

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR-4244-F-03]

RIN 2502-AG96

Disposition of HUD-Acquired Single Family Property; Final Rule

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

ACTION: Final rule.

SUMMARY: On May 29, 1998, HUD published for public comment a proposed rule that would amend HUD's regulations for the disposition of HUD-acquired single family properties. Among other amendments, the proposed rule would provide HUD with the necessary flexibility to use a variety of innovative, efficient, and cost-effective methods for selling its inventory of single family properties. 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. This final rule makes effective the amendments in the May 29, 1998 proposed rule and takes into consideration the public comments submitted on the proposed rule.

EFFECTIVE DATE: March 11, 1999.

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. HUD's Single Family Property Disposition Program

Section 204 of the National Housing Act (12 U.S.C. 1710) governs the Federal Housing Administration (FHA) insurance claim process and property disposition. Section 204(g) of the National Housing Act addresses the management and disposition of HUD-acquired single family properties. HUD's implementing regulations are found in 24 CFR part 291 (entitled "Disposition of HUD-Acquired Single

Family Property"). Under these statutory and regulatory authorities, 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. Before issuance of this final rule, HUD's principal method of selling properties was through HUD-administered competitive sales of individual properties to individual purchasers.

As previously structured, the competitive sales process was found to be time consuming and did not always result in the 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, it represents a significant administrative responsibility for HUD. HUD determined that both HUD and potential homeowners were disadvantaged by the processing time involved in the competitive sales process. 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.

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 more effective and efficient methods of disposing of HUD-owned single family properties. The ANPR suggested that proposed 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. The May 29, 1998 Proposed Rule

On May 29, 1998 (63 FR 29496), after consideration of the public comments received on the June 13, 1997 ANPR, HUD published for public comment a proposed rule to amend its regulations at 24 CFR part 291. (The preamble to the May 29, 1998 proposed rule contained a detailed summary of the public comments received on the ANPR, and HUD's responses to these comments (see 63 FR 29496, 29497-29498)).

The May 29, 1998 proposed rule provided as its primary proposal that HUD would no longer limit itself to a primary method for the disposition of its single family properties. The proposed rule provided 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. These methods may include competitive sales to individuals, direct sales, bulk sales, and other sales as determined necessary by the Secretary.

The May 29, 1998 proposed rule also amended 24 CFR part 291 to introduce for public comment an innovative and cost-effective sales method, known as the REO acquisition method. Under this 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. These designated properties would consist primarily of properties that would otherwise come into HUD's inventory in the future ("pipeline" properties), but 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. The preamble to the May 29, 1998 proposed rule provided additional details regarding the REO acquisition method.

III. This Final Rule

This final rule makes effective the amendments contained in the May 29, 1998 proposed rule, and takes into consideration the public comments on the proposed rule. In response to public comment, this final rule also amends 24 CFR part 291 to refine the already codified policies and procedures governing another innovative sales method, disposition of single family properties through management and marketing services. The management and marketing service process was designed to address the deficiencies of HUD-administered competitive sales of individual properties. Under this process, HUD contracts the management and sales function of HUD real estate-owned properties to experienced companies located in areas that correspond to HUD's Homeownership Centers.

Under this method, management and marketing contractors are selected by HUD to successfully manage single family properties owned by or in the custody of HUD, to successfully market those single family properties, and to successfully oversee the sales closing

activity, including proper accounting for HUD's sales proceeds. Following the selection of the management and marketing contractors, the individual acquired single family properties will continue to be sold to individuals, including nonprofit organizations and government entities. HUD will continue to retain closing agents who will have primary responsibility for carrying out all closing activities. The management and marketing contractors will be responsible, however, for providing appropriate materials to the closing agent and reconciling any discrepancies resulting from closing activities.

HUD is refining the codified procedures governing management and marketing services in its regulations because it has determined that it is an effective and efficient sales method. HUD has conducted a successful management and marketing pilot program in the cities of Baltimore, New Orleans and Sacramento. As noted in the preamble to the May 29, 1998 proposed rule, HUD has been considering expanding its use of management and marketing contracting as a result of this successful pilot program (see 63 FR 29496, 29497). Additionally, many commenters on the May 29, 1998 proposed rule praised the pilot program and urged that HUD increase its use of management and marketing contracts (see section IV of this preamble). As one of the public commenters wrote, the management and marketing sales method is "a public/private partnership that works."

As noted previously, the May 29, 1998 proposed rule was designed to provide HUD with the flexibility to choose from a variety of sales methods. Section 291.90 of the proposed rule, which is made effective by this final rule, identifies the various sales methods available to HUD, and includes disposition of properties through management and marketing service contracts. Section 291.90(e) provides that "HUD may select any other method [of sale], as determined by the Secretary." HUD retains the right to use a sales method not listed in this section that it determines is appropriate, efficient, and effective given the circumstances involved. If, under § 291.90(e), HUD determines that a particular sales method may be used more frequently than originally anticipated, HUD will amend § 291.90 to include this sales method. In any given disposition of single family properties, the public will be notified of the sales methods to be used through appropriate methods, which may include bid materials, the internet, and other methods.

In also keeping with HUD's stated goal of increased flexibility, HUD has determined that several additional amendments to the proposed rule are necessary for purposes of clarity and the successful implementation of this sales method. HUD also has made several other changes in response to public comment to the procedures governing competitive sales of individual properties. The revisions were necessary to make the program more efficient and cost effective. Additionally, HUD has made other non-substantive amendments for purposes of clarity. The following summarizes the principal differences between the May 29, 1998 proposed rule and this final rule. As described below, none of these changes substantively alter the policies and procedures described in the proposed rule.

1. Purpose and General Requirements (§ 291.1)

This rule amends § 291.1, to clarify the purpose of 24 CFR part 291. As amended, § 291.1(a)(1) provides that part 291 governs the disposition of one-to-four family properties acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or acquired by HUD under section 312 of the Housing Act of 1964.

2. Definitions (§ 291.5)

The definitions of the terms "Closing agent," "HUD-acquired properties," and "Single family property" have been removed. Due to other revisions made to the regulatory text of the May 29, 1998 proposed rule, these terms are not used in the final rule. Accordingly, the definitions of these terms are unnecessary and have been removed. The definition of the term "Preapproved" has also been removed from § 291.5. This term is commonly used and understood by individuals involved in the sale of HUD-acquired single family properties. Further, the term "Preapproved" is used only once in the part 291 regulations (at § 291.210(a)(1)), and not in the sense provided by the former regulatory definition. It is therefore unnecessary to include a definition of this term in 24 CFR part 291.

The definition of the term "HUD" has been clarified to provide that, as used in 24 CFR part 291, it means the Department of Housing and Urban Development or its contractor, as appropriate.

For purposes of clarity, the definition of the term "Purchase money mortgage (PMM)" has been removed from § 291.5

and relocated to § 291.100(d)(3). This term is only used in this section of the regulation, and is therefore more appropriately located in the section of the final rule where the term is referenced, rather than in the general definitions section. The substance of the definition of "Purchase money mortgage (PMM)" has not been revised.

This rule also relocates the definition of the term "Lessee" from § 291.5 to § 291.405. Section 291.405 sets forth the definitions of terms that are used exclusively in 24 CFR part 291, subpart E (entitled "Lease and Sale of HUD-Acquired Single Family Properties for the Homeless"). The term "lessee" is only used in subpart E of 24 CFR part 291, and is therefore more appropriately defined in § 291.405 than in § 291.5. The substance of the definition of the term "lessee" has not been revised.

3. Reference to Management and Marketing Service Contracts (§§ 291.90 and 291.205)

As noted above, the final rule has been amended to reference management and marketing service contracts. Specifically, §§ 291.90 (entitled "Sales methods") and 291.205 (entitled "Competitive sales of individual properties") have been revised explicitly to provide that HUD may conduct competitive sales of individual properties either directly or through management and marketing service contracts.

4. Minimum Property Standards (MPS) (§§ 291.100(c)(1) and (c)(2))

Section 291.100 describes certain general policies applicable to most sales methods used by HUD in its single family property disposition program. Paragraph (c)(1) of proposed § 291.100 provided that "[a] property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings * * * will be offered for sale * * * with FHA mortgage insurance available." Several public commenters recommended methods that HUD might use to improve its competitive sales process, including suggestions for enhancing appraisal standards (see comment captioned "Improve Upon Current Disposition Process" in section IV.E. of this preamble). In response to these commenters, HUD is strengthening the regulatory language of § 291.100(c)(1) to require that a property offered for an insured sale must meet the MPS, as determined by the Secretary. A conforming change has also been made to proposed § 291.100(c)(2), which formerly also referred to the "intent of the MPS."

5. "As Is" Condition for Section 203(k) Properties (§ 291.100(c)(3))

This final rule also amends § 291.100(c)(3) of the May 29, 1998 proposed rule for technical clarity. Proposed § 291.100(c)(3) stated that uninsured single family properties would be "offered for sale either in 'as is' condition without mortgage insurance, or under section 203(k) of the National Housing Act (12 U.S.C. 1709(k))." The quoted language might erroneously imply that properties offered for sale under the section 203(k) program will not be offered for sale in "as is" condition. However, as is made clear from the rest of the rule, all properties are offered on an "as is" basis. In addition, HUD's sales contracts in all cases provide that the properties are sold in "as is" condition. Accordingly, the phrase "as is" has been added following the reference to the section 203(k) program in § 291.100(c)(3).

6. Listings (§ 291.100(h))

For purposes of clarity, the substance of proposed § 291.100(h) and (i) have been consolidated in § 291.100(h), which sets forth the listing requirements for HUD's single family property disposition program. The substance of proposed § 291.100(h), has been reorganized and redesignated as paragraph (h)(1) of § 291.100. The substance of proposed § 291.100(i), which concerns asset management and listing contracts, has been redesignated as new paragraph § 291.100(h)(2). With the exception of these clarifying changes, the substance of these provisions has not been revised.

7. Repair Escrow Amounts (§ 291.205(b)(2))

Section 291.205(b) describes the procedures relating to the calculation of net offers under the competitive sale program. This final rule removes proposed § 291.205(b)(2), which provided that "[i]n 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." HUD has determined that this change is necessary for two reasons. First, in response to public comment, HUD intends to expand its use of multiple listing services (MLS). Specifically, HUD is considering use of the MLS for sales governed by management and marketing sales contracts. (See the public comment captioned "HUD Should Require Transferors to Use MLS" in section IV.B of this preamble.) The identification of two list prices (one

for repair escrow purchasers and one for other buyers) is cumbersome under the MLS. Further, the deduction of the repair escrow amount from the bid amounts submitted by repair escrow purchasers may inadvertently penalize these purchasers during the bid selection process.

8. Bid Period for Competitive Sales (§ 291.205(d))

Section 291.205(d) describes the bid procedures for competitive sales of individual properties. The proposed rule (which reflected the procedures in the existing part 291 regulations) would have established fixed time frames for the submission and HUD review of bids. It is not necessary to codify this information in HUD's regulations, since the information may more appropriately be included in the bid materials accompanying a particular sale. Further, HUD is refining and updating its procedures governing management and marketing service contracts in response to public comment. These public comments praised HUD's management and marketing pilot program in the cities of Baltimore, New Orleans, and Sacramento. The commenters urged HUD to revise the May 29, 1998 proposed rule to incorporate the procedures used in the successful pilot program.

Among other revised features, HUD may provide for the electronic submission of bids. The use of automated procedures and other streamlined bid submission methods may call for a shortened bid period or for the modification of HUD's bid review procedures. Accordingly, this final rule revises § 291.205(d) to provide HUD with the necessary flexibility to successfully implement a variety of bid submission and review procedures in the competitive sale of individual properties. Specifically, the final rule removes the references to fixed time periods and specific bid review procedures contained in the May 29, 1998 proposed rule.

As revised by this final rule, § 291.205(d) provides that HUD will establish a bid period for properties available for competitive sale. Generally, this bid period will be 10 days, but may be lengthened or shortened by HUD. In the case of properties offered with mortgage insurance, HUD may establish procedures that give priority to owner-occupant purchasers for a period of up to 30-days (see § 291.205(a)(2)). HUD may treat all bids received during a specified period of time as having been received simultaneously. HUD may also choose to review bids on a daily basis,

with all bids submitted during each day considered to have been received simultaneously. HUD may use either (or both) of these methods during the bid period, as specified in the bid materials accompanying a particular competitive sale.

9. Extended Listing period (§ 291.205(f))

This section provides that properties not sold at the bid opening of a competitive sale will remain available for an extended listing period. Proposed § 291.205(f) provided that properties that "fail to sell within 30-days after being offered for competitive bidding will be reanalyzed and relisted." Proposed § 291.205(f) also stated that "[i]f a property's price or terms are changed, it will be subject to another competitive bidding process * * *" (emphasis added).

This final rule makes three changes to § 291.205(f). First, this final rule lengthens the extended listing period from 30 days to 45 days. This change extends the availability of a property being offered for sale, and thus provides potential buyers with additional time to purchase the property. In keeping with the stated goal of this rule to provide HUD with the necessary flexibility to successfully implement a variety of sales methods, this final rule also provides that a property may be subject to another competitive bidding process if the property's price or terms are changed (the language of the proposed rule would have mandated another competitive bid process). Finally, this final rule makes a clarifying change to § 291.205(f) by replacing the term "relisted" with the phrase "made available for sale."

10. Bid Format (§ 291.205(g) and (k))

These two regulatory provisions have been updated to incorporate the use of automated bid submission procedures. As set forth in the May 29, 1998 proposed rule, these provisions reflected outdated bid format requirements. For example, § 291.205(g)(2) provided that "bids must be placed in sealed envelopes marked with the property number, address, and return address of the broker." This final rule revises § 291.205(g) and (k) to remove these references to outdated bid format requirements, and to reflect modern electronic bid submission procedures.

11. Multiple Bids (§ 291.205(i))

This final rule revises § 291.205(i) for purposes of technical clarity. Proposed § 291.205(i) provided that "[i]f a prospective owner-occupant purchaser submits a bid on more than one

property, the first of those bids that produces the greatest return to HUD will be accepted * * * .” The quoted language might be misinterpreted to mean that HUD will accept the first such bid submitted by an owner-occupant purchaser, rather than the bid that overall produces the greatest net return to HUD. Accordingly, this final rule clarifies the language of § 291.205(i).

12. Owner-Occupant Priority During Competitive Sales Process (§ 291.205(j))

This final rule adds a new § 291.205(j), which provides that owner-occupant purchasers will be given priority in those cases where an owner-occupant and an investor purchaser submit identical bids during a competitive sale. Several public commenters recommended that HUD ensure that the transferor will sell the properties to owner-occupants (see the comment captioned “HUD Should Ensure That Properties Are Sold to Owner-Occupants” in section IV.B. of this preamble). HUD agrees with the commenters that the sale of single family properties to owner-occupant purchasers is an effective method of promoting affordable homeownership opportunities. In response to these public comments, this final rule provides that if identical bids are submitted by an owner-occupant purchaser and an investor purchaser during a competitive sale, HUD will select the bid submitted by the owner-occupant purchaser. As a result of the addition of new § 291.205(j), proposed §§ 291.205(j) and (k) of the May 29, 1998 proposed rule have been redesignated as §§ 291.205(k) and (l), respectively.

13. Direct Sales to Government Entities and Nonprofit Organizations (§ 291.210(a)(1))

Section 291.210(a) describes the procedures governing the direct sale of properties to governmental entities and private nonprofit organizations. Section 291.210(a)(1) of the May 29, 1998 proposed rule would have changed the existing part 291 regulations by providing for the direct sale of properties to government entities and private nonprofit organizations of all properties located in HUD-designated revitalization areas. However, section 602 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the “FY 1999 HUD Appropriations Act”) directs HUD to carry out a sales program to local governments and interested

private nonprofit organizations in designated revitalization areas. HUD will implement section 602 of the FY 1999 HUD Appropriations Act through a separate rulemaking. Therefore, this final rule does not adopt the language of proposed § 291.210(a)(1). Rather, this final rule uses the language of the existing part 291 regulations, which provides for direct sales of properties without insured mortgages to government entities and private nonprofit organizations, without regard to their location. (For additional discussion regarding section 602 of the FY 1999 HUD Appropriations Act and its relationship to this final rule, please see the discussion of the public comment captioned “HUD Should Foster Cooperation with Nonprofit, Community Organizations, and Local Governments” in section IV.B of this preamble.)

As a result of the revision to § 291.210(a)(1), a conforming change has been made to § 291.90, which identifies the various sales methods available to HUD. Specifically, this final rule revises proposed § 291.90(c)(1), which lists direct sales to governmental entities and nonprofit organizations, to specify that such sales will be without mortgage insurance, and to remove the reference to “HUD designated revitalization areas.”

14. Tiebreakers for Direct Sales to Governments and Nonprofit (§ 291.210(a)(2)(i))

In addition to the change discussed above, this final rule makes another change to the procedures concerning direct sales to government entities and private nonprofit organizations. Specifically, this final rule amends § 291.210(a)(2) to codify existing practice regarding award selection in the case of identical bids submitted by two or more bidders. Section 291.210(a)(2)(i) of this final rule provides that: “All bids received on the same business day will be considered to have been received simultaneously. In the case of identical bids submitted on the same business day, award will be determined by drawing lots.”

15. Consideration and Inspection Period (§ 291.210(a)(2)(ii))

This final rule also revises § 291.210(a)(2)(ii), which describes the consideration and inspection period for governmental and nonprofit purchasers. Proposed § 291.210(a)(2)(ii) established a fixed 10 day consideration and inspection period. It is not necessary to codify this information in HUD’s regulations, since the information is more appropriately included in the bid

materials accompanying a particular sale. Further, removal of the fixed time period conforms to the stated goal of this final rule to provide HUD with the necessary flexibility to successfully use a variety of sales methods. Accordingly, this final rule amends § 291.210(a)(2)(ii) to remove the reference to the fixed 10 day period. As revised by this final rule, § 291.210(a)(2)(ii) states that the consideration and inspection period will usually be for ten days from the date of notification of interest, but may be lengthened or shortened by HUD.

IV. Discussion of Public Comments on the May 29, 1998 Proposed Rule

The public comment period for the proposed rule expired on June 29, 1998. HUD received 201 comments, including comments from real estate brokers, agencies, and related associations; vendors in the real estate industry (contractors, title companies, appraisers, etc.); mortgage lending institutions and related institutions and associations; local governments and government agencies; nonprofit organizations; members of Congress; and other commenters. This section of the preamble presents a summary of the significant issues raised by the public commenters on the May 29, 1998 proposed rule, and HUD’s responses to these comments.

A. Support for the REO Acquisition Method

Several commenters offered support for the REO acquisition method described in the proposed rule. One commenter asserted that the management of foreclosed homes has been identified by many lenders as a task best contracted to specialists. Some of these commenters wrote that this approach would bring higher prices for the properties and move the properties more quickly. One commenter argued that the REO acquisition method would likely bring HUD’s properties to the open market in better condition than through HUD’s current sales process, and some commenters expressed confidence that local real estate markets would not be negatively affected, since the transferors would have profit incentives to achieve market prices. Several commenters expressed interest in participating in the future REO acquisition process.

HUD Response. HUD agrees with these commenters that the REO acquisition method is an efficient, and cost-effective process for the disposition of single family properties. The purpose of this final rule is to provide HUD with the flexibility to use a variety of innovative methods in the sale of single

family properties. As already noted in this preamble, HUD agrees that the management and marketing of foreclosed properties also presents an efficient and effective sales method. HUD is amending § 291.90 to refine the policies and procedures governing management and marketing service contracts. Through the use of management and marketing service contracts, the REO acquisition method, or other similar arrangements, HUD believes it will be able to transfer properties it acquires quickly and efficiently and in a manner that allows HUD to achieve its national housing goals.

B. Recommendations for Implementing the REO Acquisition Method Applicable to Other Sales Methods

Many commenters offered suggestions for the successful implementation of the REO acquisition method. Many of the suggestions made by these commenters are not limited to the REO sales method, but are applicable to a variety of disposition methods, including management and marketing contracts. The following presents a summary of the cross-cutting issues raised by these commenters, and HUD's responses to these issues.

Comment: HUD Should Ensure Involvement of Local Brokers. Several commenters recommended that if HUD uses the REO acquisition method, HUD should ensure that the transferor engages in partnerships and otherwise cooperates with local real estate brokers to ensure their continued participation and business viability. Several commenters argued that the involvement of local real estate professionals is the most cost-efficient means of selling properties, because these professionals provide knowledge of the local housing market. Several commenters argued further that the competition among multiple brokers will provide for fair market pricing.

HUD Response. HUD agrees that local real estate professionals can be important contributors to the success of its single family property disposition program. As the commenters note, the expertise provided by these professionals can enhance the efficiency and timeliness of the sales process. HUD has relied on the services of local real estate professionals in the implementation of management and marketing service contracts, and will seek to involve such professionals in the various other sales methods available to HUD, to the extent practicable.

Comment: HUD Should Require Transferors to Use MLS. Several commenters recommended that HUD

require the transferors to list all properties on the local multiple listing service (MLS) in order to assure wide access to the properties by the general public. (However, one commenter argued that HUD properties are in such bad condition that they would not be suitable for placement on the MLS.)

HUD Response. HUD agrees that the MLS can be an effective method for informing the public of single family properties that are available for sale. HUD will determine on a case-by-case basis, depending on the specific sales method, whether the use of the MLS is appropriate. HUD intends to use the MLS for sales governed by management and marketing service contracts. HUD believes that the use of the MLS by management and marketing service contractors will ensure the widest possible access to the properties by the general public.

HUD will consider the use of the MLS for other disposition methods, such as the REO acquisition method. HUD may also use other methods to publicize properties available for sale, including the internet, newspapers, and other media determined appropriate by the Secretary.

Comment: HUD Should Foster Cooperation with Nonprofit, Community Organizations, and Local Governments. Several commenters recommended that HUD develop requirements or incentives (such as performance measures) for the REO transferors to work with nonprofit organizations and local governments in the disposition of the properties. Other commenters suggested that local governments and/or nonprofit organizations should be given the right of first refusal for properties located in their areas, or those in revitalization areas, before these properties are acquired by the transferors.

Four commenters recommended that HUD exempt all properties in revitalization areas from the future REO acquisition process. In those areas, the commenters suggested that HUD should sell all properties directly to nonprofit and local governments at discounted prices, so that those entities can then engage in community-based activities such as rehabilitation and homebuyer counseling.

Three commenters suggested that through the disposition of Mission Properties, HUD can implement its missions as an organization, which include neighborhood revitalization, homeownership, and a continuum of care for homeless persons, as well as other efforts such as the Officer Next Door program. The commenters explained that Mission Properties

consist primarily of properties in areas of high FHA default and foreclosure rates, or in other areas as designated by the community and HUD. These commenters suggested that HUD should exempt such properties from the future REO acquisition process and sell them directly to nonprofit organizations and local governments at discounted prices.

HUD Response. HUD understands that there are nonprofit organizations, local governments, and other community groups that rely upon HUD-acquired properties as a resource for their housing programs. HUD is committed to continuing its partnership with these groups. As already noted in this preamble, HUD intends to continue to make available a portion of its acquired properties 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.

Additionally, section 602 of the FY 1999 HUD Appropriations Act requires that HUD carry out a program under which HUD-owned homes and mortgages are made available in a manner that promotes expanded homeownership opportunities in designated revitalization areas. Under section 602, the Secretary will designate revitalization areas, in consultation with affected units of general local government and interested nonprofit organizations. Section 602 provides that the Secretary shall provide a preference in the sale of HUD-owned homes and mortgages to nonprofit organizations or to the unit of general local government having jurisdiction in the revitalization area. HUD will implement section 602 of the FY 1999 HUD Appropriations Act through a future rulemaking.

Comment: HUD Should Ensure That Properties Are Sold to Owner-Occupants. Several commenters recommended that HUD ensure that the transferor will sell the properties to owner-occupants (or to nonprofit/local governments that will, in turn, sell to owner-occupants), and not to investors to use as rental properties. Two commenters suggested that this could be accomplished through the assignment of a preference or right of first refusal to owner-occupant purchasers, as well as through particular marketing guidelines. These commenters argued that the REO acquisition method should not undermine HUD's homeownership goals by resulting in a net decrease in homeownership. The commenters argued that HUD must ensure that its sales methods operate consistently with

and in support of HUD's national housing goals.

HUD Response. HUD agrees with the commenters that the sale of single family properties to owner-occupant purchasers is an effective method of promoting affordable homeownership opportunities. For example, this final rule retains the provision found in the existing part 291 regulations that permits HUD to give priority to owner-occupant purchasers in the competitive sales of individual properties (see § 291.205(a)(2)). In response to these public comments, this final rule also provides that HUD will give priority to bids submitted by owner-occupant purchasers during the competitive sales process. Specifically, the rule provides that if identical bids are submitted by an owner-occupant purchaser and an investor purchaser, HUD will select the bid submitted by the owner-occupant purchaser. (See § 291.205(j)). HUD also wishes to note that under the bid procedures established for management and marketing service contracts, priority will be given to owner-occupant purchasers during the initial bid opening period.

C. Specific Recommendations for Implementing the REO Acquisition Method

Many commenters made recommendations specifically applicable to the implementation of the REO acquisition method. HUD appreciates the very helpful and detailed suggestions regarding the implementation of this innovative sales method. At this time, HUD has decided not to amend the May 29, 1998 proposed rule to adopt by regulation the recommendations made by these commenters. HUD does not want to limit its ability to conduct an efficient and effective REO acquisition method by prescribing too much detail through regulation. Instead, HUD prefers to describe its sales methods broadly in order to retain the flexibility granted to HUD by statute, and to leave the details for any sales method to the bid materials.

A summary of the significant issues raised by these commenters is set forth below.

Comment: HUD Should Enter Agreements with More Than One Transferor Per Geographic Region. Several commenters recommended that HUD should enter into agreements with more than one transferor in each geographic region, in order to promote competition and increase access to the properties.

Comment: HUD Should Develop Guidelines to Ensure Affordability.

Several commenters recommended that HUD develop a broad set of guidelines to ensure that the transferors controlling the properties continue to make them affordable to homeowners (e.g., through downpayment or closing cost assistance).

Comment: HUD Should Test Future REO Acquisition Method First. Two commenters recommended that HUD test the future REO acquisition method, perhaps in certain test areas, for a limited period of time. If the proposed method works without harming small businesses, homebuyers, or communities, then HUD should phase the proposed method in slowly.

Comment: Structuring the REO Acquisition Process. One commenter stressed that HUD must retain an interest in the properties and a share of the risks and gains in order for the future REO acquisition method to succeed. The commenter noted that a transferor under the future REO acquisition method would be acquiring the pipeline properties "in a blind manner," which represents a potential risk. If HUD retains an interest, and therefore a share of the risk, in the transaction, the commenter asserted that HUD would receive higher bids from the prospective transferors and higher ultimate proceeds. The commenter also noted that the transferor must also have a significant interest in the success of and the goals of the disposition process, to ensure that properties are not "dumped" on the market.

One commenter suggested that in implementing the future REO acquisition process, and in determining criteria for choosing the transferors, HUD should emphasize the following factors: (1) The transferors should be well capitalized and have the financial capability to fund their obligations to HUD; (2) the transferors should have well developed systems, policies, procedures, and vendor networks in order to market and sell the properties promptly upon acquisition; (3) the transferors should have plans to maximize the involvement of small and/or disadvantaged businesses; and (4) the transferors should develop a program to screen properties for appropriate referrals to nonprofit and government sponsored housing development agencies.

One commenter offered very specific suggestions for establishing the basis upon which prospective transferors would submit their bids. This commenter expressed a concern that the transferors' profits will depend more upon the speed of sales than the actual selling prices. Therefore, this commenter argued that the transferor

may have an incentive to forsake negotiating efforts with the ultimate purchaser. In order to counter that incentive, the commenter suggested that the bids should be based upon a percentage of the selling price.

Comment: Requests for Additional Information. Several commenters sought additional information about how the future REO acquisition method would work. For example, one commenter asked many specific questions, such as how HUD would decide which properties within a geographic region would be included in the acquisition agreement (if not all properties). Another commenter asked how the future REO acquisition method would affect servicers' responsibilities and contractors' duties and authorities.

Again, HUD appreciates all these suggestions and will consider these comments when it determines property should be disposed through the REO acquisition method.

D. Opposition to the REO Acquisition Method

Many of the commenters objected to the future REO acquisition method described in the proposed rule. Most of these commenters equated the proposed process with traditional bulk sales, which they claimed helps only the large wealthy investors, while eliminating homeownership opportunities for low-income and first-time buyers. They also claimed that such bulk "fire" sales depress neighborhood property values and otherwise harm neighborhoods.

Comment: HUD Should Continue Using Current Primary Method of Sale. Many commenters urged HUD to continue using its current primary method of selling its inventory of properties—competitive sales of individual properties to individuals. These commenters argued that the current method of sale is better than the proposed future REO acquisition method for several reasons, as described below.

1. Future REO Acquisition Method Would Eliminate Homeownership Opportunities

Many commenters argued that the future REO acquisition method would eliminate homeownership opportunities for low-income families, which is an important part of HUD's mission. Many of these commenters asserted that through altering FHA guidelines in the sale of HUD properties, HUD can provide homeownership assistance through reduced downpayments and closing costs. These commenters argued that under the future REO acquisition method, title to the properties would be

passed to a separate entity, and HUD would not be able to change the FHA guidelines to provide such assistance. These commenters argued that the future REO acquisition method would provide huge profits to large investors, but would eliminate homeownership opportunities for low-income families.

2. Future REO Acquisition Method Would Result in Lower Returns

Several commenters argued that the future REO acquisition method would result in deeply discounted wholesale prices to investment companies, reducing the return to HUD, and therefore to the taxpayers. Some commenters argued that the competitive bidding process under the current sales method results in the highest possible return to HUD.

Several commenters asserted that the future REO acquisition method would also result in lower ultimate sales prices that would contribute to the depreciation of the property values in the surrounding neighborhoods. Alternatively, other commenters argued that the ultimate sales prices would increase due to the profit motivations of the transferors, making homeownership more difficult for lower income buyers.

3. HUD Staff Can Sell Properties Faster and at Lower Cost Than Contractors

Several commenters argued that, as compared to outside contractors, HUD Single Family staff in its local offices can facilitate the sale of properties faster and at lower cost than outside contractors. These commenters argued, therefore, that HUD should not shift property disposition functions to such contractors.

HUD Response. In response to all three groups of commenters, HUD continues to believe that the REO acquisition method described in the May 29, 1998 proposed rule is an effective, timely, and cost-efficient method for the disposition of HUD-acquired single family properties, and therefore retains this sales method in the part 291 regulations. In addition, HUD has refined the procedures that govern management and marketing service contracts. Again, the purpose of amending HUD's part 291 regulations is to notify the public that there is no principal or primary sales method to which HUD must adhere.

This final rule codifies the proposal of the May 29, 1998 proposed rule that HUD has the discretion to use other methods of sale in addition to the REO acquisition method, including the competitive sales to individuals preferred by the commenters, direct sales, and other sales as determined

necessary by the Secretary. At present, HUD has decided to concentrate its efforts on competitive sales to individuals through the use of management and marketing contracts. However, HUD retains the option to use the REO acquisition method at any time. HUD will consider the issues raised by these commenters during the development of any future REO sales method.

Comment: Future REO Acquisition Process Would Result in Decreased Rehabilitation. Two commenters argued that although the future REO acquisition method may result in a rapid sale of properties, the large investors that participate in the process would have an economic disincentive to expend resources on rehabilitation. The commenters argued that under the proposed sales method, HUD would have limited control of the rehabilitation performed on these homes, which are often physically distressed. The commenters argued that the transferors would simply perform minimal cosmetic repairs that would prepare the homes as rental properties.

HUD Response. HUD believes that the REO acquisition method is an innovative and effective method for the sale of HUD-acquired single family properties. At the present time, HUD is planning to rely on management and marketing service contracts. HUD, however, has the discretion to use the REO acquisition method or other sales methods when it believes that a particular method(s) is appropriate given the circumstances faced by HUD in economically and efficiently disposing of properties and meeting its national housing goals.

Comment: Future REO Acquisition Process Would Hurt Small Businesses. Several commenters argued that the future REO acquisition process would hurt small businesses (particularly real estate brokers) by eliminating them from HUD's disposition process. The commenters argued that although a few large companies would profit, many small real estate brokers would suffer. Some of these commenters remarked that small investors would also be effectively prohibited from participating in the future REO acquisition method, considering the magnitude of the transactions.

HUD Response. Before publication of the May 29, 1998 proposed rule, HUD 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. Based on this analysis, HUD determined that the REO acquisition method described in the rule would not

have a significant economic impact on a substantial number of small entities (see 63 FR 29496, 29499).

In analyzing the impact of the REO acquisition method on small entities, HUD noted that a transferor under the REO sales arrangement may use a sales process similar to HUD's competitive 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. Further, 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.

The May 29, 1998 proposed rule also noted that while HUD sells in excess of 50,000 properties each year, this volume of property sales represents only a small percentage of the total number of home sales nationwide. 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 the REO acquisition method would not be significant, and it would not affect a substantial number of small entities.

Comment: Shifting HUD Work to Contractors. Several commenters objected to the proposed rule because it would unnecessarily shift FHA Single Family work to contractors. One of these commenters argued that shifting property management and disposition functions to a private entity would clearly violate OMB Circular A-76, "which permits alternative methods of performing an activity only if it can be carried out at a lower cost than in-house performance." One of these commenters asserted that HUD is relying upon a centralization pilot to support its argument that the future REO acquisition method would result in faster processing with no loss in customer service. The commenter asserted that most of the observed improvement was not a result of the pilot, but rather a result of a decrease in FHA refinancing volume and a reduction in quality reviews. One of the commenters asserted that HUD itself is jeopardizing its property disposition performance through downsizing.

These commenters also pointed to a comparison between HUD's Denver staff and outside contractors, and concluded that HUD's staff transferred properties more quickly and at lower costs than the contractors. One commenter argued further that any savings in personnel costs anticipated through the use of the

future REO acquisition method would be offset by the cost of personnel necessary to oversee the disposition process properly and to perform accounting functions. Another commenter argued that the disposition of HUD properties is an optimal function for the new community builder storefronts, since the commenter claimed that most of the public's knowledge of HUD, and most of the traffic in the new storefronts, consists of interest in HUD homes.

HUD Response. HUD does not agree with the assertions made by these commenters, and believes that the REO acquisition method is an efficient and cost-effective method for the disposition of HUD-acquired single family properties and of meeting national housing goals. As described in the preamble to the proposed rule, HUD anticipates that entities interested in participating in the future REO acquisition method will be experienced in high-volume property sales. Competition among interested entities would enhance this benefit and result in maximum efficiency and return. (See 63 FR 29496, 29497.)

Comment: An Invitation for Fraud and Corruption. Several commenters asserted that since only the largest investors (or bidding teams) would be capable of participating in the future REO acquisition method, competition would be minimized. Some of these commenters concluded that the magnitude of the proposed transactions would present an overwhelming opportunity for fraud and corruption. One commenter asserted that, due to downsizing, HUD would be even less capable of monitoring contractor performance.

HUD Response. HUD agrees with these commenters that should the Department pursue any future REO sales methods, appropriate safeguards will be put in place to minimize the opportunity for fraud and corruption.

Comment: HUD Violated Policy Regarding 60-Day Comment Period. One commenter argued that HUD violated its general policy in 24 CFR part 10 of providing the public 60 days to comment on proposed rules. The commenter argued that HUD provided an insufficient basis for shortening the comment period to 30 days.

HUD Response. HUD recognizes the value and importance of public comment in the regulatory process. HUD has invited public comment at every stage of the development of the amendments made effective by this final rule. HUD provided the public with notice and an opportunity to comment on innovative sales procedures in the

advance 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. In order to provide the fullest and most expedient access to the provisions of the May 29, 1998 proposed rule, HUD made it available on the HUD Home Page on the World Wide Web at <http://www.hud.gov>, on the date of its publication in the **Federal Register**. HUD also directly notified entities that had expressed a significant interest to HUD by sending such entities a copy of the May 29, 1998 proposed rule.

E. Other Recommendations

Comment: HUD Should Develop Sales Process Modelled on Freddie Mac/HomeSteps. Many commenters urged HUD to work with Freddie Mac in order to develop a property disposition process similar to Freddie Mac's HomeSteps program. Three commenters, however, criticized disposition programs such as Freddie Mac's, claiming that the required use of professionals in the "network" stifles competition (and is in violation of RESPA, according to two of the commenters). Two of the commenters also argued that the properties in such programs do not sell as quickly as HUD's.

HUD Response: As noted above, one of the purposes of this final rule is to provide HUD with the necessary flexibility to use a variety of sales methods for the disposition of HUD-acquired single family properties. Under § 291.90(e) of this rule, HUD has the authority to use any sales methods as determined necessary by the Secretary. At this time, HUD has decided not to implement a sales method modelled on the Freddie Mac HomeSteps program.

Comment: Property Disposition Pilot Program/Golden Feather Realty. Many commenters praised the management and marketing pilot program for property disposition that HUD is conducting in Baltimore, New Orleans, and Sacramento, describing it as "a public/private partnership that works." In particular, many commenters commended Golden Feather Realty and its performance under the pilot program in Baltimore. These commenters complimented Golden Feather on its efficiency—homes sell quickly, with higher sales prices, saving HUD \$8.6 million. One commenter asserted that Golden Feather has increased the awareness of and interest in the program through advertising and classes. These commenters suggested that HUD expand

this program nationwide and use it as its primary sales method.

One commenter stressed that HUD should not, in implementing its proposed future REO acquisition method, adversely affect the current and pending management and marketing contracts in these pilot cities.

One commenter, however, asserted that nonprofit organizations have not been able to participate in the acquisition of a significant number of properties in these areas. The commenter suggested that in future management and marketing contracts HUD should set goals to ensure significant participation by nonprofit, along with appropriate discounts on the properties.

HUD Response. As discussed above, HUD has decided to refine the procedures relating to management and marketing service contracts in the part 291 regulations, given the success of this pilot program and the public comments praising this sales method. Under the management and marketing process, HUD will contract the REO management and sales function to experienced companies located in areas that correspond to HUD's Homeownership Centers. Following the selection of the management and marketing contractors, the individual acquired single family properties will be sold to individuals, including nonprofit organizations and government entities. HUD believes that the use of such innovative methods as management and marketing contracts, the REO acquisition method, and other sales methods will result in prompt delivery of HUD-acquired single family properties to the sales market; minimize losses to the FHA insurance fund; and keep the cost of mortgage insurance low.

In response to the commenter who asserted that nonprofits have not been able to meaningfully participate in the acquisition of properties, HUD notes that in FY 1998 nonprofit organizations/governments played a significant role in the management and marketing pilot program (acquiring 102 properties in Baltimore, 75 properties in New Orleans, and 105 properties in Sacramento).

Comment: Improve Upon Current Disposition Process. Several commenters suggested that HUD seek to improve upon its current disposition process, rather than abandoning it. For example, three commenters suggested that HUD should establish routine procedures for inspecting and appraising the properties, disclosing deficiencies, repairing the properties, and/or providing repair escrow when necessary. Another commenter

recommended that HUD should organize a broker committee with direct input at the local level. Two commenters suggested that HUD should develop an effective "back-up" process, so that if the first bid falls through (e.g., due to lack of financing), the property can go to the back-up bidder. One commenter wrote that HUD should establish minimum acceptable bids for the properties. Another commenter recommended that HUD should reduce the number of personnel in the property disposition process.

Several of these comments focused on HUD's use of media in informing the public of the availability of properties. For example, several commenters wrote that HUD should rely more heavily upon the Internet for listing the properties, and otherwise make better use of new technology. Another commenter suggested that HUD should rely on its employees and use all other tools available (online multiple listing services, television, direct mail, community builders) to speed up the property disposition process. One commenter recommended that HUD should resume the practice of advertising HUD listings in local newspapers, rather than just by facsimile (FAX), since small businesses do not always have fax machines.

HUD Response. HUD agrees that changes to the current competitive sales method for individual properties were necessary to make the program more efficient and cost effective, and permit HUD to meet its national housing goals. HUD has adopted several of these comments and has modified its competitive sales procedures as described in section III of this preamble. It is anticipated that with these modifications, properties will be listed and returned to private homeownership more quickly. In addition, HUD believes its expanded use of management and marketing contracts will improve the efficiency and cost-effectiveness of its competitive sales of individual properties.

Comment: Concentrate on Reducing Defaults/Foreclosures. Three commenters urged HUD to concentrate on reducing the number of loans that go into default and foreclosure. One commenter suggested that HUD review the FHA underwriting guidelines. Two commenters asserted that HUD should develop a comprehensive counseling and default mitigation program. One commenter argued that the future REO acquisition method would actually reduce the effectiveness of HUD's loss mitigation efforts by reducing appraised market values in affected neighborhoods.

HUD Response. Over the past few years, legislation has been enacted that provides HUD with several effective loss mitigation tools. HUD continues to encourage lenders to mitigate losses, and to make efficient use of available loss mitigation techniques.

V. Nondiscrimination Requirements

As noted in the May 29, 1998 proposed rule, 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. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this 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 (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage 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). That finding continues to be applicable to this final rule and 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 final 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 amendments made by this final rule will 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.

Under many of the sales methods described in this final rule, such as the REO acquisition method and management and marketing contracts, it is likely that small entities would continue to be involved in the ultimate sales of the properties. For example, a transferor under the REO acquisition process may use a sales process similar to the process. Management and marketing contractors will continue to conduct competitive sales to individuals. Additionally, in an effort to mitigate any potential impact on small entities, HUD will encourage the use of

small local firms to assist in the disposal of single family acquired properties. Under the management and marketing pilot program, 99 percent of the funds spent on subcontracting went to small businesses providing services such as lawn cutting, debris removal, cleaning, and repairs.

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 amended as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

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

Authority: 12 U.S.C. 1701 *et seq.*; 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 acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or acquired by HUD under section 312 of the Housing Act of 1964. 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 funds.

(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 term *Secretary* is defined in 24 CFR part 5.

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

Competitive sale of individual property 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 means the Department of Housing and Urban Development or its contractor, as appropriate.

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.

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).

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.

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 without insured mortgages 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 meets the Minimum Property Standards (MPS), as determined by the Secretary, 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 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 in "as-is" condition 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.

(3) *Purchase money mortgage (PMM).* For purposes of this section, the term "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.

(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) *Listings.* 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.

(1) *Open listings.* Except as provided in paragraph (h)(2) of this section, properties are sold on an open listing basis with participating real estate brokers.

(2) *Asset management and listing contracts.* (i) A local HUD 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.

(ii) 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 in this process 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 insured mortgages, 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 insured mortgages, priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

(b) *Net offer.* (1) The net offer is calculated by subtracting from the bid price the dollar amounts for the financing and loan closing costs and the broker's sales commission, as described in paragraph (b)(2) of this section.

(2) 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 total 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.

(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.* (1) HUD will establish a bid period for properties available for sale. Generally, the bid period will be 10 days, but may be lengthened or shortened by HUD. After properties are initially advertised, bids may be submitted by all potential purchasers. However, in the case of properties offered with insured mortgages, HUD may give priority to owner-occupant purchasers for a period of up to 30-days, as described in paragraph (a)(2) of this section.

(2) HUD may treat all bids received during a specified period of time during the bid period to have been received simultaneously. HUD may also choose to review bids on a daily basis, with all bids submitted during each day considered to have been received simultaneously. HUD may use either (or both) of these methods during the bid period, as described in the bid materials accompanying a particular sale.

(3) Offers received on a property before the bid period begins will be returned. Offers received after the bid 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 bid period (see paragraph (f) of this section).

(e) *Full price offers.* HUD local offices that operate under a "full price offer" program open offers at specified times during the bid 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 bid period cancelled.

(f) *Extended listing period.* Properties not sold during the bid period 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 45 days after being offered for competitive bidding will be reanalyzed and made available for sale. If a property's price or terms are changed, it may be subject to another competitive bid period as described in paragraph (d) of this section.

(g) *Bid requirements.* (1) All successful bids submitted, whether during the bid period or the extended listing period, must be in a form prescribed by HUD, and must be submitted in accordance with procedures established by HUD. If the purchase is to be an insured sale, a local HUD office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid. All bids not indicating that the purchaser will occupy the property will be considered as offers from investor purchasers.

(2) 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 local HUD 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 local HUD 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 bid 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) *Identical bids.* In the case of identical bids submitted by an owner-occupant purchaser and an investor purchaser, HUD will select the bid submitted by the owner-occupant purchaser. If identical bids are submitted by two or more owner-occupant purchasers, or by two or more investor purchasers, award will be determined by drawing lots.

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

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

(2) Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Information regarding losing bids will also be made available either through electronic posting or by contacting the local HUD office. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract, signed by both the submitting real estate broker and the prospective purchaser, and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(l) *Counteroffers.* If all bids received on a property are unacceptable, a local HUD 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 local HUD 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.

§ 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 without insured mortgages 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 properties directly from HUD 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 without insured mortgages 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. All bids received on the same business day will be considered to have been received simultaneously. In the case of identical bids submitted on the same business day, award will be determined by drawing lots.

(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). HUD will provide a consideration and inspection period for these purchasers. The consideration and inspection period will usually be for ten days from the date of notification of interest, but may be lengthened or shortened by HUD, as appropriate. Those properties in which purchasers express an interest will be held off the market for the duration of the 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 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 consideration and inspection 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 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 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.

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

Dated: February 3, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99-3046 Filed 2-8-99; 8:45 am]

BILLING CODE 4210-27-P