

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner**

[Docket No. FR-3931-N-01]

**Notice of Sale of HUD-Held Multifamily
Mortgage Loans**

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

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces the Department's intention to sell certain unsubsidized mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive auction. This notice also describes the bidding process for these loans. This notice ensures compliance with the Department's mortgage sale regulations.

DATES: Bid Packages are currently available.

ADDRESSES: Interested parties may request a Bid Package by contacting an FHA sales representative at 1-800-877-4814. When the information is available, it will be forwarded by regular mail. Parties may make special arrangements to receive the information through expedited delivery.

Asset review files for all the mortgage loans included in this sale are currently available to prospective bidders for due diligence at the Due Diligence Facility located at 733 15th Street NW., Suite 800, Washington, DC 20005. The facility will be open to the public between the hours of 9 a.m. and 6 p.m., Monday through Friday. Interested parties wanting access to the facility may contact Mr. Wayne T. Thornton, Williams, Adley & Company, in writing at the above address, or by telephone at (202) 639-9700, to schedule access time. Asset review files may also be ordered and sent to prospective bidders in the manner described in the Bid Package.

FOR FURTHER INFORMATION CONTACT: William Richbourg, Office of the Housing—FHA Comptroller, Management Control Staff, HFFM, Room 5144, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 401-0577. Hearing- or speech-impaired individuals may call (202) 708-4594 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In accordance with the final rule published in the **Federal Register** on September 22, 1994 (59 FR 48726) (Mortgage Sale Regulations), and specifically with 24

CFR 290.202 of that rule (59 FR 48731), the Department announces its intention to sell certain unsubsidized mortgage loans (Mortgage Loans). The Mortgage Loans comprising this auction encumber properties located throughout the United States (FHA National Mortgage Auction). A final listing of the specific properties involved in the FHA National Mortgage Auction will be included in the Bid Package. The Mortgage Loans will be sold without FHA insurance. The Department will offer interested parties an opportunity to bid competitively on the Mortgage Loans. Bids may be offered for one or all of the Mortgage Loans, as well as for any combination of Mortgage Loans. More particularly, a bidder may bid on as many individual Mortgage Loans as the bidder chooses. Further, a bidder may condition acceptance of its bids for individual Mortgage Loans upon being the successful bidder of Mortgage Loans with a minimum aggregate unpaid principal balance. The Department will accept those bids that optimize the gross proceeds from the sale.

The Bidding Process

The Department will describe in detail the procedure for participating in the National Mortgage Auction in a Bid Package, which will include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement), as well as certain information concerning each of the Mortgage Loans, such as the unpaid principal balance and interest rate. The Department will distribute the Bid Package for a period of approximately 6 weeks prior to the date that bids are due. Bid Packages are currently available. Interested parties may request a Bid Package by contacting an FHA sales representative as specified in the **ADDRESSES** section, above, of this notice.

Bidders must include a 5 percent initial deposit with their bids. More specifically, if a bidder submits multiple bids, the initial deposit will be limited to 5 percent of the bidder's single largest bid amount. Similarly, the initial deposit for a bidder who has created a pool or a number of pools is limited to 5 percent of the single largest bid amount of the bidder's pool bids. The successful bidders will be notified within 2 business days (Award Date) after the Bid Date. An additional deposit is required from each successful bidder within 2 business days after the Award Date. This additional deposit when added to the initial deposit must total 10 percent of the bidder's successful bids. More specifically, if a bidder submits multiple individual bids, the additional deposit when added to the

initial deposit must total 10 percent of the aggregate unpaid principal of all of the bidder's successful bids. Similarly, if a bidder submits a pool bid or multiple pool bids, the additional deposit must total 10 percent of the aggregate unpaid principal of all of the bidder's successful pool bids.

The Department will assign its interest in a Mortgage Loan to a successful bidder no more than 45 days after the Award Date. If the successful bidder fails to abide by the terms of the Loan Sale Agreement, including paying the Department any remaining sums due pursuant to the Loan Sale Agreement and closing within the time period provided by the Loan Sale Agreement, the Department shall retain and accept as liquidated damages the initial and additional deposit (plus interest) from the successful bidder.

These are the essential terms of sale. The Loan Sale Agreement, which is included in the Bid Package, will provide additional details. **TO ENSURE A COMPETITIVE BIDDING PROCESS, THE TERMS OF SALE ARE NOT SUBJECT TO NEGOTIATION.**

Due Diligence Facility

During the 6 week distribution period for Bid Packages, a due diligence facility will be available to interested parties, at which the Department will provide information such as environmental and title reports and market data. The address of the facility is specified in the **ADDRESSES** section, above. The Department anticipates that information will be available in both electronic and hard copy forms. The Department reserves the right to charge a reasonable fee to recover its costs in duplicating and forwarding any information requested by an interested party, as well as an access fee to the due diligence facility, which will be credited to the purchase of any asset review files.

Mortgage Sale Policy

The Department reserves the right to add or delete Mortgage Loans to the FHA National Mortgage Auction at any time prior to the Bid Date. The Department also reserves the right to reject any and all bids, without prejudice to the Department's right to include any Mortgage Loans in a later sale.

This notice is to ensure compliance with the Mortgage Sale Regulations. These regulations were promulgated in consideration of the settlement that the Department entered into in *Walker v. Kemp*, No. C 87 2628 RFP (N.D. Cal.). In settling the matter, the Department agreed, with regard to specific mortgages, to consider, prior to the sale

of such mortgages, certain factors pertaining to the protection of tenant interests in subsidized projects with HUD-held mortgage loans. By following the Mortgage Sale Regulations, the Department is in compliance with the terms of the settlement.

This is a sale of unsubsidized mortgage loans. Therefore, the Department has determined that pursuant to the Mortgage Sale Regulations, the Mortgage Loans may be sold without FHA insurance. At this time, the Department knows of no Mortgage Loans securing projects (1) for which foreclosure appears unavoidable, and (2) in which reside very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage (24 CFR 290.202, see 59 FR 48731, September 22, 1994). If the Department determines that there are any such Mortgage Loans, they will be removed from this sale.

Mortgage Loan Sale Procedure

The Department selected a competitive auction as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, mortgages must be sold on a competitive basis (24 CFR 290.200(a), see 59 FR 48730, September 22, 1994). This method of sale optimizes the Department's return on the sale of these Mortgage Loans, affords the greatest opportunity for all interested parties to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for the Department to dispose of the Mortgage Loans.

At one time, the Department considered and discussed with industry participants a loan sale procedure that afforded the borrowers the opportunity to acquire their Mortgage Loans on a noncompetitive basis prior to offering the Mortgage Loans for sale to all other interested parties (Borrower Settlement Option). For the reason set forth above, however, the Department decided to dispose of these Mortgage Loans through a competitive auction.

Application Of Replacement Reserve To Indebtedness

If a Mortgage Loan is in arrears at the time of closing, the Department will apply the funds in the replacement reserve account to the amount due the Department under the Mortgage Loan and, thereafter, the balance in the replacement reserve account, if any, will be transferred to the mortgagor. If a Mortgage Loan is current at the time of

closing, the funds in the replacement reserve account will be returned to the mortgagor in accordance with such terms and conditions as may be established by the Department.

Timely Bids and Deposits

Each bidder assumes all risks of loss relating to its failure to deliver, or cause to be delivered, on a timely basis and in the manner specified by the Department, each bid form, earnest money deposit and Loan Sale Agreement required to be submitted by the bidder.

Ties for High Bidder

In the event there is a tie for a high bid, the Department, through its financial advisor, will contact the parties with the tie bid and afford each of them an opportunity to offer a best and final bid. The successful bidder will be the one with the highest bid. If a tie continues after the best and final offers are submitted or the bidders do not respond, or do not respond within the time period established by the Department, the successful bidder will be determined by lottery. Notwithstanding the above, the Department reserves the right to withdraw any Mortgage Loan(s) subject to a tie bid.

Status of Mortgage Loans

As of May 31, 1995, none of the Mortgage Loans were delinquent by an amount of more than one monthly payment. One or more of the Mortgage Loans, however, may become delinquent and one or more of the Mortgage Loans that are delinquent may become performing, on or before the date that title to the Mortgage Loan(s) is transferred to the successful bidder. Mortgage Loans that are delinquent on May 31, 1995 may become more delinquent prior to closing.

Ineligible Bidders

The following individuals and entities (either alone or in combination with others) are ineligible to bid on any one or combination of the Mortgage Loans included in the FHA National Mortgage Auction:

- (1) Any employee of the Department;
- (2) Any individual or entity that is debarred from doing business with the Department pursuant to 24 CFR part 24;
- (3) Any contractor, subcontractor and/or consultant (including any agent of the foregoing) who performed services for, or on behalf of, the Department in connection with the FHA National Mortgage;
- (4) Any individual that was a principal and/or employee of any entity

or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of, the Department in connection with the FHA National Mortgage.

(5) Any entity or individual that served as a loan servicer or performed other services for, or on behalf of the Department, with respect to any of the mortgage loans included in the FHA National Mortgage Auction at any time during the two-year period prior to August 16, 1995; and

(6) Any individual that was a principal and/or employee of any entity or individual described in paragraph (5) above at any time during the two-year period prior to August 16, 1995, except, however, any entity or individual described in paragraphs (5) and (6) shall be permitted (subject to the terms and conditions of any agreement the entity or individual has previously entered into in connection with the FHA National Mortgage Auction and/or other agreements entered into with, or on behalf of, the Department), to:

(i) Perform services as a consultant and/or advisor to any bidder who is eligible to bid at the FHA National Mortgage Auction, provided that such services do not involve the use of any materials or information not otherwise available to the general public that were produced or developed for, or on behalf of, the Department; and

(ii) Bid on any of the Mortgage Loans included in the FHA National Mortgage Auction that were not serviced by such entity or individual described in paragraphs (5) or (6) at any time during the two-year period prior to August 16, 1995.

Freedom of Information Requests

HUD has approved a policy for responding to Freedom of Information Act requests for sales information on HUD's Multifamily Mortgage Loan Sales. The purpose of this policy is to clarify for the public and potential purchasers of HUD-held multifamily project mortgages the types of sales information that will be disclosed under the Department's HUD-held multifamily mortgage sales program and to strike a balance between HUD's policy of disclosing as much information as possible to the public and the specific mandates of the Multifamily Housing Property Disposition Reform Act of 1994 to reduce losses to the FHA fund through mortgage sales. The Department has determined that Freedom of Information Act requests for certain types of sales information after the date of the auction but prior to the Department's closing of the sales would

have an adverse effect both on the commercial position of the prospective purchasers and on the integrity of the Department's auction process. In considering HUD's statutory obligations, HUD has decided that the sales information to be disclosed following the settlement of all sales transactions will consist of: (1) The names and addresses of the parties requesting bidder information packages; (2) the identities of the purchasers; and (3) the purchase price.

Scope of Notice

This notice applies to this FHA National Mortgage Auction, and does not establish the Department's policy for the sale of other mortgage loans.

Dated: July 10, 1995.

Jeanne K. Engel,

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

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