

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

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

24 CFR Parts 200 and 203

[Docket No. R-95-1749; FR-2682-F-02]

RIN 2502-AE72

**Nationwide Pre-Foreclosure Sale
Procedure**

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

ACTION: Final rule.

SUMMARY: This rule adopts as final the interim rule that set forth the requirements and procedures that govern the Department's Pre-foreclosure Sale (PFS) Procedure. The interim rule was published in the **Federal Register** on September 30, 1994, at 59 FR 50136. The requirements and procedures contained in the interim rule are based on the Pre-foreclosure Sale Demonstration Program established by a notice published in the **Federal Register** on May 29, 1991, at 56 FR 24324.

EFFECTIVE DATE: June 2, 1995.

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

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been assigned approval number 2502-0464.

Background

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

Over the past few years, much interest has been expressed by mortgagors and

real estate agents in a transaction known as the "pre-foreclosure sale." This loss mitigation technique has grown significantly in use by the private sector and is also now commonly used by Government-sponsored enterprises, such as Fannie Mae (Federal National Mortgage Association), to ameliorate their losses from defaulted loans. In a successful pre-foreclosure sale involving a property subject to an FHA-insured mortgage loan, neither foreclosure nor conveyance of the property to the Department occur. A third party buys the home from a defaulting mortgagor at its approximate fair market value (with certain adjustments, as approved by the Secretary), which is less than the owner's outstanding indebtedness at the time of sale.

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

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

The Demonstration was successful in that the demand for this alternative to foreclosure was found to be very substantial; the efficacy of the pre-foreclosure sale transaction was found to be cost-beneficial to HUD; and feedback obtained from participating local HUD offices, program coordinators, mortgagees, homeowners and the general public was quite favorable. By expanding the options

available to financially distressed mortgagors and not adversely affecting any mortgagor rights or interests under existing FHA-insured loan servicing regulations, the Department has not only acted responsibly toward the homeowners with FHA-insured mortgages, but also has operated with an eye to the cost-effectiveness of its own policies and procedures.

The Department then decided to implement the pre-foreclosure sale procedure nationwide by incorporating it into the overall approach of servicing FHA-insured loans by FHA-approved lender/servicers. Therefore, the Department issued an interim rule on September 30, 1994, at 59 FR 50136. The September 30, 1994 interim rule made pre-foreclosure sales an even more efficient servicing tool by streamlining procedures and, in some respects, reducing the Department's cost of following this course of action.

Public Comments

The public was given 60 days to comment on the requirements and procedures set forth in the September 30, 1994 interim rule. Comments were received from one commenter (a national trade association), and that comment was totally favorable to the interim rule.

This Final Rule

This final rule adopts without change the interim rule published on September 30, 1994, at 59 FR 50136.

Other Matters

Environmental Finding

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

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule pertains to a limited number of single-family mortgage situations. It expands the options available to

financially distressed mortgagors and does not adversely affect any mortgagor rights or interests under existing FHA-insured loan servicing regulations.

Executive Order 12612, Federalism

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

Executive Order 12606, the Family

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

Semiannual Agenda

This rule was listed as item 1784 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57652), pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development,

Minimum property standards, mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 203

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

Accordingly, the Department adopts as final without change the interim rule amending 24 CFR parts 200 and 203 published on September 30, 1994, at 59 FR 50136.

Dated: April 26, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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