DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4244–P–02]

RIN 2502–AG96

Disposition of HUD-Acquired Single Family Property; Proposed Rule

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for the disposition of HUD-acquired single family properties. Through this proposed rule, HUD is seeking comments on an efficient, innovative, and cost-effective alternative for selling HUD's inventory of single family properties. This alternative would allow HUD to enter into a property acquisition agreement or agreements with an individual, partnership, corporation or other legal entity. The agreement would provide for the right and obligation of the entity to acquire designated properties, including properties that are currently in HUD's inventory, but primarily those that are or will be ''in the pipeline.'' HUD's goals are to reduce the inventory of single family properties while continuing to expand homeownership opportunities for American families and to ensure the stability of the Federal Housing Administration (FHA) Mortgage Insurance Fund.

DATES: *Comment due date:* June 29, 1998.

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 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. 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 McCloskey, Director, Single Family Asset Management Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9184, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708–1672 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

I. Background—Program of Sales of Single Family Properties

Section 204 of the National Housing Act (Act) (12 U.S.C. 1710) governs the Federal Housing Administration (FHA) insurance claim process and property disposition. Specifically, section 204(g) of the Act pertains to the management and disposition of HUD-acquired single family properties. HUD's implementing regulations are contained in 24 CFR part 291.

These statutory and regulatory authorities for the acquisition, handling, and disposing of HUD-acquired property make up HUD's Single Family Property Disposition program. Essentially, HUD is charged with implementing a program of sales of HUD-acquired properties along with appropriate credit terms and standards to be used in carrying out the program. Currently, HUD's principal method of selling properties is through competitive sales of individual properties to individual purchasers.

The competitive sales of individual properties is a time consuming process that does not result in efficient and prompt delivery of the single family properties to the sales market. HUD has the largest real estate-owned (REO) operation in the nation, selling in excess of 50,000 properties each year. While this volume of property sales represents only a small percentage of the total number of home sales nationwide (see the ''Regulatory Flexibility Act'' section of this preamble for further discussion), it represents a significant administrative responsibility for HUD. Both HUD and potential homeowners are disadvantaged by the processing time required involved in competitive sales of individual properties. It is critical for HUD to find more timely and less costly methods to dispose of its REO inventory in order to further its mission of providing homeownership opportunities for American families. In addition, HUD must dispose of these properties efficiently in order to minimize any losses to the insurance fund and to keep the costs of insurance low.

On June 13, 1997 (62 FR 32251), HUD published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) to solicit public comments on better methods of disposing of HUD-owned single family properties. The ANPR suggested that such methods could include bulk sales of current inventory or future acquisitions on a regional or national basis, or arrangements similar to joint ventures, profit-sharing arrangements, or private-public partnerships. In addition to soliciting comments through the ANPR published in the **Federal Register**, HUD requested public input through a notice published in the following newspapers: *The Washington Post, The New York Times, The Wall Street Journal, Barron's,* and *U.S.A. Today.*

II. HUD's New Innovative Sales Method

After considering all the comments received on the ANPR, which are discussed below, HUD is proposing that competitive sales of individual properties to individuals will no longer be HUD's principal method of sale, as the regulations in 24 CFR part 291 currently provide. The proposed rule provides that HUD may, in its discretion, on a case-by-case basis or as a regular course of its business, choose from a variety of sales methods. The proposed rule also would add a new innovative and cost-effective sales method.

Under the new sales method, HUD will invite interested entities to participate in a competitive selection process for the right and obligation to acquire properties designated by HUD. (For purposes of this rule, HUD refers to this sales method as the ''future REO acquisition method.'') HUD intends that these designated properties would consist primarily of ''pipeline'' properties. Pipeline properties are those that would otherwise come into HUD's inventory in the future. These designated properties could also include properties that are currently in HUD's inventory. HUD and the selected entity/transferor would enter into a property acquisition agreement, which would provide for the right and obligation of the transferor to acquire the designated properties as the properties become available. Under this method, HUD would have the right to negotiate the specific terms of such an agreement with the selected transferor. HUD is considering defining the entity's obligation to acquire the properties in terms of a specific geographic region or regions over a specific period of time, as well as utilizing the capacity of such entity to support HUD's loss mitigation efforts. The selected transferor would generally be responsible for managing and selling the individual REO properties. With respect to this method of disposition, HUD encourages qualified entities that currently are engaged in the process of management and disposition of HUD's REO inventory to consider participation in the future REO acquisition method by partnering

with other qualified entities, if they themselves lack the resources to participate individually. Furthermore, HUD will make available to the selected transferor(s) a list of all entities (by service and geography) who currently participate in HUD's REO disposition process for its use in performing the future acquisition method.

As noted earlier, HUD has the discretion to use other methods of sale, in addition to this future REO acquisition method, including competitive sales of individual properties to individuals, direct sales, bulk sales, and other sales as determined necessary by the Secretary. HUD anticipates, however, that the new future REO acquisition method or other similar arrangements would allow HUD to transfer most of the properties it acquires (or would otherwise acquire), quickly and efficiently and in a manner that allows HUD to better achieve its national housing goals.

The ability to move the properties out of HUD's inventory quickly and efficiently is crucial. The longer the properties remain in HUD's inventory, the more HUD's holding costs increase, and the longer they remain unavailable as homeownership opportunities for potential purchasers. Using disposition methods such as the future REO acquisition method would be more efficient and expedient than HUD's current sales methods, since HUD anticipates that the entities interested in such arrangements will be experienced in high-volume property sales. HUD anticipates that competition among interested entities would enhance this benefit and result in maximum efficiency and return. Therefore, using innovative property disposal methods such as the future REO acquisition method should not only ensure the maximum possible return to the mortgage insurance fund; it should also help to strengthen neighborhoods and communities and help to expand homeownership opportunities in order to help provide decent, safe, and affordable housing.

HUD anticipates, however, that the future REO acquisition method could result in fewer properties available for direct sales to nonprofit organizations and units of government. HUD understands that there are entities that rely upon HUD-acquired properties as a resource for their housing programs, and HUD is committed to continuing its partnership with these groups. Therefore, in order to minimize the anticipated effects of any decreased availability of properties, HUD intends to make available a portion of the properties acquired in HUD-designated revitalization areas to nonprofit organizations (including homeless providers and nonprofit organizations representing persons with disabilities or other classes of persons protected by the Fair Housing Act) and units of government for use in HUD and local housing or homeless programs (see § 291.90(c)(1) of this proposed rule).

III. Discussion of Public Comments on ANPR

HUD received 52 comments in response to the June 13, 1997 ANPR and simultaneous newspaper publications. The following discussion provides a summary of the issues and recommendations raised by the commenters.

New Methods of Sale

A few commenters offered suggestions for new methods of sale for HUD's inventory. For example, one commenter proposed that HUD enter into a contract with that commenter, which proposed to provide electronic marketing of HUD-owned single family properties. While HUD currently lists properties available for sale in large circulation newspapers, and some offices list properties on the World Wide Web, HUD is looking for a new means to reduce substantially the on-hand inventory, now and into the future, rather than a new means to market that inventory.

Another commenter suggested that HUD outsource the REO management and liquidation function to experienced companies located in areas that correspond to HUD's Homeownership Centers. HUD is considering expanding the use of the management and marketing-type contracting that is being tested in New Orleans, Baltimore, and Sacramento, which would rely upon local real estate brokers, appraisers, and closing agents for the inventory not sold through the future REO acquisition method. Therefore, HUD will continue to consider the suggestions of these commenters. At this time, however, HUD is proposing to rely upon the future REO acquisition process described above to transfer most of the properties.

One commenter suggested that HUD form joint venture arrangements with selected nonprofit real estate development organizations to reduce the inventory. Another commenter suggested that HUD sell properties in identified neighborhoods in bulk to a State agency that would then enter into a joint venture with a nonprofit. Several other commenters suggested that HUD give greater priority to nonprofits and/or government agencies. HUD intends to continue to offer a certain percentage of properties to nonprofit organizations and local government entities. In addition, this proposed rule would not preclude States and nonprofits from participating in the sales process described in this rule through partnering arrangements with each other or with the successful transferor. HUD believes, however, that reducing the inventory through the future REO acquisition method would be more cost-effective.

One commenter recommended that Federal agencies combine their resources and sell properties via auctions under the Government Owned Real Estate (G.O.R.E.) project. HUD has participated in G.O.R.E. auctions in the past and anticipates doing so in the future. However, since HUD has a much higher volume of properties in its inventory and a greater need for frequent sales than other Federal agencies, the G.O.R.E. auctions have a limited utility for HUD. HUD anticipates that the effort described in this proposed rule would be a more efficient method of selling the bulk of its inventory, because transferors could be available to acquire properties on a continual basis in many regions.

Opposition to Bulk Sales

Several commenters opposed selling HUD's single family acquired properties through bulk sales. Two commenters warned that bulk sales will negatively affect real estate values and could cause a local depression of the real estate market. Three commenters (real estate brokers/managers) claimed that bulk sales would put them out of business.

Contrary to these commenters' objections, however, HUD is primarily considering selling a pipeline of properties to transferors chosen through a competitive process, rather than selling acquired properties through bulk sales. HUD does not believe that the sales arrangement described in this proposed rule would adversely affect real estate values or cause a depression of local real estate markets, since HUD anticipates that the ultimate sales of the individual properties by the chosen transferors will result in fair market pricing. Although HUD may sell properties that are currently in inventory through a bulk sale arrangement, any such sales will be structured to take into account the impact on local communities.

HUD has performed an analysis on the impact the future REO acquisition method would have on small businesses that do business with HUD, such as real estate brokers. This analysis is described below under the heading ''Regulatory Flexibility Act.'' This new sales method

should not significantly affect small businesses, especially if the transferors use a process of selling the properties that is similar to HUD's. In an effort to mitigate any such impact, however, HUD would encourage its transferors to use local firms to assist in their disposal of the single family acquired properties.

IV. Changes to Regulations in 24 CFR Part 291

Specifically, this proposed rule would amend the regulations in 24 CFR part 291 to:

1. Add a new section (see § 291.200 of this proposed rule) to describe basic procedures for the future REO acquisition sales method. The proposed § 291.200 contains general information regarding the process by which HUD anticipates conducting the new sales method. HUD plans to advertise the availability of acquisition opportunities to the public, and to provide detailed information to interested eligible entities.

2. Reorganize the property disposition regulations to allow for and to recognize the use of innovative sales procedures such as the future REO acquisition method, by:

a. Revising § 291.5 (Definitions), primarily by moving relevant definitions to subpart E;

b. Creating a new § 291.90 in subpart B to describe all the sales methods that will be available to the Secretary;

c. Moving the flood insurance requirements from § 291.100(f) to § 291.100(c)(1) regarding individual properties that are sold with FHA mortgage insurance; HUD's requirements for flood insurance apply only to FHA-insured mortgages in these circumstances.

d. Redesignating § 291.200 of the current regulations, regarding HUD's policy for the rental of acquired property, as § 291.10 in subpart A of part 291.

e. Revising the heading of existing subpart C to read ''Sales Procedures.'' This rule would move the provisions of §§ 291.105 and 291.110 into subpart C (see §§ 291.205 and 291.210 of this proposed rule), to follow the new § 291.200 regarding the future REO acquisition method (described above).

HUD anticipates that it would rely heavily upon the future REO acquisition method or similar arrangements to sell its inventory of single family properties (so long as such arrangements are found to be economically viable and in furtherance of the national housing goals), rather than the sales methods described in §§ 291.205 and 291.210 of this rule. However, this rule would preserve the procedures for those sales methods and retain them as viable sales options. If HUD seeks to use direct sales to other individuals or entities that do not meet any of the other categories of sales, this rule would continue to require the Assistant Secretary for Housing-Federal Housing Commissioner to make a finding that disposing of properties in such a manner would be in the best interest of the Secretary (see § 291.210(c) of this rule.)

V. Nondiscrimination Requirements

HUD's responsibilities and priorities include ensuring compliance with applicable nondiscrimination requirements, such as the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act. With regard to the disposition of single family properties in HUD's inventory, all resales by public entities are subject to compliance with Title II of the Americans with Disabilities Act. All resales by both public and private entities are subject to compliance with the Fair Housing Act.

In addition, HUD must comply with section 504 of the Rehabilitation Act of 1973, which requires nondiscrimination based on disability in programs or activities conducted by any executive agency. HUD regulations implementing this requirement are in 24 CFR part 9. Under § 9.155(a) of those regulations, HUD must ensure that its Property Disposition Program policies and practices do not discriminate on the basis of disability, against a qualified individual with disabilities. HUD will take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public. HUD will provide appropriate auxiliary aids as necessary to afford an individual with disabilities an equal opportunity to participate in this program.

VI. Justification for Shortened Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed earlier in this preamble, HUD anticipates that this future REO acquisition method of disposing of single family properties would be more efficient and expedient than HUD's current method of competitive individual property sales, thereby increasing homeownership opportunities and helping to build strong neighborhoods and communities. The completion of this rulemaking would be necessary in order for HUD to begin the process of selecting and negotiating with the transferor(s). (However, nothing in this rule prevents HUD from conducting a bulk sale of property in its inventory.)

HUD has provided the public with notice and an opportunity to comment on innovative sales procedures in the advanced notice of proposed rulemaking published in the **Federal Register** on June 13, 1997 (62 FR 32251). HUD also sought public input by publishing a notice in several prominent newspapers and business journals. Therefore, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at http://www.hud.gov, on the date of publication in the **Federal Register**. HUD will also directly notify entities that have expressed a significant interest to HUD by sending such entities a copy of this proposed rule.

VII. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order. Any changes made to this rule as a result of that review are clearly identified in the docket file. The docket file and the Economic Analysis prepared for this rule are available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding 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 General Counsel, Room 10276, Department of Housing and Urban

Development, 451 Seventh Street, SW, Washington, DC.

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 rule would not have a significant economic impact on a substantial number of small entities.

(1) *No Significant Economic Impact.* The future REO acquisition method would not result in a significant economic impact on a substantial number of small entities. During fiscal year 1997, the sale of HUD homes represented only 1.2 percent of total home sales, using only 1.6 percent of the active selling brokers. Since HUD's home sales are a very small portion of the overall home sales business, the economic impact of this rule would not be significant, and it would not affect a substantial number of small entities.

(2) *A Substantial Number of Small Entities Will Not be Affected.* HUD has determined that there are approximately 18,000 small entities that could be affected by this rule, including nonprofit organizations, State and local governments, Real Estate Asset Managers (REAMs), real estate brokers, selling agents, closing agents, and repair contractors. The number of entities potentially affected by this rule is not substantial, and any potential economic impact would not be significant. A transferor under this new arrangement may use a sales process similar to HUD's previous sales process, in which case a number of the entities that would continue to be involved in the ultimate sales of the properties would be small entities. In an effort to mitigate any potential impact on small entities, HUD would encourage the transferor(s) to use small local firms to assist in their disposal of single family acquired properties.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule simply allows HUD to use innovative methods of selling its inventory of single family homes. As a result, this rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, 24 CFR part 291 is proposed to be amended as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

2. In part 291, subparts A, B, and C are revised to read as follows:

Subpart A—General Provisions

Sec.
291.1 Purpose and general requirements.
291.5 Definitions.
291.10 General policy regarding rental of acquired property.

Subpart B—Disposition by Sale

291.90 Sales methods.
291.100 General policy.

Subpart C—Sales Procedures

291.200 Future REO acquisition method.
291.205 Competitive sales of individual properties.
291.210 Direct sales procedures.

Subpart A—General Provisions

§ 291.1 Purpose and general requirements.

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties. HUD will issue detailed policies and procedures that must be followed in specific areas.

(2) The purpose of the property disposition program is to dispose of properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

(b) *Nondiscrimination policy.* The requirements set forth in 24 CFR parts 5 and 110 apply to the administration of any activity under this part. In addition, in accordance with 24 CFR 9.155(a), HUD must ensure that its policies and practices in conducting the single family property disposition program do not discriminate on the basis of disability.

§ 291.5 Definitions.

(a) The terms *HUD* and *Secretary* are defined in 24 CFR part 5.

(b) Other terms used in this part are defined as follows:

Closing agent means a qualified firm or person under contract to HUD to administer closings involving the sale of HUD-acquired single family properties.

Competitive sale to individual means a sale of an individual property to an individual bidder through a sealed bid process (or other bid process specifically authorized by the Secretary) in competition with other bidders in which properties have been publicly advertised to all prospective purchasers for bids.

Direct sale means a sale to a selected purchaser to the exclusion of all others without resorting to advertising for bids. Such a sale is available only to approved applicants.

Eligible properties means HUD-acquired properties designated by HUD for property disposition or other housing programs.

HUD-acquired properties means all single family properties acquired by HUD or properties that HUD is otherwise obligated to acquire under the Mutual Mortgage Insurance Fund, the Special Risk Insurance Fund, the General Insurance Fund, or other housing programs, except properties committed to other HUD programs.

Insured mortgage means a mortgage insured under the National Housing Act (12 U.S.C. 1701 et seq.).

Investor purchaser means a purchaser who does not intend to use the property as his or her principal residence.

Lessee means the applicant, approved by HUD as financially responsible, that executes a lease agreement with HUD for an eligible property.

Owner-occupant purchaser means a purchaser who intends to use the property as his or her principal residence; a State, governmental entity, tribe, or agency thereof; or a private

nonprofit organization as defined in this section. Governmental entities include those with general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies).

Preapproved means a commitment has been obtained from a recognized mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(ii) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles;

(3) Practice nondiscrimination in the provision of assistance in accordance with the authorities described in § 291.435(a); and

(4) Have nonprofit status as demonstrated by approval under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or demonstrate that an application for such status is currently pending approval.

Purchase money mortgage, or *PMM,* means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

Single family property means a property designed for use by one to four families.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Tribe has the meaning provided for the term ''Indian tribe'' in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

§ 291.10 General policy regarding rental of acquired property.

HUD will lease acquired property to comply with other designated HUD programs, or when the Secretary determines that it is in the interest of HUD. Leases may include an option to purchase in appropriate circumstances.

Subpart B—Disposition by Sale

§ 291.90 Sales methods.

HUD will prescribe the terms and conditions for all methods of sale. HUD may, in its discretion, on a case-by-case basis or as a regular course of business, choose from among the following methods of sale:

(a) *Future REO acquisition method.* The Future Real Estate-Owned (REO) acquisition method consists of a property acquisition agreement (or agreements) between HUD and a transferor (or transferors), which shall provide for the right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. HUD will select such transferor(s) through a competitive process, in accordance with all applicable laws and regulations, including the requirements in § 291.200. The transferor(s) shall have the right and obligation to manage and dispose of the properties upon such terms and conditions as are approved by the Secretary;

(b) *Competitive sales of individual properties.* This method consists of competitive sales of individual properties to individual buyers, the procedures for which are described in § 291.205;

(c) *Direct sales methods.* There are three types of direct sales methods:

(1) Direct sales of properties located in HUD-designated revitalization areas to governmental entities and private nonprofit organizations, the procedures for which are described in § 291.210(a);

(2) Direct sales to displaced persons, sales of razed lots, or auctions, the procedures for which are described in § 291.210(b);

(3) Direct sales to other individuals or entities that do not meet any of the categories specified in paragraphs (a) through (d) of this section, under the circumstances and procedures described in § 291.210(c);

(d) Bulk sales, the procedures for which are described in § 291.210(d); or

(e) *Other sales methods.* HUD may select any other methods of sale, as determined by the Secretary.

§ 291.100 General policy.

For all sales, except as otherwise specifically indicated, those sales conducted in accordance with §§ 291.90(a) and 291.200 or with subpart D of this part, the following general policies apply:

(a) *Qualified purchaser.* (1) Anyone, including a purchaser from a transferor of a property pursuant to §§ 291.90(a) and 291.200, regardless of race, color, religion, sex, national origin, familial status, age, or disability may offer to buy a HUD-owned property, except that:

(i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and

(ii) No nonoccupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased ''subject to'') of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property.

(2) Neither HUD nor any transferor pursuant to §§ 291.90(a) or 291.200 will offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property.

(3) HUD will offer tenants accepted under the occupied conveyance procedures outlined in 24 CFR 203.670 through 203.685 the right of first refusal to purchase the property only if:

(i) The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to HUD to be offered the right of first refusal; or

(ii) State or local law requires that tenants be offered the right of first refusal.

(b) *List price.* The list price, or ''asking price,'' assigned to the property is based upon an appraisal conducted by an independent real estate appraiser using nationally recognized industry standards for the appraisal of residential property.

(c) *Insurance.* Properties may be sold under the following programs:

(1) *Insured.* A property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1, which is available at the Department of Housing and Urban Development, HUD Customer Service Center, 451 7th Street, SW, Room B–100, Washington, DC 20410; by calling (202) 708–3151; or via the Internet at www.hud.gov) will be offered for sale in ''as-is'' condition with FHA mortgage insurance available. Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a.

(2) *Insured with repair escrow.* A property that requires no more than $5,000 for repairs to meet the intent of the MPS, as determined by the Secretary, will be offered for sale in ''as-is'' condition with FHA mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(3) *Uninsured.* A property that fails to qualify under either paragraph (c)(1) or (c)(2) of this section will be offered for sale either in ''as-is'' condition without mortgage insurance available, or under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).

(d) *Financing.* (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed 5 years. Mortgagors must meet FHA mortgage credit standards.

(e) *Environmental requirements and standards.* Sales under this part are subject to the environmental requirements and standards described in 24 CFR part 50, as applicable.

(f) [Reserved]

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the requirements for the evaluation and reduction of lead-based paint hazards contained in 24 CFR part 35 and 24 CFR part 200, subpart O.

(h) *Open listings.* Except as provided in paragraph (i) of this section, properties are sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

(i) *Asset management and listing contracts.* (1) A field office may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(2) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser's broker must submit the bid to HUD through the exclusive broker.

Subpart C—Sales Procedures

§ 291.200 Future REO acquisition method.

(a) Under this method of property disposition, HUD will enter into a property acquisition agreement (or agreements) with a transferor (or transferors), which shall provide for the right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. The transferor(s) will be selected through a competitive process, conducted in accordance with applicable laws. HUD will negotiate the specific terms of the property acquisition agreement(s) with the selected transferor(s). The properties will be available on an ''as-is'' basis only, without repairs or warranties.

(b) *Eligible entities.* An individual, partnership, corporation, or other legal entity will not be eligible to participate if at the time of the sale, that individual or entity is debarred, suspended, or otherwise precluded from doing business with HUD under 24 CFR part 24.

§ 291.205 Competitive sales of individual properties.

When HUD conducts competitive sales of individual properties to individual buyers, it will sell the properties on an ''as-is'' basis, without repairs or warranties, and it will follow the sales procedures provided in this section.

(a) *General.* (1) Properties that are sold on an individual competitive bid basis are sold through local real estate brokers, except as provided in § 291.100(h).

(2) For properties being offered with mortgage insurance, priority will be given to owner-occupant purchasers, as defined in § 291.5, for a period of up to 30 days, as determined by HUD. For properties offered without mortgage insurance, priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

(b) *Net offer.* The net offer is calculated by subtracting from the bid price the dollar amounts for the following:

(1) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties.

(2) In the case of properties sold under the insured sales with repair escrow program, the repair escrow amount is also deducted from the bid to determine the net offer.

(c) *Acceptable bid.* HUD will accept the bid producing the greatest net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. The greatest net return is calculated based on the net offer, as described in paragraph (b) of this section.

(d) *Bid period.* After properties are initially advertised, bids are accepted for a 10-day period, with all offers received during the 10 days considered to have been received simultaneously, except as described in paragraph (e) of this section. Offers received on a property before the 10-day bidding period begins will be returned. Offers received after the 10-day period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the 10-day period.

(e) *Full price offers.* HUD field offices that operate under a ''full price offer'' program open offers at specified times during the 10-day bidding period. If an offer for the full list price and otherwise meeting the terms of the offering is received, it will be accepted at the time of the opening and the 10-day bid period cancelled.

(f) *Extended listing period.* Properties not sold at the bid opening will remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled daily bid opening. Properties that fail to sell within 30 days after being offered for competitive bidding will be reanalyzed and relisted. If a property's price or terms are changed, it will be subject to another competitive bidding period as described in paragraph (d) of this section.

(g) *Bid requirements.* (1) All bids submitted, whether during the 10-day bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form prescribed by HUD, signed by both the submitting real estate broker and the prospective purchaser. If the purchase is to be an insured sale, a field office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid.

(2) Unless the Secretary specifically authorizes another bid process, bids must be placed in sealed envelopes

marked with the property number, address, and return address of the broker. All bids not indicating that the purchaser will occupy the property will be considered as investor offers.

(3) Noncomplying bids will be returned to the broker with an explanation for the noncompliance decision and information about whether the property is still available.

(h) *Earnest money deposits.* (1) The amount of earnest money deposit required for a property with a sales price of $50,000 or less is $500, except that for vacant lots the amount is 50 percent of the list price. For a property with a sales price greater than $50,000, the amount of earnest money deposit required in the area is set by the field office, in an amount not less than $500 or more than $2,000. Information on the amount of the required earnest money deposit is available from the field office or participating real estate brokers.

(2) All bids must be accompanied by earnest money deposits in the form of a cash equivalent as prescribed by the Secretary, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. If a bid is accepted by HUD, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total or partial forfeiture for failure to close a sale.

(i) *Multiple bids.* Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective purchaser. If a purchaser submits multiple bids on the same property, only the bid producing the highest net return to HUD will be considered. If a prospective owner-occupant purchaser submits a bid on more than one property, the first of those bids that produces the greatest net return to HUD will be accepted and all other bids from that purchaser will be eliminated from consideration. However, if the prospective owner-occupant purchaser has submitted the only acceptable bid on another property, then that bid must be accepted and all other bids from that purchaser on any other properties will be eliminated from consideration.

(j) *Opening the bids.* Unless the Secretary specifically authorizes another bid process:

(1) The bids will be opened publicly at a time and place designated by the HUD field office.

(2) Each bid will be announced when opened, and acknowledgment made of the offer that produces the greatest net return to HUD. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(k) *Counteroffers.* If all bids received on a property are unacceptable, a field office may notify all bidders or their brokers that HUD will accept an offer equalling a predetermined net acceptable price. Bidders must submit an acceptable offer before the established bid cut-off period, to be determined by the field office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, award will be determined by drawing lots.

§ 291.210 Direct sales procedures.

When HUD conducts the sales listed in § 291.90(c), it will sell the properties on an ''as-is'' basis, without repairs or warranties, and it will follow the applicable sales procedures provided in this section.

(a) *Direct sales of properties located in HUD-designated revitalization areas to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and qualified private nonprofit organizations that have been preapproved to participate by HUD, according to standards determined by the Secretary, may purchase HUD properties at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs.

(2)(i) Purchasers under paragraph (a)(1) of this section must designate geographical areas of interest by ZIP code. Upon request, before those properties are publicly listed, HUD will assure that governmental entities and nonprofit organizations are notified in writing when eligible properties become available in the areas designated by them. HUD will coordinate the dissemination of the information to ensure that if more than one purchaser designates a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. A property in this section will be sold to the first eligible purchaser submitting an acceptable contract.

(ii) Purchasers under paragraph (a)(1) of this section must notify HUD of preliminary interest in specific properties within 5 days of the notification of available properties (if notification is by mail, the 5 days will begin to run 5 days after mailing). Those properties in which purchasers express an interest will be held off the market for a 10-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the 10-day consideration and inspection period, properties in which no governmental entity or nonprofit organization has expressed a specific intent to purchase will be offered for sale under the competitive bid process. Properties in which a governmental entity or nonprofit organization expressed an intent to purchase, during the 10-day period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to 10 days, as determined by HUD, following expiration of the 10-day consideration and inspection period, and no other governmental entity or nonprofit organization has expressed an interest, then the property will be offered for sale under the competitive bid process.

(3) In order to ensure that properties purchased at a discount are being utilized for expanding affordable housing opportunities, HUD may require, as appropriate, periodic, limited information regarding the purchase and resale of such properties, and certain restrictions on the resale of such properties.

(b) *Direct sales to displaced persons; razed lots; auctions.* HUD may seek to dispose of individual properties to individual buyers through methods such as direct sales to displaced persons, sales of razed lots, or auctions. These sales will be upon such terms and conditions as the Secretary may prescribe.

(c) *Direct sales to individuals or entities.* HUD may also seek to dispose of properties through direct sales to other individuals or entities that do not meet any of the categories specified in this section, if the Assistant Secretary for Housing-Federal Housing Commissioner (or his or her designee) finds in writing that such sales would further the goals of the National Housing Act (12 U.S.C. 1701 *et seq.*) and would be in the best interests of the Secretary. These sales will be upon such terms and conditions as the Secretary may prescribe.

(d) *Bulk sales.* HUD may seek to dispose of properties through bulk sales. Such sales will be upon such terms and conditions as the Secretary may prescribe.

3. A new § 291.405 is added to subpart E, to read as follows:

§ 291.405 Definitions.

For purposes of this subpart E:

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits a written expression of interest in eligible properties under this subpart E. Governmental entities include those that have general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies or State housing finance agencies). In the case of applicants leasing properties while their applications for Supportive Housing assistance are pending, ''applicant'' is defined in 24 CFR part 583.

Homeless means:

(1) Individuals or families who lack the resources to obtain housing, whose annual income is not in excess of 50 percent of the median income for the area, as determined by HUD, and who:

(i) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(ii) Have a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing, but excluding prisons or other detention facilities); or

(iii) Are at imminent risk of homelessness because they face immediate eviction and have been unable to identify a subsequent residence, which would result in emergency shelter placement (except that persons facing eviction on the basis of criminal conduct such as drug trafficking and violations of handgun prohibitions shall not be considered homeless for purposes of this definition); or

(2) Persons with disabilities who are about to be released from an institution and are at risk of imminent homelessness because no subsequent residences have been identified and because they lack the resources and support networks necessary to obtain access to housing.

Dated: March 19, 1998.

Art Agnos,

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

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