

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR-3814-F-04]

RIN 2502-AG42

Sale of HUD-Held Single Family Mortgages; Final Rule

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

ACTION: Final rule.

SUMMARY: This document represents the final rulemaking for an interim rule that HUD published in the Federal Register on August 31, 1995 regarding the sale of HUD-held single family mortgage loans. This rule adopts the interim rule as final, and makes certain changes to the rule's provisions.

EFFECTIVE DATE: March 25, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Office of Housing, Room 9178, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1672. (This telephone number is not toll-free.) Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

HUD established its policies and procedures for the sale of HUD-held single family mortgage loans through an interim rule published in the Federal Register on August 31, 1995 (60 FR 45331), and corrected on October 6, 1995 (60 FR 52296).¹ As described in the preamble to the August 31, 1995 interim rule, HUD is conducting a program of regular sales of all HUD-owned single family mortgage loans in order to decrease HUD's inventory of assigned mortgage loans and to reduce further losses to the Federal Housing Administration (FHA) mortgage insurance funds. The sale of both single family and multifamily mortgage loans is a key component of President Clinton's initiative to reinvent HUD.

In the August 31, 1995 interim rule, HUD invited the public to comment on these policies and procedures. HUD has not, however, received any comments on the interim rule.

Success of the Sales Program

In conducting the single family mortgage loan sale program, HUD is promoting the National Housing Goals established in section 2 of the Housing Act of 1949 (42 U.S.C. 1441) by helping to provide a "decent home and a suitable living environment for every American family." One of the policies behind the National Housing Goals is that private enterprise must be encouraged to serve the nation's housing needs. HUD has determined that transferring servicing functions to private entities greatly improves the servicing of these mortgages. In addition, HUD has emphasized the protection of the mortgagors' rights to foreclosure avoidance relief, both in the regulations and the Loan Sale Agreement.

HUD's first three sales under the single family mortgage loan sale program were very successful. In the first sale, conducted on October 25, 1995, HUD sold 9,870 single family mortgage loans in an auction, and an additional 3,111 loans in a competitive re-offering held a week later. These loans carried an aggregate unpaid principal balance (UPB) of approximately \$522 million, and the winning bids averaged 75 percent of the mortgage loans' UPB and generated approximately \$8.3 million in Federal budget savings.

In the second sale, conducted on March 20, 1996, HUD auctioned 16,231 single family mortgage loans, carrying a UPB of approximately \$743 million. The winning bid was 83.57 percent of UPB. This sale generated \$140 million in budget savings, according to the calculations of the Office of Management and Budget (OMB).

In the third sale, conducted on September 4, 1996, HUD auctioned 16,996 single family mortgage loans, carrying a UPB of approximately \$804.5 million. The winning bid averaged 90.759 percent of UPB. The third sale generated approximately \$164 million in budget savings.

Changes in this Final Rule

Due to the successful results of HUD's first three sales of single family mortgage loans, and to the fact that HUD has received no public comments on the August 31, 1995 interim rule (60 FR 45331), this final rule contains only the following changes to the interim rule:

1. The final rule deletes § 291.300, which provided that the provisions of the interim rule would be effective until September 30, 1996, unless HUD adopted the interim provisions as final (with or without changes) or published

a notice in the Federal Register extending the effectiveness. With the publication of this final rule, which adopts the interim provisions as final with changes, § 291.300 is obsolete.

2. The final rule includes in § 291.301 a definition of "*Bid package*," which did not appear in the interim rule. HUD determined that including this definition, which describes the contents of the bid package, will make the regulations clearer.

This final rule also includes in § 291.301 a new definition of "*Payment plan agreement*." For the purposes of certain assigned mortgage loans, this term represents a forbearance agreement between the purchaser and the mortgagor for payments after the expiration of an initial 36-month forbearance period. Paragraph 11 of this preamble, below, further describes the use of this term.

3. The final rule provides parenthetical information regarding mortgage loans assigned to HUD under section 230(b) of the National Housing Act. Since the publication of the August 31, 1995 interim rule, the Balanced Budget Downpayment Act, I (Pub. L. 104-99; approved January 26, 1996) replaced the language of section 230 of the National Housing Act. Section 230(b) of the National Housing Act had previously authorized the Secretary to take assignment of a defaulted mortgage loan and provide assistance to the defaulted borrower. The new language in section 230 authorizes the Secretary to pay partial claims and to facilitate mortgage modifications by taking assignment of performing mortgage loans after they have been modified to cure the default. Congress provided that the "old" section 230(b) assignment program requirements (those that appeared in section 230(b) prior to the January 26, 1996 amendment) would continue to govern with regard to mortgage loans for which the borrower applied for assignment prior to April 26, 1996 (the date of enactment of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134; approved April 26, 1996)). While the Secretary can no longer accept assignments of mortgage loans under the old section 230(b) assignment program (unless the application for assignment was made before April 26, 1996), HUD still has such mortgage loans in its inventory that it wishes to sell. Therefore, this final rule adds parenthetical information throughout the rule to clarify that HUD is referring to the old section 230(b) assignment program, and to mortgage loans assigned under that program, in these mortgage sale regulations, rather than to the

¹ HUD extended the effectiveness of the interim rule through a notice published in the Federal Register on August 27, 1996 (61 FR 43966). That notice provided that the provisions of the interim rule will be effective until the final rule is published and becomes effective.

newly enacted section 230 modification and assignment process enacted January 26, 1996 (see, e.g., the definition of "Single family mortgage loan" in § 291.301).

HUD may also decide to sell the mortgage loans that it acquires in the future through the newly enacted section 230 modification and assignment process. HUD has determined that the provisions of this final rule would accommodate this decision, since the definition of "Single family mortgage loan" in § 291.301 would include such mortgage loans.

4. This final rule uses the term "Loan Sale Agreement" throughout, rather than the term "Mortgage Loan Sale Agreement." "Loan Sale Agreement" is the term actually used in the agreement between HUD and the purchaser. This final rule simply conforms the regulations to the correct terminology.

5. This final rule provides that individuals or entities that are suspended from doing business with HUD, in addition to those that are debarred, will not be eligible to bid in a sale under this sales program. As provided in the August 31, 1995 interim rule (60 FR 45331), HUD initially determined that an individual or entity would be ineligible to bid if they were on HUD's most recent "Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees," if they were on probation or under a limited denial of participation, or if they were subject to a withdrawal of approval or other sanctions. While HUD amended the interim rule on October 6, 1995 (60 FR 52296) to exclude only those individuals or entities that had been debarred, HUD has determined through its experience in the initial sales that it is also necessary to exclude individuals and entities that have been suspended. Since HUD protects the interests of homeowners with mortgages that it previously insured, owned, and serviced, HUD will ensure that bidders are not otherwise suspended from doing business with the agency.

6. This final rule simplifies § 291.304(d)(1)(i) of the interim rule (§ 291.304(f)(1) of this final rule) regarding the circumstances under which HUD can reject a bid. Section 291.304(a) of both the interim rule and this final rule requires that all bids must be submitted in accordance with the bid package instructions. However, the interim rule mentioned in § 291.304(d)(1)(i) one circumstance under which a bidder would not be in compliance with the instructions—if the bidder changes the documents prescribed in the bid package. This final rule amends that provision simply to

track the clearer language in § 291.304(a).

7. This final rule reorganizes the provisions in § 291.306 of the interim rule. That section of the interim rule, with the heading "Closing requirements," described the requirements for earnest money deposits, the execution of the Loan Sale Agreement, and HUD's withdrawal of loans from a bidding pool. However, earnest money deposits are submitted during the bidding process, rather than the closing process. Similarly, the bidder submits an executed copy of the Loan Sale Agreement with its bid; HUD then executes the Loan Sale Agreement when it accepts the successful bid. Therefore, this rule will move these requirements to §§ 291.304 and 291.305, and will provide appropriate information regarding the closing process in § 291.306.

8. This final rule clarifies § 291.307(a) by providing that all mortgage loans purchased through the mortgage loan sale program must be serviced by a mortgagee that has servicing approval by HUD. Although the Loan Sale Agreement already contains this specification, HUD has determined that including it in the regulations will avoid confusion.

9. This final rule clarifies § 291.307(b) of the interim rule regarding the continuation of the mortgagor's rights, in order to avoid any confusion about the purchaser's right to foreclose. The interim rule provided that the purchaser and servicer will be fully bound by the Loan Sale Agreement, including any mortgagor rights to forbearance. However, this final rule will clarify that the purchaser and the servicer must service these loans in accordance with the servicing requirements in the Loan Sale Agreement in order to preserve the mortgagors' rights under the assignment program, and must ensure that these requirements have been followed prior to initiating foreclosure.

10. This final rule streamlines § 291.307(c)(1) regarding the servicing requirements for assigned mortgage loans within the initial 36-month forbearance period. This final rule provides generally that the purchaser must service these mortgage loans in essentially the same manner as HUD serviced the loans while HUD held them. Specific servicing requirements will be set forth in the Loan Sale Agreement for each sale.

The purpose of the assignment program is to enable the homeowner to avoid foreclosure and retain ownership of the property. Therefore, the assignment program provides certain rights to the mortgagor regarding such

forms of relief as forbearance. Even if HUD sells the mortgage loans, HUD and the purchaser must guarantee that the mortgagors' rights under the assignment program will be protected during the first 36 months of assignment. While the regulations must therefore provide the purchaser's general responsibility in servicing these mortgage loans, it is unnecessary to specify all aspects of HUD's servicing policies in the regulations. Specific servicing requirements are set forth in the Loan Sale Agreement, which will primarily reflect the provisions of HUD Handbook 4330.2 REV-1, Mortgage Assignment Processing and Secretary-Held Servicing (March 1991).

11. This final rule clarifies § 291.307(c)(2) regarding the servicing requirements for assigned mortgage loans after the expiration of the 36-month forbearance period. First, this final rule uses the term "Payment plan agreement" (in §§ 291.301 and 291.307(c)(2)) to represent a forbearance agreement between the purchaser and the mortgagor for payments after the expiration of the initial 36-month forbearance period. The interim rule used the terms "new forbearance agreement" and "outstanding forbearance agreement," which could be confused with the initial forbearance agreement in effect during the 36-month period after assignment. This clarifying change should help avoid confusion.

Second, this final rule clarifies that the purchaser must renew payment plan agreements upon their expiration at least through and including the expiration of the original term of the mortgage loan, so long as the mortgagor has complied with the prior agreement. Furthermore, a purchaser may only foreclose if a mortgagor defaults in making payments required under the most recent payment plan agreement and cannot or will not reinstate. This requirement has been in the Loan Sale Agreement. HUD has decided to include the provision in the final rule, as well, in order to clarify and emphasize the requirement.

Third, this final rule removes a sentence from § 291.307(c)(2) that is redundant and potentially confusing. This rule removes the sentence providing that a purchaser may take any lawful action to ensure that arrearages do not continue to increase. HUD has determined that § 291.307(c)(2) of this final rule accurately and clearly presents the servicing requirements without this sentence.

12. This final rule revises § 291.307(c)(3) of the interim rule regarding the servicing requirements for mortgages assigned to HUD under

section 221(g)(4) of the National Housing Act. Section 291.307(c)(3) of the interim rule provided that a purchaser of such mortgages must provide a defaulting mortgagor "foreclosure avoidance relief that is substantially equivalent to that which the mortgagor could have otherwise sought under section 230 of the National Housing Act" (60 FR 45334). While HUD was under no legal obligation to provide such relief, due to administrative and recordkeeping concerns, HUD at its discretion provided foreclosure avoidance relief analogous to section 230 for loans assigned to HUD under 221(g)(4). However, with the recent amendment to section 230 of the National Housing Act (described above in paragraph 3 of this preamble), the foreclosure avoidance relief under the old section 230 assignment program is no longer available. Therefore, HUD will not require purchasers to provide forbearance for 221(g)(4) mortgage loans that are current, and this final rule removes that obsolete reference. This final rule also removes a similar reference in § 291.307(b).

Section 291.307(c)(3) of this final rule will provide, however, that 221(g)(4) mortgage loans that are not current are subject to forbearance agreements and the servicing requirements in § 291.307(c)(1) and (c)(2).

13. This final rule removes § 291.307(c)(4) of the interim rule regarding purchase money mortgages (PMMs) that were not part of the settlements resulting from the *Ferrell* litigation actions.² As a result of the *Ferrell* litigation, HUD agreed to provide certain foreclosure avoidance relief to mortgagors with FHA insured mortgages. Section 291.307(c)(4) of the interim rule provided only that a purchaser of non-*Ferrell* PMMs does not have to provide relief under section 230 of the National Housing Act. This paragraph is unnecessary, since it does not contain any regulatory requirements.

14. For mortgages subsidized under section 235 of the National Housing Act, this final rule clarifies the status of assistance payment contracts. Furthermore, this final rule provides the Secretary with essential flexibility when reducing the interest rates on the loans. As described in the interim rule, when HUD sells these loans, the assistance payments contracts will terminate. To

minimize the effect of this termination on the mortgagors, this final rule removes the complex formula provided in § 291.307(d) of the interim rule, and it allows the Secretary to reduce the interest rate to that which will adequately compensate the mortgagors for the termination of assistance.

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. Any changes made to this rule as a result of that review are clearly identified in the docket file. The docket file and the Economic Analysis prepared for this rule are available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Environmental Impact

The policies and procedures contained in this rule do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy, within the meaning of 24 CFR 50.19(c)(1). Therefore they are categorically excluded from the requirements of the National Environmental Policy Act.

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 will 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. Specifically, the requirements of this rule relate to the sale of certain HUD assets, and do not impinge upon the relationship between the Federal Government and State and local governments. As a result, this rule is not subject to review under the order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive

Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. This rule will protect mortgagors' rights relative to forbearance, assistance, or reinstatement. Since this rule will not significantly change the rights of mortgagors or their families, no further review under the order is necessary.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in doing so certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule contains only the minimum requirements necessary to operate the single family mortgage loan sale program, and it will not affect the ability of small entities, relative to larger entities, to bid for and acquire HUD-held mortgages.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4; approved March 22, 1995), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on 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.

Congressional Review of Major Final Rules

This rule is a "major rule" as defined in the Administrative Procedure Act (5 U.S.C. 804(2)).

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, subpart D is amended as follows:

a. The interim rule published August 31, 1995 (60 FR 45331); corrected on October 6, 1995 (60 FR 52296); and extended on August 27, 1996 (61 FR 43966), is adopted as final; and

b. Is further amended as follows:

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

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

²The history of the *Ferrell* litigation is described in *Brown v. Lynn*, 385 F. Supp. 986 (N.D. Ill., 1974). The litigation resulted in a 1976 stipulation and consent decree, *Ferrell v. Hills*, (N.D. Ill., E.D., July 29, 1976), which was then replaced by the Amended Stipulation in August 1979.

2. Subpart D is revised to read as follows:

Subpart D—Sale of HUD-Held Single Family Mortgage Loans

Sec.

- 291.301 Definitions.
- 291.302 Purpose and general policy.
- 291.303 Eligible bidders.
- 291.304 Bidding process.
- 291.305 Selection of bids and execution of Loan Sale Agreement.
- 291.306 Closing requirements.
- 291.307 Servicing requirements.

Subpart D—Sale of HUD-Held Single Family Mortgage Loans

§ 291.301 Definitions.

For purposes of this subpart, the following definitions apply:

Bid package means the documents prepared for bidders in a mortgage loan sale, and includes the following: An Executive Summary containing information on FHA single family mortgage loan sales and background on HUD programs; a description of post-sale servicing requirements; due diligence information and reports; mortgage loan information; a copy of the Loan Sale Agreement and its exhibits; bidding and closing information; and such other information and requirements as the Secretary may determine necessary.

Payment plan agreement, for purposes of § 291.307(c)(2), means an agreement between the purchaser and the mortgagor for payments after the 36-month period of statutorily authorized forbearance relief has expired.

Single family mortgage loan means a mortgage loan on a single family property assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996) (12 U.S.C. 1715u), a mortgage loan on a single family property insured by HUD under section 221 of the National Housing Act (12 U.S.C. 1715l), a mortgage loan on a single family property issued in connection with the settlement of the *Ferrell* litigation, a purchase money mortgage loan issued by HUD on a single family property sold from HUD's inventory that was not connected with the settlement of the *Ferrell* litigation, or any other single family mortgage loan owned by HUD and representing an asset to HUD's Title II mortgage insurance funds.

Single family property means a residence with one to four dwelling units.

§ 291.302 Purpose and general policy.

This subpart sets forth HUD's policy and procedures for the sale of HUD-held single family mortgage loans. In general, HUD will sell both performing and

nonperforming HUD-held single family mortgage loans. HUD will sell all mortgage loans without recourse and without FHA insurance. HUD will package pools of single family mortgage loans for sale to the general public on a competitive basis; however, HUD may sell mortgage loans to government-sponsored enterprises (GSEs) on a negotiated basis. Nothing in this subpart shall be construed to prevent HUD from packaging single family mortgage loans with other types of HUD assets for sale. The Secretary retains full discretion to offer any qualifying pool of mortgage loans for sale and to withhold or withdraw any offered pool of mortgage loans from sale. However, when HUD offers a qualifying mortgage loan for sale, the procedures set out in this subpart and in the bid package will govern the sale of HUD-held single family mortgage loans.

§ 291.303 Eligible bidders.

HUD will provide information on the eligibility of bidders in the bid package, a notice in the Federal Register, or other means, at the Secretary's full discretion. However, an individual, partnership, corporation, or other legal entity will not be eligible to bid for any loan pool, either as an individual or a participant, if at the time of the sale, that individual or entity is debarred or suspended from doing business with HUD under 24 CFR part 24.

§ 291.304 Bidding process.

(a) *Submission of bids.* All bids must be submitted to HUD in accordance with instructions in the bid package for a particular sale.

(b) *Effect of bid.* By submitting a bid, the bidder is making an offer to purchase single family mortgage loans as presented in the bid package. Submission of a bid constitutes acceptance of the terms and conditions set forth in the bid package. Along with the bid, the bidder must submit an executed copy of the Loan Sale Agreement, which is included in the bid package.

(c) *Earnest money deposits.* The bidder must submit to HUD, along with its bid, an earnest money deposit in an amount to be determined by HUD. The earnest money deposit is nonrefundable to the winning bidder and will be credited toward the purchase price.

(d) *Termination of offering.* HUD reserves the right to terminate an offering in whole or in part at any time before the bid date.

(e) *Withdrawal of loans.* HUD reserves the right, in its sole discretion and for any reason whatsoever, to withdraw loan assets from a pool prior to the bid

date. Any earnest money deposits relating to withdrawn loan assets will be retained by HUD and credited toward the total purchase price of the remaining loan assets in the pool, in accordance with the Loan Sale Agreement. After the bid date, HUD can withdraw mortgage loans in accordance with the Loan Sale Agreement.

(f) *Rejection of bids.* (1) HUD may, in its sole discretion, reject any bid under the following circumstances:

(i) If the bid does not conform with the instructions in the bid package; or

(ii) If, in HUD's sole discretion, it determines that such action would be in the best interests of the U.S. Government.

(2) HUD can also issue a conditional rejection that will become an acceptance upon fulfillment of HUD's requests.

(g) *Withdrawal of bids.* A bidder may withdraw a previously submitted bid in accordance with the instructions in the bid package for a particular sale.

(h) *Bids by brokers or agents.* Any bid by a broker or agent for a principal must be in the name of the principal and signed by the broker/agent as the attorney-in-fact for the principal. All such bid documents must be executed so as to bind the principal by the broker/agent as the attorney-in-fact. A power of attorney satisfactory to HUD as to form and content must be submitted with each bid.

§ 291.305 Selection of bids and execution of Loan Sale Agreement.

HUD will evaluate bids, select successful bids, and notify the successful bidder in a manner set forth in the bid package. HUD will complete the execution of the Loan Sale Agreement when it accepts the successful bid.

§ 291.306 Closing requirements.

(a) *Closing date payment.* On the closing date, the purchaser must pay to HUD the closing date payment, consisting of the balance of the amount due on the bid price, as adjusted in accordance with the Loan Sale Agreement.

(b) *Closing documents.* HUD will execute and deliver to the purchaser a bill of sale transferring title to the mortgage loans sold in the sale. The purchaser must deliver to HUD the documents required at closing, in addition to the closing date payment.

§ 291.307 Servicing requirements.

(a) *Use of HUD-approved servicing mortgagees.* All mortgage loans must be serviced by HUD-approved servicing mortgagees for the remaining life of the mortgage loans. A purchaser that is not

a HUD-approved servicing mortgagee must retain a HUD-approved servicing mortgagee to service the mortgage loans.

(b) *Continuation of mortgagor rights.* The purchaser may take all lawful steps to collect the amounts due under the mortgage loans. These steps may include foreclosure, but only after the servicer has provided all required forms of relief for the mortgagor in accordance with paragraph (c) of this section. The purchaser and its servicer, and any subsequent transferee of or servicer for the mortgage loan, will be fully bound by the terms of the Loan Sale Agreement, including those terms that provide the mortgagor with any rights regarding forbearance, assistance, or reinstatement of the mortgage loan.

(c) *Purchaser's protection of mortgagor's rights.* (1) *Assigned mortgage loans during forbearance period.* This paragraph (c)(1) explains how a purchaser (or a servicer of a purchased mortgage loan) must service a mortgage loan that was assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996), for which not more than 36 months has expired since the mortgage loan assignment was accepted by the Secretary. Such a purchaser must service these mortgage loans in essentially the same manner as HUD was required to service the loans while HUD held them. Specific servicing requirements will be set forth in the Loan Sale Agreement for each sale.

(2) *Assigned mortgage loans after the initial 36-month forbearance period.* This paragraph (c)(2) explains how a purchaser (or a servicer of a purchased mortgage loan) must service a mortgage loan that was assigned to HUD under section 230(b) of the National Housing

Act (as that subsection existed prior to January 26, 1996), for which more than 36 months has expired since the mortgage loan assignment was accepted by the Secretary.

(i) Such purchaser may require the mortgagor to pay at least the full monthly payment due under the mortgage loan. A purchaser may also require a mortgagor to pay increased monthly mortgage loan payments under a renewed payment plan agreement to reduce the amount in arrears if the mortgagor's available income (as calculated according to the Loan Sale Agreement) can support the increased payments. A purchaser must renew payment plan agreements at least through and including the expiration of the original term of the mortgage loan, so long as the mortgagor complies with the prior payment plan agreement.

(ii) If the mortgagor defaults under a payment plan agreement established by the purchaser, the mortgagor shall have the right to reinstate the most recent payment plan agreement if the mortgagor makes a lump sum payment in an amount necessary to cure the default. If the mortgagor defaults under the most recent payment plan agreement and does not reinstate, the purchaser may terminate the payment plan agreement and take such action as may be permitted under the terms of the mortgage.

(iii) The purchaser's right to demand payment of a reinstatement amount from the mortgagor may be limited by the terms of the Loan Sale Agreement.

(3) *Section 221 Mortgages.* This paragraph (c)(3) explains how a purchaser (or a servicer of a purchased mortgage) must service a mortgage assigned to HUD under section 221(g)(4) of the National Housing Act.

(i) *Current section 221(g)(4) mortgage loans.* Section 221(g)(4) mortgage loans that are current as of the closing date are not subject to the servicing requirements set forth in paragraphs (c)(1) and (c)(2) of this section.

(ii) *Defaulted section 221(g)(4) mortgage loans.* With respect to any section 221(g)(4) mortgage loan as to which a payment default has occurred, and as to which HUD, as of the closing date, was providing or had agreed to provide forbearance relief, the purchaser must continue to provide forbearance relief and must service such mortgage loans as set forth in paragraphs (c)(1) and (c)(2) of this section.

(d) *Section 235 mortgage loans—(1) Assistance payments contract.* If, prior to the mortgage loan sale, the assistance payments contract has not been previously terminated under 24 CFR 235.375(a), the contract will terminate as to each mortgage loan upon the sale of the mortgage loan. The purchasing mortgagee will therefore not receive any assistance payments on behalf of the mortgagor for any Section 235 mortgage loan sold.

(2) *Reduction in interest rates.* For a Section 235 mortgage loan that was accompanied by an assistance payments contract that was still in effect on the date of the sale, the Secretary will reduce the interest rate on the mortgage loan to a rate to be determined by the Secretary.

Dated: December 17, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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