programs in a businesslike and financially sound manner.

The procedures proposed by this rule would streamline and expedite the foreclosure process. However, foreclosure itself is a last step taken only after extensive efforts to bring a delinquent mortgage current have been unsuccessful. Before a foreclosure is commenced, the Department has already provided the delinquent

mortgagor with notice and the opportunity to enter into workout agreements in order to provide alternatives to, and avoid, foreclosure. The Secretary has a dual responsibility—a responsibility to the insurance funds and a responsibility to the home ownership needs of persons assisted by the Department. In drafting this rule, the Department has taken into consideration that foreclosure will be commenced only after extensive attempts to correct the default. The Department believes that the rule balances these two responsibilities, and public comment is invited on this point.

Scope

The proposed rule applies to any mortgage that:

- Is security for a one- to four-family dwelling, was previously insured under title I or title II of the National Housing Act, and is held by HUD by reason of assignment or otherwise, or that HUD holds following acquisition and subsequent sale of the property pursuant to a purchase money mortgage agreement; or
- Is security for a one- to four-family dwelling on which HUD made a rehabilitation loan pursuant to section 312 of the Housing Act of 1964, as it existed before the repeal of that section by section 289 of the National Affordable Housing Act (except that when a one-to four-family dwelling is combined with non-residential space in a "mixed use" project, the mortgage is not covered by this Act and this part).

The nonjudicial foreclosure procedures proposed under this rule will be available for use by HUD in connection with any such mortgage, irrespective of the date of execution. The procedure is similar to the deed of trust foreclosure procedure used in approximately one-half of the States. To the extent that a mortgagor has legal or equitable defenses, the mortgagor would be free to seek injunctive relief in the courts.

Outline of Foreclosure Procedures

The procedures authorized by this statute are as follows. Upon determining that a mortgage should be foreclosed, HUD or its designee names a foreclosure commissioner to conduct the foreclosure and sale in accordance with the requirements of the statute. The foreclosure commissioner will have previously been found eligible by the Department to serve as a foreclosure commissioner for HUD's cases. The commissioner commences the foreclosure by serving a Notice of

Default and Foreclosure Sale. The contents of this notice and the manner in which it is to be served are set forth in the statute and the regulations.

If a substitute foreclosure commissioner is designated, foreclosure would continue unless the substitute commissioner finds that continuation would unfairly affect the interests of the mortgagor. If a sale is adjourned to another day, a new Notice of Default and Foreclosure Sale must be served.

After the service requirements are met, the commissioner or his designee conducts the foreclosure sale at the date and time specified in the Notice of Default and Foreclosure Sale and disposes of the sale proceeds as provided by the statute. No other proceeding to foreclose the mortgage can be continued or initiated during the pendency of a foreclosure under these regulations. The statute authorizes the commissioner to convey title to the purchaser and requires the commissioner to establish a record of the foreclosure and sale.

From the proceeds of the foreclosure sale, or from other available sources if funds are insufficient, the commissioner is reimbursed for reasonable costs of the foreclosure sale and is paid a fee for his or her services in an amount to be established by HUD.

Notice Requirements

The statute and regulations set forth extensive and thorough requirements for service of the Notice of Default and Foreclosure Sale on the current owner, all mortgagors of record and other interested parties. The Notice of Default and Foreclosure Sale must set forth information on the foreclosure commissioner, identification of the property covered by the mortgage, and specific information about the failure to pay or other default.

Mortgagor Protections

Since a foreclosure extinguishes property rights, the statute and the proposed rule contain numerous provisions to protect the interests of the mortgagor of the property subject to foreclosure sale, tenants and other interested parties. The foreclosure commissioner must be responsible, financially sound, and competent to conduct the foreclosure. The commissioner is specifically authorized to adjourn or cancel the sale if conditions are not conducive to a sale that is fair to the mortgagor. The mortgagor and other interested parties are notified in writing about the designation of the foreclosure commissioner and about the designation of any substitute commissioner. Even if

not so provided in the mortgage instrument, under the Act and these regulations, the mortgagor has the right to have the mortgage reinstated one time by bringing the mortgage current or curing a nonmonetary default with respect only to foreclosures being carried out under this part. Subsequent reinstatements can be made only at the discretion of the Department.

Effect on State Law

The statute provides that its purpose is to create a uniform Federal foreclosure remedy for single family mortgages within its scope. The intent of the Secretary with respect to the enforcement of these regulations is that they will be governed by Federal law and will not be subject to conflicting or varying State laws unless otherwise expressly noted.

The statute and the regulations also provide that there will be no right of redemption, or right of possession based on a right of redemption, in the mortgagor or others subsequent to a foreclosure of a mortgage completed pursuant to this statute. If redemption periods provided under State law—up to 18 months or longer in some States—were applied to these mortgages, salability of the properties involved would be seriously impaired and their rehabilitation and improvement discouraged. Such a result would increase the Federal financial exposure and frustrate achievement of the program's objectives and the national housing goals. State redemption laws have previously been preempted in connection with the foreclosure of HUD-held title II mortgages under section 204(j) of the National Housing Act, 12 U.S.C. 1710(j), and with respect to section 312 mortgages under section 701 of the HUD Reform Act of 1989, 42 U.S.C. 1452c.

Scope of Final Rule

In conjunction with its efforts to streamline and reduce regulations, the Department is considering the option of issuing a much briefer final rule for Nonjudicial Foreclosure of Single Family Mortgages after considering comments on this proposed rule. The procedures that are in the statute would not be repeated in the final rule as they are in this proposed rule. The final rule would instead consist of provisions that address only those areas where the statute gives the Secretary discretion to act or for which clarification and additional detail are necessary. Nonjudicial foreclosures would be conducted with reference to the statute and the abbreviated final rule, or through the use of a guidebook with

instructions for foreclosure commissioners which the Department would make available to the public. The Department specifically requests comment on this point.

Other Matters

Environmental impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to implementation of statutory authority for the nonjudicial foreclosure of HUD-held single family mortgages, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The proposed rule implements procedures for the nonjudicial foreclosure of HUD-held single family mortgages. These procedures would impact those families who would be required to vacate more quickly than under other procedures. However, this impact is expected to be small, and would be offset by the benefit to families to the extent that these procedures decrease the risk to single-family housing of vandalism, fire loss, depreciation, and damage and waste, and the attendant adverse effects on the neighborhoods in which the properties are located.

Executive Order 12512, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that although this proposed rule would have an effect on States or their political subdivisions, and the relationship between the Federal

government and the States, the provisions of this proposed rule do not have "federalism implications" within the meaning of the Order because the authorizing statute provides for the preemption of State law.

Semiannual Agenda of Regulations

This proposed rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 29

Mortgages, Foreclosures.

Accordingly, title 24 CFR is proposed to be amended by adding a new part 29, to read as follows:

PART 29—NONJUDICIAL FORECLOSURE OF SINGLE FAMILY MORTGAGES

Subpart A—General

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29.115 Adjournment or cancellation of sale.
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29.121 Disposition of sales proceeds.
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29.127 Record of foreclosure and sale.
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Authority: 12 U.S.C. 1715b, 3751–3768; 42 U.S.C. 1452b, 3535(d).

Subpart A—General

§ 29.1 Purpose.

(a) The purpose of this part is to implement the Single Family Mortgage Foreclosure Act of 1994 (the Act), 12 U.S.C. 3751–3768. This Act creates a uniform Federal remedy for foreclosure of mortgages covering single family properties which are held by the Secretary of Housing and Urban Development pursuant to Title I of the National Housing Act, 12 U.S.C. 1702 *et seq.*, Title II of the National Housing Act, 12 U.S.C. 1707 *et seq.*, or Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b (as it existed before

repeal). The Secretary's powers under the Act to appoint a foreclosure commissioner or commissioners and substitutes therefor, to fix the compensation of commissioners, and to promulgate implementing regulations, have been delegated to the HUD General Counsel.

(b) The availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Department, will ameliorate the negative consequences of the disparate State laws under which mortgages covering one- to four-family residential properties are foreclosed on behalf of HUD. The long periods of time that are required under State law to complete foreclosure of such mortgages lead to deterioration in the condition of the properties involved, necessitate substantial Federal holding expenditures, increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties, and adversely affect the neighborhoods in which the properties are located. These consequences seriously impair the ability of HUD to protect Federal financial interests in the properties and frustrate attaining the objectives of the underlying Federal program authority. Use of this nonjudicial foreclosure procedure will also reduce unnecessary litigation, which contributes to already overcrowded court calendars, by removing many foreclosures from the courts.

§ 29.3 Scope and applicability.

(a) *Scope.* Under this part, the Secretary may foreclose on any defaulted single family mortgage (as defined in § 29.5) encumbering real estate in any State regardless of when the mortgage was executed.

(b) *Applicability.* The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law. This part applies only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

§ 29.5 Definitions.

As used in this part—

Act means the Single Family Mortgage Foreclosure Act of 1994 (12 U.S.C. 3751 *et seq.*).

Bona fide purchaser means a purchaser for value in good faith and without notice of any adverse claim,

and who acquires the security property free of any adverse claim.

County means a political subdivision of a State or Territory of the United States, created to aid in the administration of state law for the purpose of local self-government, and includes a parish or any other equivalent subdivision.

Mortgage means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real or mixed real and personal), or any interest in property (including leaseholds, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

Mortgage agreement means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the debtor, obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

Owner means any person who has an ownership interest in the property and includes heirs, devisees, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

Record; recorded means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without actual knowledge, and includes "register" and "registered" in the instance of registered land.

Secretary means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

Security property means the property (real or mixed real and personal) or an interest in property (including leaseholds, life estates, reversionary

interests, and any other estates under applicable law), together with fixtures and other interests subject to the lien of the mortgage under applicable law.

Single family mortgage means a mortgage that covers property on which there is located a 1- to 4-family residence, and that:

(1) Is held by the Secretary pursuant to title I or title II of the National Housing Act (12 U.S.C. 1701 *et seq.*); or

(2) Secures a loan obligated by the Secretary under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), as it existed before the repeal of that section by section 289 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839). A mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this part.

State means:

- (1) The several States;
- (2) The District of Columbia;
- (3) The Commonwealth of Puerto Rico;

Rico;

- (4) The United States Virgin Islands;
- (5) Guam;
- (6) American Samoa;
- (7) The Northern Mariana Islands; and
- (8) Indian tribes, meaning any Tribe, band, group or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

Subpart B—Procedures

§ 29.101 Designation of foreclosure commissioner.

(a) The Secretary may designate a person or persons to serve as a foreclosure commissioner for the purpose of foreclosing single family mortgages. A foreclosure commissioner designated pursuant to this part shall have a nonjudicial power of sale as provided in this part.

(b) The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be

designated as a foreclosure commissioner unless that person is determined by the Secretary to be responsible, financially sound, and competent to conduct a foreclosure. The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the Secretary, and the execution of a designation pursuant to this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary.

(c) The Secretary designates a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name. The designation shall be effective upon execution.

(d) A copy of the designation of the foreclosure commissioner shall be mailed with each copy of the Notice of Default and Foreclosure Sale served by mail in accordance with § 29.109.

(e) The Secretary may designate, with or without cause, a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by the procedure contained in paragraph (c) of this section.

(1) Such substitution may be made at any time prior to the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in accordance with the provisions of § 29.115.

(2) If a substitute commissioner is designated, a copy of the written notice of such designation referred to in paragraph (c) of this section shall be served:

(i) By mail, as provided by § 29.109 (except that the minimum time periods between mailing and the date of the foreclosure sale shall not apply); or

(ii) In any other manner which, in the substitute foreclosure commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

§ 29.103 Prerequisites to foreclosure.

(a) The Secretary may commence foreclosure of a single family mortgage under this part upon the breach of a covenant or condition in the mortgage agreement.

(b) No foreclosure under this part may be commenced unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage in a manner other than under this part has been withdrawn, dismissed, or otherwise terminated.

(c) The Secretary shall not institute any separate foreclosure proceeding during the pendency of foreclosure pursuant to this part.

(d) Nothing in this part shall preclude the Secretary from enforcing any right, other than foreclosure under applicable Federal or State law, including any right to obtain a monetary judgment, or foreclosing under this part if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement.

§ 29.105 Commencement of foreclosure.

If the Secretary determines that the prerequisites to foreclosure set forth in § 29.103 are satisfied, the Secretary may direct the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage in accordance with § 29.107.

§ 29.107 Notice of default and foreclosure sale.

The commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale. The Notice shall set forth the name, address and telephone number of the foreclosure commissioner and the date on which the Notice was issued, along with the following information:

(a) The current mortgagee (that is, the Secretary), the original mortgagee (if other than the Secretary), and the original mortgagor.

(b) The street address or a description of the location of the security property and the legal description of the security property as contained in the mortgage instrument.

(c) The date of the mortgage, the office in which the mortgage is recorded, and the liber and folio numbers or other appropriate description of the location of recordation of the mortgage.

(d) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be

paid if the mortgage is to be reinstated, the due date of the earliest principal installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness.

(e) The date, time, and location of the foreclosure sale.

(f) A statement that the foreclosure is being conducted in accordance with the Act and this part.

(g) A description of the types of costs, if any, to be paid by the purchaser upon transfer of title.

(h) The bidding and payment requirements for the foreclosure sale, including the amount and method of deposit to be required at the foreclosure sale, and the time and method of payment of the balance of the foreclosure purchase price. The Notice shall state that all deposits and the balance of the purchase price shall be paid by certified or cashier's check. The Notice also shall state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(i) Any other appropriate terms of sale or information as the Secretary may determine.

§ 29.109 Service of Notice of Default and Foreclosure Sale.

The foreclosure commissioner shall serve the Notice of Default and Foreclosure Sale described in § 29.107 upon the following persons and in the following manner, and no additional notice shall be required to be served, notwithstanding any notice requirements of any State or local law:

(a) *Filing the notice.* The Notice of Default and Foreclosure Sale shall be filed not less than 21 days before the date of the foreclosure sale in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located, or if none, in the manner authorized by Section 3201 of title 28, United States Code.

(b) *Notice by mail.* (1) The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid, return receipt requested, to the following (except that multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units):

(i) The current security property owner of record, as the record existed 45

days before the date originally set for the foreclosure sale, whether or not the notice describes a sale as adjourned as provided in this part. Notice under this part shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to the last known address of the current owner or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such current owner.

(ii) The original mortgagor and all subsequent mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in this part, except that the notice need not be mailed to any such mortgagors who have been released from all obligations under the mortgage. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to the last known address of the mortgagors or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such mortgagors.

(iii) All dwelling units in the security property, whether or not the notice describes a sale adjourned as provided in this part. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or if the security property has more than one dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iv) All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in this part. Notice under this section shall be mailed not less than 21 days before the date of the foreclosure sale and shall be mailed to each such lienholder's address of record, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(2) Notice by mail pursuant to this section shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned. The date of the receipt for the postage paid for the certified or

registered mail serves as proof of the date of mailing.

(3) The Notice of Default and Foreclosure Sale made pursuant to paragraph (b) of this section shall include a copy of the instrument by which the Secretary has designated him or her to act as commissioner.

(c) *Publication.* (1) A copy of the notice of default and foreclosure sale shall be published once a week during three successive calendar weeks before the date of the foreclosure sale. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located shall be considered a newspaper having general circulation for the purposes of paragraph (c)(1) of this section.

(2) If there is no newspaper of general circulation published at least weekly in the county or counties in which the security property being sold is located, copies of the Notice of Default and Foreclosure Sale shall be posted, not less than 21 days before the date of the foreclosure sale, at the courthouse of any county or counties in which the security property is located and at the place where the sale is to be held.

§ 29.111 Presale reinstatement.

(a) Except as provided in § 29.101(b), paragraph (b) of this section, and § 29.115, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary directs the foreclosure commissioner to do so before or at the time of the sale; or

(2) The foreclosure commissioner finds, upon application of the mortgagor not less than three business days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the Notice of Default and Foreclosure Sale; or

(3) In the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed all amounts which would be due under the mortgage agreement if payments under the mortgage had not been accelerated, all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in § 29.119, and the foreclosure commissioner finds that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to

paragraph (a)(3) of this section if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this part or otherwise, to be canceled by curing a default.

(4) In the case of a foreclosure involving a nonmonetary default:

(i) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults are cured and that there are no monetary defaults; and

(ii) There is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding amounts due only as a result of acceleration), including all amounts of expenditures secured by the mortgage and all incurred costs of foreclosure for which payment is provided in § 29.119.

(b) Before withdrawing the security property from foreclosure under paragraphs (a)(2), (a)(3), or (a)(4) of this section, the foreclosure commissioner shall notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and shall provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property shall not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale, if any, shall be served as described in § 29.109.

(c) If the foreclosure commissioner cancels the foreclosure, the mortgage will continue in effect as though acceleration had not occurred.

(d) Cancellation of a foreclosure sale under this part shall have no effect on the commencement of a subsequent foreclosure proceeding.

(e) The foreclosure commissioner shall file a notice of cancellation in the same place and manner provided for filing the Notice of Default and

Foreclosure Sale as provided in § 29.109.

§ 29.113 Conduct of sale.

(a) The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Foreclosure and Sale and more fully described in this section. The sale will be scheduled for a date 30 or more days after the due date of the earliest unpaid installment as described in § 29.107 or the earliest occurrence of a nonmonetary default. The sale will be held at public auction and must be scheduled to begin at a time between the hours of 9:00 a.m. and 4:00 p.m. local time. The sale will be scheduled for a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. If the security property is situated in two counties, the sale may be held in any one of the counties in which any part of the security property is situated.

(b) The foreclosure commissioner shall conduct the foreclosure sale in a manner that is fair to both the mortgagor and the Secretary (see § 29.117) and consistent with the provisions of this part.

(c) The foreclosure commissioner shall attend the foreclosure sale in person or, if the commissioner is not a natural person, through a duly authorized employee. If more than one commissioner has been designated, at least one shall attend the sale.

(d) The foreclosure commissioner shall accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure sale which are contained in § 29.107(h). The foreclosure commissioner will announce the name of each such bidder and the amount of the bid. The commissioner will accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale in § 29.107(h). Before the close of the sale the commissioner will announce the amount of the high bid and the name of the successful bidder.

(e) Notwithstanding the provisions of paragraph (d) of this section, neither the foreclosure commissioner nor any relative, related business entity, or employee shall be permitted to bid in any manner on the security property subject to the foreclosure sale, except that the foreclosure commissioner or an

auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf. Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(f) The commissioner may serve as an auctioneer, or the commissioner may, at the commissioner's discretion, employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate any such auctioneer from the proceeds of the commission he or she collects under § 29.119(e).

(g) The foreclosure commissioner may require a bidder to make a deposit in an amount or percentage set by the foreclosure commissioner and stated in the Notice of Default and Foreclosure Sale as set forth in § 29.107(h) before the bid is accepted.

(h) A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, shall be liable to the Secretary for any costs incurred as a result of such failure. If the successful bidder fails to comply with the terms of the sale a new notice will be sent and a new sale will be held consistent with the requirements of this part.

§ 29.115 Adjournment or cancellation of sale.

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the foreclosure commissioner determines, in the foreclosure commissioner's discretion, that:

(1) Circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

(2) Additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in § 29.111.

(b) The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting, at the original place of sale, the new time and place of the foreclosure sale, which must be held between 9 a.m. and 4 p.m. at the original place of sale.

(c) Except as provided in paragraph (b) of this section, the foreclosure commissioner may adjourn a foreclosure sale for not less than 9 and not more than 31 days, in which case the foreclosure commissioner shall serve a Notice of Default and Foreclosure Sale revised to state that the foreclosure sale has been adjourned to a specified date between the hours of 9 a.m. and 4 p.m. The revised Notice also shall include any other information the foreclosure commissioner deems appropriate. Such Notice shall be served by publication and mailing as provided in § 29.109, except that publication may be made on any of three consecutive days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the revised sale date, and mailing may be made at any time at least seven days before the date to which the foreclosure sale has been adjourned. The commissioner shall also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

§ 29.117 Validity of sale.

Any foreclosure sale held in accordance with the Act and this part shall be conclusively presumed to have been conducted in a fair, legal, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property.

§ 29.119 Foreclosure costs.

The following foreclosure costs shall be paid from the sale proceeds, or from other available sources if sales proceeds are insufficient, before satisfaction of any other claim to such sale proceeds:

(a) Advertising costs and postage expenses incurred in giving notice pursuant to § 29.109 and § 29.115.

(b) Mileage by the most reasonable road distance for posting Notices under § 29.109(a)(2)(iii) and (b), and for the foreclosure commissioner's or auctioneer's attendance at the sale. The mileage shall be paid at a rate provided in 28 U.S.C. 1821.

(c) Reasonable and customary costs incurred for title and lien record searches.

(d) The necessary out-of-pocket costs incurred by the foreclosure commissioner for recording documents.

(e) A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure in an amount to be determined by the Secretary. A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 29.121 Disposition of sales proceeds.

(a) The proceeds of the foreclosure sale shall be used in the following order:

(1) To cover the costs of foreclosure listed in § 29.119.

(2) To pay valid tax liens or assessments on the security property as provided in the Notice of Default and Foreclosure Sale.

(3) To pay any liens recorded before the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale.

(4) To pay service charges and advances for taxes, assessments, and property insurance premiums which were made under the terms of the foreclosed mortgage.

(5) To pay the interest due under the mortgage debt.

(6) To pay the unpaid principal balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided in the mortgage agreement).

(7) To pay any late charges or fees.

(b) Any surplus proceeds from a foreclosure sale shall be applied, after payment of the items described in paragraph (a) of this section, in the order as follows:

(1) To pay any liens recorded after the foreclosed mortgage in the order of priority under the law of the State in which the security property is located.

(2) To pay the surplus to the mortgagor.

(c) If the person to whom surplus proceeds are to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds disagrees with the foreclosure commissioner's proposed disposition of

the disputed proceeds, the foreclosure commissioner may deposit the disputed funds with a legally authorized official or court. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action shall be deductible from the disputed funds.

(d) The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed under § 29.119, and otherwise to audit the foreclosure commissioner's disposition of the sale proceeds.

§ 29.123 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in § 29.121(a)(2) and (a)(3).

(b) If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(c) The deed or deeds issued by the foreclosure commissioner shall be without warranty or covenants to the purchaser or purchasers. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner shall be a conveyance of the property and constitute passage of good and marketable title to the mortgaged property. No judicial proceedings shall be required ancillary or supplementary to the procedures provided under the Act and under this part to assure the validity of the conveyance or confirmation of such conveyance. The purchaser of property under the Act and this part shall be presumed to be a bona fide purchaser.

(d) A purchaser at a foreclosure sale held pursuant to the Act and this part shall be entitled to possession upon passage of title under paragraph (c) of this section, subject to any interest or interests not barred under § 29.129. Any person remaining in possession of the property after the passage of title shall be deemed a tenant at sufferance subject to eviction under applicable law.

(e) If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner shall execute and deliver the deed to a legal representative of the decedent purchaser's estate upon payment of the

purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(f) When the foreclosure commissioner conveys the property to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed, including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property.

(g) The register of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations required in § 29.127(a) in an affidavit or an addendum to the deed as provided in § 29.127(b), the affidavit or addendum shall be accepted for recordation. Failure to collect or pay a tax as described in paragraph (f) of this section shall not be grounds for refusing to record such instruments, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such instruments and their provisions in any State or Federal Court.

(h) The Clerk of the Court or other appropriate official shall cancel all liens as requested by the foreclosure commissioner.

§ 29.125 Redemption rights.

(a) There shall be no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to this Act and this part. For purposes of this section only, a foreclosure shall be considered completed upon the date of the foreclosure sale.

(b) Section 204(l) of the National Housing Act, 42 U.S.C. 1710(l), and section 701 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 1452c, shall not apply to mortgages foreclosed under this Act and this part.

§ 29.127 Record of foreclosure and sale.

(a) The foreclosure commissioner shall include in the recitals of the deed to the purchaser the following items:

(1) The date, time, and place of the foreclosure sale.

(2) A statement that the foreclosed mortgage was held by the Secretary.

(3) The date of the foreclosed mortgage, the office in which the mortgage was recorded, and the liber and folio numbers or other appropriate description of the recordation of the mortgage.

(4) The details of the service of the Notice of Default and Foreclosure Sale under § 29.109, including the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, names of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

(5) The date and place of filing the Notice of Default and Foreclosure Sale.

(6) A statement that the foreclosure was conducted in accordance with the provisions of the Act and this part and with the terms of the Notice of Default and Foreclosure Sale.

(7) The name of the successful bidder and the amount of the successful bid.

(b) The foreclosure commissioner may, in his or her discretion, make the recitations in paragraph (a) of this section in an affidavit or addendum to the deed, either of which is to be recorded with the deed as provided in the Act and this part.

(c) The items set forth in paragraph (a) of this section shall be prima facie evidence of the truth of such facts in any Federal or State court and evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice. Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

§ 29.129 Effect of sale.

A sale made and conducted as prescribed in the Act and this part to a bona fide purchaser shall bar all claims upon, or with respect to, the property sold for the following persons:

(a) Any person to whom the Notice of Default and Foreclosure Sale was

mailed as provided under the Act and in this part, and the heir, devisee, executor, administrator, successor or assignee claiming under any such person.

(b) Any person claiming any interest in the property subordinate to that of the mortgage if such person had actual knowledge of the foreclosure sale.

(c) Any person claiming any interest in the property whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as required by § 29.109(c), and the executor, administrator, or assignee of such a person.

(d) Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of paragraphs (a) through (d) of this section.

§ 29.131 Computation of time.

Periods of time provided for in this part shall be calculated in consecutive calendar days including the day or days on which the actions or events occur, or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

§ 29.133 Deficiency judgment.

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after deducting the payments provided for in § 29.121, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, the only limitation on such action being a prohibition against pursuit of a deficiency that is specifically set forth in the mortgage.

Dated: March 7, 1995.

Henry G. Cisneros,
Secretary.

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