



## 24 CFR Parts 203, 206, and 291

[Docket No. FR-6051-P-02]

### Federal Housing Administration (FHA): Single Family Sale Program

**AGENCY:** Office of the Assistant Secretary for Housing – Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

**ACTION:** Proposed rule.

**SUMMARY:** In a Single Family Sale (the “Program”), eligible single family mortgage loans insured by the Federal Housing Administration (FHA) are assigned to the Secretary of the Department of Housing and Urban Development (HUD) in exchange for claim payments, and mortgage notes are then sold, without FHA insurance, to qualified purchasers in a manner that seeks to maximize recoveries and strengthen HUD’s Mutual Mortgage Insurance Fund (MMIF), and to achieve HUD’s operational goals for the MMIF. The Program has operated as a demonstration since 2002. This proposed rule would transition the Program from a demonstration to a permanent Program by revising HUD’s Single Family Mortgage Insurance, Home Equity Conversion Mortgages, and Disposition of HUD-Acquired and -Owned Single Family Property regulations to provide for the sale of HUD-held single family forward mortgages and Home Equity Conversion Mortgages (HECMs), through Competitive Sale of Single Family Loans and Direct Sale of Single Family Loans. This proposed rule would also remove existing regulations on Disposition of HUD-Acquired and -Owned Single Family Property regulations which provided for a retired program that handled the sale of HUD-held single family mortgage loans.

**DATES:** *Comment due date:* [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit comments regarding this document. Comments should refer to the above docket number and title. There are two methods for

submitting comment.

**1. Submission of comments by mail:** Comments may be submitted by mail to the HUD Regulations Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-8000; telephone: (202) 708-2625 (this is not a toll-free number) or toll free (800) 481-9895. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

**2. Electronic submission of comments:** Comments may be submitted electronically through the Federal e-Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make the comments immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on this site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of this document.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

**3. Public inspection of public comments:** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at (202) 402-5731 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of

hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** John Lucey, Director, FHA Office of Asset Sales, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-8000; telephone: (202) 708-2625 (this is not a toll-free number), or toll-free: (800) 481-9895. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as from individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under section 204 of the National Housing Act,<sup>1</sup> HUD has general authority to pay insurance claims and dispose of mortgages and properties acquired under the FHA single family mortgage insurance programs. Section 204(g) specifically grants HUD broad discretion to implement a range of disposition alternatives. The National Housing Act also requires HUD ensure the mutual mortgage insurance fund (MMIF) remains financially sound. HUD must effectively manage HUD's defaulted assets and minimize losses to the MMIF to carry out its fiduciary responsibility to ensure the financial soundness of the MMIF.

Since 2002, HUD has operated a demonstration program<sup>2</sup> to implement its broad disposition authority with respect to mortgages and properties acquired under the FHA single family mortgage insurance programs. By notice published in the *Federal Register* on February

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<sup>1</sup> See 12 U.S.C. 1710 (2010), as amended by section 601 of the Fiscal Year 1999 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 105-276, approved October 21, 1998) ("FY 1999 Appropriations Act").

<sup>2</sup> HUD has used various names to refer to the demonstration program, including the Accelerated Claim and Asset Disposition (ACD) Demonstration, the Single Family Loan Sales ("SFLS") Program, and the Distressed Asset Stabilization Program ("DASP").

5, 2002, HUD announced the establishment of the Accelerated Claim and Asset Disposition (ACD) Demonstration to “address any programmatic concerns” and “assess its success and determine whether to implement the ACD process on a permanent basis, throughout the country.”<sup>3</sup> On October 29, 2002, HUD responded to public comments and conducted its first sale of defaulted mortgages through the ACD Demonstration.<sup>4</sup> HUD has continuously operated the ACD demonstration for the purpose of paying insurance claims and disposing of mortgages and related properties acquired under the FHA single family mortgage insurance programs.

Absent the Program, if a borrower is unable to resume their mortgage payments after loss mitigation, the mortgagee in most cases would be required to foreclose the defaulted loan to perfect an insurance claim. If the property cannot be sold to a third party at foreclosure or a second-chance auction, the mortgagee may file a conveyance claim, which gives the property to HUD in exchange for receiving the FHA mortgage insurance claim payment. Prior to filing the conveyance claim, the mortgagee will incur legal and holding costs for which the mortgagee may seek reimbursement from HUD through claim payment. A property conveyed to HUD increases HUD’s Real Estate Owned (REO) inventory, posing an additional financial burden on the MMIF for asset management costs. As an alternative to filing a conveyance claim, for a forward loan that has been foreclosed, HUD will pay a claim without conveyance of title claim from the MMIF to the mortgagee if the borrower defaults and the mortgagee loses money after selling the house in a foreclosure or post-foreclosure sale. Disposing of delinquent forward mortgage loans shortens the period between default and claim payment, reducing the financial exposure to these insurance funds for costs incurred after default.

For a HECM that has been foreclosed, the mortgagee cannot file a conveyance claim but can sell the foreclosed property to a third party and receive claim payment if the mortgagee is owed more than it receives from such sale. For HECMs endorsed before 2009, HUD pays

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<sup>3</sup> See *Notice of FHA Accelerated Claim Disposition Demonstration*, 67 FR 5418 (February 5, 2002).

<sup>4</sup> See *Notice of FHA Accelerated Claim Disposition Demonstration*, 67 FR 66038 (October 29, 2002).

claims from the General Insurance (GI) Fund. For HECMs endorsed in 2009 or after, HUD pays claims from the MMIF.

HUD's sale of defaulted loans is generally intended to yield a recovery to the MMIF that meets or exceeds the recovery obtained as a result of a foreclosure-based claim.

When a borrower passes away after assignment of a HECM, HUD incurs costs associated with real property when it is vacant or abandoned. HUD's servicing tenure and attempts to foreclose can be delayed by title or jurisdictional issues and backlogs resulting from high volume. These issues result in higher servicing costs along with additional inspection and property preservation costs while the HECMs remain in HUD's portfolio. After foreclosure, HECMs that converted to REO are added to HUD's inventories, increasing asset management costs to protect and dispose of the properties. Disposition of eligible assigned HECMs, such as HECMs secured by vacant and abandoned properties, can result in significant cost savings to the MMIF and GI Fund, as applicable, and enable better and more timely resolution of these assets.

On June 5, 2006, HUD issued an advance notice of proposed rulemaking ("ANPR") soliciting public comment on HUD's ACD program.<sup>5</sup> The ANPR solicited public comments to make "possible improvements to the program," including the most efficient way to "maximize the return to the FHA insurance fund" by "minimiz[ing] the time an asset is held."<sup>6</sup>

On April 30, 2007, HUD published a regulatory agenda providing public notice that FHA had withdrawn the ANPR effective March 1, 2007.<sup>7</sup> After this action, HUD adopted additional modifications to the demonstration, including changing the disposition method from joint venture to whole loan sales.

## **II. Advance Notice of Proposed Rulemaking (ANPR)**

On May 6, 2019, HUD published another ANPR for the Single Family Loan Sale

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<sup>5</sup> See *Accelerated Claim and Asset Disposition (ACD) Program; Advanced Notice of Proposed Rulemaking*, 71 FR 32392 (June 5, 2006).

<sup>6</sup> *Id.*

<sup>7</sup> See *HUD Semiannual Regulatory Agenda*, 72 FR 22694 (April 30, 2007).

Program.<sup>8</sup> The ANPR presented questions to commenters on asset eligibility, the assignment claims process, loan delivery, sale structure, purchaser requirements, and enforcement mechanisms. Commenters provided responses addressing the Program's positive and negative effect on the community; obstacles during post-sale servicing; the loan pooling and scoring process; and participating servicer agreements.

Commenters expressed different perspectives on whether the current program benefits the community. Commenters stated the loan sale program stabilizes communities and provides borrowers, for whom all FHA-prescribed loss mitigation efforts have failed, a second chance to save their homes and avoid foreclosure, while producing a better financial outcome for taxpayers. Other commenters stated the current program inadequately protects homeowners, damages communities, and creates neighborhood instability. Many commenters stated the program increases single family rental housing and decreases homeownership because it primarily facilitates sales to single family rental property owners. Commenters noted these purchasers include private equity funds, real estate investment trusts (REITs), and other large investors, which can cause neighborhood instability. Commenters also referenced allegations the program has a disparate impact on communities of color. To remedy the adverse effects of the current program, commenters suggested HUD strike an appropriate balance between protecting the MMIF, the interests of communities, and the need to ensure fair treatment of borrowers.

Commenters also identified additional obstacles of the Single Family Loan Sale Program that limit participation in the program and the sale of loans. These obstacles included irregularly scheduled sales with short response timeframes, which leads to administrative and cost burdens as well as difficulty pursuing foreclosure or helping borrowers with loss mitigation efforts. Other commenters stated HUD's program requires participating servicers to spend significant

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<sup>8</sup> See *Federal Housing Administration (FHA): Single Family Loan Sale Program; Advance Notice of Proposed Rulemaking and Request for Public Comment*, 84 FR 19784 (May 6, 2019).

resources in lengthy and expensive conflict resolution over contractual representations and warranties. Commenters argued FHA should apply outcome requirements to all loan sale pools, not just Neighborhood Stabilization Outcome (NSO) pools. Commenters also stated the post-sale servicing failed to require a reasonable modification program for borrowers whose loans have been sold, and HUD has not required loan sale purchasers to consider specific options for borrowers in default.

Many commenters offered suggestions on how HUD should structure loan pooling. Commenters recommended HUD set aside pools of loan sales for nonprofits as well as arrange loan sales in small, manageable numbers in limited geographic areas. Commenters also discussed nonprofit and for-profit partnerships, both encouraging these arrangements but also noting the importance of clearly defining the roles and decision-making authority of each partner. Other commenters preferred larger pool sizes to minimize the negative impact of fixed transaction costs on bids. Commenters also recommended a “last look” option for nonprofit corporations that compete at the national level to match the highest bidder purchase offer. Similarly, commenters stated HUD should establish and publish limits on the disposition of properties acquired through the program to other entities besides owner-occupants, nonprofit community organizations, purchasers who will commit to providing affordable rentals, or land banks.

Commenters also offered suggestions to improve the Participating Servicer Agreement (PSA) to include: clearly defining the requirements and timeframes, such as a clear deadline for the delivery of collateral files to the purchaser and the endorsed Note; providing a deadline for the submission of trailing expenses by the prior servicer for reimbursement; providing transfer instructions with time limitations for submitting documentation; and clarifying violations that would trigger repurchase or re-conveyance. Commenters also recommended the PSA provide updated documentation for the interim servicing period to include servicing notes and loss mitigation actions since the date of transfer. Commenters stated the PSA should establish a

servicing fee for awarded loans based on current market costs for the interim servicing period.

For additional information, all public comments can be viewed at [www.regulations.gov](http://www.regulations.gov), under docket number HUD-2019-0039. (See <https://www.regulations.gov/docket/HUD-2019-0039>)

### **III. Proposed Rule Changes**

This proposed rule seeks to combine what HUD has previously called the Single Family Loan Sale Program for forward loans (SFLS) and the HUD-held Vacant Loan Sales Program for HECMs (HVLS) into one permanent program that will be referred to as the Single Family Sale Program (the “Program”). The proposed rule would combine SFLS and HVLS into the Program, although HUD anticipates it will continue to sell forward loans and reverse loans in distinct pools or sales. The proposed rule would also give FHA flexibility to maximize returns to the MMIF in cases when a loan sale would help minimize losses from the disposition of each asset. The proposed rule also seeks to provide flexibility for the management of defaulted loans and more efficiently accept assignment and dispose of assigned mortgages through loan sales. The proposed rule would specify certain claim requirements related to loss mitigation loan eligibility for a Single Family Sale and provide for HUD to withdraw or require repurchase of a Single Family Loan that does not satisfy those requirements. The proposed rule would require Participating Servicers comply with any loan sale notification requirement to borrowers (Loan Sale Notification) as prescribed by the Secretary through notice, such as a Sale Notice or Mortgage Letter. The proposed rule would contain post-sale requirements which include a first-look sale requirement for Purchaser-held real estate owned property resulting from foreclosure or deed-in-lieu of foreclosure of a Single Family Loan.

A new subpart G proposes to codify the demonstration structure and process, which includes improvements identified and tested over the course of the demonstration, as a permanent program. HUD is also proposing to remove subpart D of 24 CFR part 291 in its entirety because the policies and procedures established under subpart D do not govern active

sales of HUD-held single family loans. Lastly, HUD proposes related changes to the FHA single family mortgage assignment claim requirements by adding a section to 24 CFR parts 203 and 206 to reflect payments made when a loan is assigned as part of the new loan sale process.

**Section 203.413 – Amount of payment – Forward Loan Sale assignments.**

Section 203.413 provides that when a forward mortgage loan is assigned because of a Sale Notice, pursuant to new subpart G, the Commissioner shall pay to the mortgagee the unpaid principal balance of the loan at the time of assignment in accordance with the PSA executed by the Secretary and the mortgagee. This section also describes the process and procedures for a mortgagee's claim for insurance, including the Commissioner's manner of calculating the assignment claim payment based on the regulation and the Conveyance, Assignment and Assumption Agreement (CAA), which includes what the Commissioner will consider as allowable reimbursable expenses in the claim, and when the mortgagee fails to meet certain claim submission requirements. Also, this section requires the mortgagee determine and certify the mortgage satisfies the Commissioner's acceptability criteria, which includes satisfaction of the Single Family loss mitigation eligibility requirements and a prohibition on inclusion of low-value mortgages secured by vacant properties, for the Single Family Sale. This section provides for claim payment reductions where the Participating Servicer fails to take required actions as specified in the PSA, such as curing breaches in a timely manner. Section 203.413 also sets forth HUD's grounds for curtailing debenture interest and rejecting a claim when claims are filed or in a suspended status after claim submission deadlines are missed.

**Section 206.130 – Amount of payment – HECM Sale assignments.**

Section 206.130 mirrors § 203.413 and provides the same process for paying HECM mortgages when a HECM mortgage is assigned because of a Sale Notice. Pursuant to new subpart G, the Commissioner shall pay to the mortgagee the unpaid principal balance of the loan at the time of assignment and an amount calculated in accordance with the PSA executed by the Secretary and the mortgagee. Section 206.130 also describes the process and procedures for a

mortgagee's claim for insurance, including the Commissioner's manner of calculating the assignment claim payment based on the regulation and the PSA, which includes what the Commissioner will consider as allowable reimbursable expenses in the claim, and when the mortgagee fails to meet certain claim submission requirements. This section also requires the mortgagee to determine and certify the mortgage satisfies the Commissioner's acceptability criteria, which includes satisfaction of the Single Family loss mitigation eligibility requirements, for the Single Family Sale. This section provides for claim payment reductions where the Participating Servicer fails to take required actions as noted in the PSA, such as curing breaches in a timely manner. Section 206.130 also sets forth HUD's grounds for curtailing debenture interest and rejecting a claim when claims are filed or in a suspended status after claim submission deadlines are missed.

#### **Section 291.601 Definitions.**

Section 291.601 provides definitions for the following terms, which were routinely used in past Single Family Loan Sales (SFLS) and HUD-held Vacant Loan Sales (HVLS). FHA-approved mortgagees that have contributed eligible loans for sales, and bidders in the SFLS and HVLS programs are familiar with these terms, as they are defined in the materials, such as the Participating Servicing Agreement (PSA); Desk Guide; Conveyance, Assignment and Assumption Agreement (CAA); and Bidder Information Package (BIP) provided by HUD for each sale. The following terms pertain to the HUD FHA Single Family Loans sold and to the entire loan sale process, including the opening of HUD's Aggregate Loan Database, bidder requirements, FHA-approved mortgagee assignment claim requirements and contracts, servicing of the loans after sale and before settlement, purchaser sale contracts, and post-sale requirements. The proposed rule will define the following terms: Aggregate Loan Database (ALD); Bidder Information Package (BIP); Bidder Qualification Statement; Claim Date; Competitive Sale of Single Family Loans; Confidentiality Agreement; Conveyance, Assignment and Assumption Agreements (CAAs); Cut-off Date or Claim Submission Cut-off Date; Desk Guide; Direct Sale

of Single Family Loans; Home Equity Conversion Mortgage (HECM); Interim Servicing Agreement (ISA); Interim Servicing Period; Low-value; Nonprofit Organization; Participating Servicer (or P-Servicer); Participating Servicer Agreement (PSA); Purchaser; Qualified Participant; Sale Notice; Servicing Transfer Date; Single Family Sale or the Program; Single Family Loan; and Vacant.

### **Section 291.603 Purpose and general policy of Single Family Sales.**

This section sets forth the general purpose and policy for HUD's Single Family Sale Program. The section makes clear that all Single Family Sales will be made without recourse to HUD and without FHA insurance. This section also clarifies that HUD has discretion on how to package loans included in the sale as well as identify entities to participate in the sale. More generally, this section clarifies that the new subpart G governs all Single Family Sales unless otherwise specified.

### **Section 291.605 Participating Servicers.**

This proposed section provides the requirements a Participating Servicer must meet to participate in the Single Family Sale Program. The Participating Servicer is the FHA-approved mortgagee contributing eligible Single Family Loans into the Sale. The Participating Servicer must identify the eligible Single Family Loans and assign them to HUD in exchange for claim payment in accordance with the terms of the Participating Servicer Agreement (PSA) with HUD. The Participating Servicer will continue to service the assigned Single Family Loans for an interim period after the Single Family Sale in accordance with the terms of an Interim Servicing Agreement (ISA) with the Purchaser. The Participating Servicer must execute the PSA and ISA to participate in the Single Family Sale. The PSA will include, but is not limited to, the processes for preparation of the mortgage loan list, submission of due diligence materials, ordering valuations, preparing claim submission files, submission of claim, transfer of documents to Purchasers, sending letters to borrowers, preparing assignments and endorsements,

conducting interim servicing, and processing repurchases. The Desk Guide is also a part of the PSA and is provided to the P-Servicer by the Secretary for a Single Family Sale.

Proposed paragraph (b) provides that for each Single Family Sale in which the Participating Servicer participates, the Participating Servicer must identify mortgages that meet the eligibility criteria in accordance with terms of the PSA, conduct all sale activities in accordance with the PSA and ISA they executed, and comply with any Loan Sale Notification requirements and Single Family Sale notice (the “Sale Notice”) requirements. A Loan Sale Notification would describe the sale process and describe Participating Servicer’s obligations before and after the sale. It would also provide contact information as required by the Secretary, such as the Participating Servicer for notification in the event the borrower wants to inquire about the loss mitigation evaluation, or the loss mitigation option was not completed in accordance with FHA requirements or HUD’s National Servicing Center for inquiry or complaint alleging non-compliance. The Loan Sale Notification requirements will be announced to Participating Servicers via notice, such as a Sale Notice or a Mortgagee Letter. The Participating Servicer would be responsible for ensuring a Loan Sale Notification is provided to each borrower and any other parties as required by the Secretary, and the Loan Sale Notification complies with all applicable law.

The sale-specific Sale Notice announces the sale of Single Family Loans and will include the schedule of dates and any additional sale, participant qualification and loan eligibility requirements including requirements related to exhausting loss mitigation; representations; post-sale servicing, outcome, and reporting requirements; and repurchase criteria applicable to the Participating Servicers activities for the individual Single Family Sale.

Paragraph (c) proposes the Participating Servicer comply with the claims payments requirements in accordance with the PSA and claims will be paid out in accordance with § 203.413 for forward Single Family Loans and § 206.130 for any HECMs assigned in connection with a Single Family Sale. The proposed paragraph (d) provides that the Participating Servicer

continue to service the purchased Single Family Loans during the Interim Servicing Period in accordance with the ISA that the Participating Servicer executed. Lastly, this section provides in paragraph (e) that the Participating Servicer conduct the servicing transfer for the Single Family Loans in accordance with both the executed PSA and ISA and comply with the applicable state and federal law requirements for servicing, including the applicable Consumer Finance Protection Bureau (CFPB) requirements.

**Section 291.607 Qualified participants.**

This proposed section provides the requirements for being a Qualified Participant in the Single Family Sale. This proposed section requires individuals or entities to become a Qualified Participant before they may bid or purchase Single Family Loans in a Single Family Sale. Specifically, paragraph (a) proposes that an individual or entity must sign a Confidentiality Agreement and complete and sign a Bidder Qualification Statement to be considered a Qualified Participant. The Bidder Qualification Statement is a statement of qualifications prepared by and containing statements as prescribed by the Secretary and executed by an individual or entity seeking to purchase Single Family Loans through the Single Family Sale Program. The statement of qualifications sets forth the basic qualifications required for participation in any of the Single Family Sale Program activities, which may include but are not limited to accessing due diligence files, bidding on, and purchasing Single Family Loans. The Secretary will specify which Bidder Qualification Statement form(s) are applicable to a particular Single Family Sale and any additional sale specific qualification criteria through notice. HUD will only provide access to sensitive Single Family Sale materials to a Qualified Participant. In addition, this proposed section provides the individual or entity must execute the applicable Bidder Qualification Statement for the specific Single Family Sale they wish to bid on, as discussed in § 291.609.

Proposed paragraph (b) provides the process for determining a Qualified Participant. HUD will qualify any individual or entity seeking to participate in a Single Family Sale if they

have met the qualification requirements and executed the applicable Bidder Qualification statement for the Single Family Sale. Where permitted by the Bidder Qualification Statement, the individual or entity may submit information that may render its failure to certify certain statements immaterial for purposes of qualifying for the Single Family Sale. The Secretary, in his or her sole discretion, may accept such information and determine the failure to certify as immaterial for qualifying the entity or individual due to the entity or individual's minor or technical reason preventing certification or experience that differs from the certification standard, but that HUD determines to be equivalent to the standard. HUD notes the Sale Notice may have additional sale-specific qualification requirements the individual or entity must also meet, as more fully described below.

**Section 291.609 Bidding process.**

This proposed section provides the process for Qualified Participants to respond to a Sale Notice HUD publishes, and any additional sale requirements as defined in the BIP. Paragraph (a) proposes for each Single Family Sale, HUD will publish the PSA, which includes the Desk Guide, and the schedule of dates and any sale-specific loan eligibility, representations, and repurchase criteria published by the Secretary in the Sale Notice. HUD will also publish the ISA (if applicable), CAA, and Sale Notices, on HUD's public website.

Paragraph (b) proposes all Qualified Participants that intend to bid must do so in accordance with the Sale Notice and the BIP, which provides details for each sale. Paragraph (b) also provides that when a Qualified Participant submits a bid, it will be considered an offer and acceptance of the terms and conditions set forth in the BIP. Paragraph (b) also notes that along with the bid, the Qualified Participant must also execute a copy of the CAA and ISA, as applicable.

Paragraph (c) proposes a Qualified Participant may use a broker or agent. In such case, the bid must be in the name of the Qualified Participant and signed by the broker or agent as the attorney-in-fact for the Qualified Participant, and the bid must include a power of attorney

satisfactory to HUD as to form and content. Paragraph (d) would require the Qualified Participant also submit to HUD an earnest money deposit in the amount set forth in the Sale Notice in paragraph (a). The earnest money deposit is nonrefundable to the Qualified Participant whose bid is selected for award and will be credited toward the purchase price. In the case the Qualified Participant's bid is not selected, their earnest money will be returned.

Paragraph (e) proposes a Qualified Participant may withdraw a submitted bid in accordance with the instructions in the BIP for a sale, but a bid may not be withdrawn once the bidding has closed.

Paragraph (f) proposes that HUD maintains the right to terminate a Single Family Sale in whole or in part at any time before the bid date. In addition, paragraph (g) sets forth the option for HUD to withdraw Single Family Loans from a Single Family Sale prior to the settlement date or after the bid date in accordance with the BIP and CAA. Lastly, paragraph (h) would provide the option for HUD to reject bids when the bid does not conform with the instructions in the BIP or when HUD determines such action would be in its best interests because it would not further HUD's fiduciary responsibility to the MMIF or any stated mission objectives in the Sale Notice. Paragraph (h) would also provide HUD issue a conditional rejection for bids that are nonconforming, to include but not limited to, a missing answer, item, or component which would render the bid incomplete. At HUD's discretion, the bidder would have the opportunity to amend the nonconforming bid and be considered for acceptance upon fulfillment of HUD's requests.

#### **Section 291.611 Post-bid process and HUD's execution of the CAA.**

This proposed selection discusses the post-bid selection process and proposes HUD would notify the Qualified Participants regarding any adjustments to bids in accordance with the BIP. HUD will select bids for award and provide notice of award in accordance with the BIP. The proposed rule provides that post-selection, HUD will complete the execution of the CAA.

#### **Section 291.613 Settlement requirements.**

This proposed section sets forth the settlement requirements applicable to a Single Family Sale. Specifically, paragraph (a) would provide that the Purchaser must pay to HUD the settlement payment, consisting of the balance of the amount due on the bid price, as adjusted in accordance with the BIP and CAA. In addition, proposed paragraph (b) would provide that when the Purchaser delivers the settlement payment, HUD will execute and deliver to the Purchaser a settlement statement and an updated loan schedule for the CAA to document the Single Family Loans sold to the Purchaser in the Single Family Sale. Proposed paragraph (c) provides for HUD to grant a temporary Limited Power of Attorney to the Purchaser to facilitate endorsement and assignment of the Single Family Loans to the Purchaser. Proposed paragraph (d) permits the Purchaser to endorse and assign Single Family Loans from HUD to its special purpose entity acquisition vehicle that meets CAA requirements.

**Section 291.615 Purchaser servicing requirements.**

This proposed section provides the requirements for Purchasers. The rule proposes to require Purchasers to adhere to and ensure their servicer, or any subsequent servicer adheres to, the servicing requirements as specified in this section and in the CAA for each Single Family Sale. Paragraph (a) proposes to include the existing requirement that the Purchaser and its servicer comply with the terms of the CAA. The CAA terms will include, but are not limited to, servicing, resale, post-sale outcome, and reporting requirements for the purchased loans. In addition, the Sale Notice published in accordance with § 291.609(a) may impose additional post-sale loss mitigation and outcome requirements, such as alternatives to foreclosure that further FHA's mission of meeting the housing needs of low- to moderate-income homeowners, a first look requirement for sales of real estate owned properties to provide an exclusive listing period for owner occupant, nonprofit organization, government, and other prospective buyers as permitted by HUD, that will be incorporated into the CAA. The CAA will incorporate by reference the Sale Notice for each Single Family Sale, enabling HUD to establish and adjust post-sale requirements meeting HUD's mission based on economic and other market conditions.

Paragraph (b) would require the Purchaser report on post-sale servicing actions and outcomes for each purchased loan. Paragraph (b) also provides that HUD will prescribe the reporting time frame after the settlement of the sale in the CAA, which generally continues for a four-year period after the settlement date. HUD will periodically publish reports to the public on loan and property outcomes and will include a breakdown of outcomes in different geographies. Paragraph (c) proposes HUD may pursue appropriate remedies for a Purchaser's failure to comply with Single Family Sale requirements, including obligations set forth under the CAA. Such remedies may include the inability to participate in the Program for one or more Single Family Sales or for a set-period of time, see § 291.621.

**Section 291.617 General policy – Direct Sales of Single Family Loans.**

As discussed in § 291.603, HUD has the discretion regarding how to package loans included in a Single Family Sale and may pursue a Direct Sale of Single Family Loans to individuals or entities that the Secretary determines to be qualified, in lieu of a bidding process. The Direct Sale of Single Family Loans will follow the requirements in subpart G, excluding 24 CFR 291.609 and 291.611. HUD in its Sale Notice for the Direct Sale of Single Family Loans will set forth specific eligibility requirements and post-sale servicing, outcome, and reporting requirements.

**Section 291.619 Direct Sale of Single Family Loans process.**

This section sets forth the second method for which HUD could decide to conduct a Single Family Sale through the Direct Sale of Single Family Loan process. Under paragraph (a), HUD proposes that HUD may issue a Sale Notice seeking participation in a Direct Sale of Single Family Loans. The Sale Notice would include any qualification requirements not already detailed in the Qualification Statement, such as targeting Nonprofit Organizations in particular geographic areas or with experience acquiring and rehabilitating Vacant properties or Low-value mortgages, and other sale requirements, including loan eligibility criteria, post-sale servicing requirements, post-sale outcomes to achieve mission objectives, such as promoting affordable

housing, and reporting requirements.

Paragraph (b) provides that in all stages of the Direct Sale of Single Family Loans process, HUD may determine whether to continue proceeding with the mortgage loan sale. HUD's determination will be based on whether the Direct Sale of Single Family Loans is feasible and in HUD's interest as it relates to HUD's fiduciary responsibility to the MMIF and any stated mission objectives.

Paragraph (c) provides that in response to the Sale Notice, an individual or entity that meets the requirements for the Direct Sale of Single Family Loans and is interested in purchasing a Single Family Loan, must submit a letter of interest to HUD that includes, at a minimum: a description of the participant and statement about how it would be able to satisfy the qualification requirements and other sale requirements including post-sale outcomes to achieve mission objectives, if any; the geographic area of interest where the individual or entity wishes to purchase the loans; the individual or entity's post-sale goals and how this purchase would assist in achieving them through post-sale outcomes; the timeframe for the purchase; the number of loans or, alternatively, the gross sale amount; and the organizational documents for the entity.

Paragraph (d) proposes a Direct Sale of Single Family Loans process for HUD to determine whether to proceed with the Direct Sale of Single Family Loans and provides that HUD would make this determination in writing. In some situations, HUD may request additional information, which would include supplemental organizational documents and program marketing material from the individual or entity, as needed for its determination.

Paragraph (e) proposes the next step in finalizing a Direct Sale of Single Family Loans. Specifically, paragraph (e) would provide that the individual or entity must submit to HUD, within 30 business days, a business plan proposal that details its ability to meet any stated mission objectives from the Sale Notice, along with its goals and how they will be achieved with post-sale outcomes. Upon receipt and review of business plan proposal, HUD would either reject the business plan proposal, issue a conditional rejection that would provide the opportunity

for a proposal to be amended and resubmitted, or approve the business plan proposal. If HUD approves the individual or entity's submission, the proposed rule provides that HUD and the submitter will execute a Confidentiality Agreement and Bidder Qualification Statement. HUD will execute a PSA with each Participating Servicer submitting Single Family Loans. After execution of such agreements, the parties will review available Single Family Loans from Participating Servicer(s) selected based on HUD's eligibility criteria for the Direct Sale of Single Family Loans. HUD and the individual or entity will agree on the Single Family Loan List that makes up the Direct Sale of Single Family Loans.

Paragraph (f) proposes that after agreement on the Single Family Loan List, HUD will complete a valuation of the Single Family Loans and issue a final price determination in accordance with Office of Management and Budget (OMB) Circular A-11 ("Preparation, Submission, and Execution of the Budget") and a CAA with an estimated settlement date to the individual or entity for review and approval. The paragraph also provides that once the final price is approved by the individual or entity, HUD and the entity will come up with a final settlement date. Lastly, paragraph (g) proposes that parties will execute the PSA, and the remaining settlement and transfer requirements would be conducted consistent with § 291.613.

#### **Section 291.621 Disqualifications.**

Paragraph (a) proposes HUD has the authority to deny or revoke approval of any party from participating in the Single Family Sale if it determines there is any false, misleading, or fraudulent information on any certification or required document.

Paragraph (b) proposes that an individual or entity is not qualified to participate in a Single Family Sale if, at or around the time of the Single Family Sale or any time thereafter, that individual or entity is debarred or suspended from doing business with HUD.

Paragraph (c) proposes HUD may disqualify Purchasers that made any misrepresentation in the qualification process or failed to meet their contractual obligations under CAAs, including meeting any post-sale requirements, for previous Single Family Sales.

#### **IV. Request for Public Comment**

HUD seeks public feedback on all elements of this proposed rule. In particular, HUD seeks information and recommendations on the following issues:

1. HUD seeks information and recommendations on whether there are any additional actions HUD can take to provide greater bidding opportunities for nonprofit organizations and governmental entities. Please provide the rationale for your opinion, as well as available examples and data which support it.

2. Should a Competitive Sale of Single Family Loans disallow Low-value Mortgages and properties that are Vacant? Please provide details on the impacts and examples (including data).

3. A first look program has not been incorporated into the forward loan sale program (SFLS). It has only been in effect for reverse loan sales (HVLS). Should all Single Family Sales require a first look program for loans that convert to real estate owned property? Please provide the rationale for your opinion, as well as available examples and data which support it.

4. Should Single Family Sales post-sale servicing requirements include that a Purchaser offer loss mitigation options that are as or more generous than the FHA loss mitigation options for insured mortgage loans? If so, should all terms of a Purchaser's loss mitigation option meet or be more generous than what FHA provides, or should there be a different standard for evaluating compliance with this requirement? Should HUD require a specific and separate waterfall of loss mitigation options for all Single Family Sales? What loss mitigation options have been successful for defaulted borrowers whose loans were sold through previous HUD single family mortgage loan sales? Please provide the rationale for your opinion, as well as available examples and data which support it.

5. Currently, in the sale of Home Equity Conversion Mortgages (HVLS loan sales), HUD allows nonprofit organizations and governmental entities to qualify for priority bidding status that allows them to be awarded up to 50% of loans in the sale. Should HUD allow nonprofit organizations and governmental entities to qualify for a priority bidding status in Single Family

Sales and if so, what percentage of the loans should be awarded to these bidders? Please provide the rationale for your opinion, as well as available examples and data which support it.

6. Has HUD proposed a workable and efficient process for Direct Sales of Single Family Loans? Please provide the rationale for your opinion, as well as available examples and data which support it.

7. Should all Single Family Sales of forward mortgage loans require a P-Servicer to send a Loan Sale Notifications to borrowers? What information should HUD include in this notification? How should the P-servicer or HUD respond if a borrower believes the loss mitigation evaluation or option was not completed in accordance with HUD requirements? Please provide the rationale for your opinion, as well as available examples and data which support it.

8. What information should HUD include in its periodic reports on Single Family Sales loan and property outcomes? Please provide the rationale for your opinion, as well as available examples and data which support it.

9. The eligibility criteria of forward mortgage loans is not defined in the proposed rule. This was done to allow the Secretary flexibility in determining the sale population based on mission and economic needs. Should the HUD eligibility criteria for a Single Family Sale of forward mortgage loans include satisfaction of HUD's loss mitigation requirements for insured mortgage loans? How can P-servicers demonstrate compliance with HUD's loss mitigation requirements? Please provide the rationale for your opinion, as well as available examples and data which support it.

10. Subject to appropriations, should HUD consider offering favorable sale terms, which will be presented in the Notice of Sale (e.g., a lower reserve price), to governmental or nonprofit entities? Please provide the rationale for your opinion, as well as available examples and data which support it.

## **V. Findings and Certifications**

### **Regulatory Review – Executive Orders 12866, 13563, and 14094**

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant, and therefore, subject to review by OMB in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs , where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094, entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”), amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

This proposed rule was determined to be a “significant regulatory action” as defined in section 3(f) of the Executive order, but not significant specifically under section 3(f)(1) of Executive Order 12866. The proposed rule would provide flexibility for the management of defaulted loans, more efficiently accept assignment, and dispose of assigned mortgages through loan sales and reduce the overall financial exposure of the MMIF.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, 451 7<sup>th</sup> Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires an agency to

conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions.

As discussed in this preamble, this proposed rule would make the Single Family Sales permanent and make changes to HUD's regulations to implement parts 203 and 206, respectively referring to Single Family Forward loans and HECM, and part 291 to efficiently manage HUD's defaulted single family assets and minimize losses to the MMIF. While small entities such as mortgage service providers may be affected by this Program, these entities would not incur a significant economic impact because the Program would provide servicers with the chance to assign burdensome and problematic loans to HUD. Therefore, the undersigned certifies this proposed rule will not have a significant economic impact on a substantial number of small entities.

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

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number.

The following documents have existing OMB approved burden that will not be changed by this proposed rule: FHA Single Family Loan Sales Qualification Statement (OMB Control Number 2502-0576), which includes approval for FHA Single Family Loan Sales Qualification Statement Addendum for Nonprofit and Government Pools and Sub-pools (form no. HUD-9612)

and SF application for insurance benefits (OMB Control Number 2502-0429). HUD will seek new PRA approval for the following burden requirements as part of this proposed rule:

Confidentiality Agreement; Participating Servicer Agreement (PSA) and its exhibits; Conveyance, Assignment and Assumption Agreement (CAA) and its exhibits including the Post-sale report; Certification of compliance; and the Final settlement statement, as well as the Loan Sale Notification, and Single Family application for insurance benefits.

The overall reporting and recordkeeping burden are estimated as follows:

Description of Information Collection	Number of Responses	Responses per Year	Total Annual Responses	Hours per Response	Total Hours
FHA Single Family Loan Sales Qualification Statement and Addendum for Nonprofit and Government Pools and Sub-pools (HUD-9611 & HUD-9612) *	90	Bi-annual (2)	180	0.25	45.00
Confidentiality Agreement	90	Bi-annual (2)	180	.25	45.00
Participating Servicer Agreement (PSA) <sup>9</sup>	20	Bi-annual (2)	40	1.60	64.00
Conveyance Assignment Assumption Agreement (CAA) <sup>10</sup>	90	Bi-annual (2)	180	77.25	13,905.00
Loan Sale Notification	2500	Bi-annual (2)	5000	0.25	1,250.00
SF application for insurance benefits (HUD-27011) <sup>11**</sup>	500	Bi-annual (2)	1000	1.33	1330.00
<b>Total</b>	<b>3,290</b>		<b>6,580</b>	<b>80.93</b>	<b>16,639.00</b>

\*These forms are contained in the OMB Control Number: 2502-0576 (Forms HUD-9611 & HUD-9612) and the

<sup>9</sup> The Participating Servicer Agreement contains exhibits of the following: Instructions Regarding Participating Servicer's Preparation of Assignments and Lost Note Affidavits and Related Forms, Desk Guide, Interim Servicing Agreement (ISA), Delivery Report, SFS Claim Submission Report, SFS Claim Submission Report-Self Certification Form, Maximum Missed Payments and Minimum Loan to Value Ration, and HUD Breach Notice Rebuttal Guidelines and Template. The chart above contains the combined burden hours for Participating Servicer Agreement (PSA) inclusive of each of these exhibits. The figures presented are based on the estimate of 5000 forward mortgages sold annually.

<sup>10</sup> The Conveyance Assignment Assumption Agreement contains exhibits of the following: Form of Assignment of Mortgage, Post Sale Reporting Requirements, Self-Certification Form Servicer Eligibility Provision, Self-Certification Form, Mortgage Loan Schedule Information, Breach and Repurchase Guidelines and Template, Form of Settlement Statement (Settlement Date), Interim Servicing Agreement, Form of Consent to Assignment and Assignment and Assumption Agreement, Form of Limited Power of Attorney, Pricing Exhibit, Form of Mortgage Loan Schedule and Instructions (Included in Exhibit C) and, if applicable, Supplemental Servicer-Related Rider with exhibits. The chart above contains the combined burden hours for the Conveyance Assignment and Assumption Agreement (CAA) inclusive of each of these exhibits. The figures presented are based on the estimate of 5000 forward mortgage loans and 2000 HECM mortgage loans sold annually.

<sup>11</sup> These forms are contained in the OMB Control Number: 2502-0576 (Forms HUD-9611 & HUD-9612) and OMB Control Number: 2502-0429 (Form HUD-27011) and the chart above.

chart above indicates there will be no increase in responses or burdens associated with these forms because of this proposed rulemaking.

\*\* This form contained in the OMB Control Number: 2502-0429 (Form HUD-27011) and the chart above indicates only the additional responses or burdens associated with the form because of this proposed rulemaking.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this proposed rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposed rule by name and docket number (FR-6051-P-02) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202-395-6947

and

Colette Pollard, HUD Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 2204, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal Rulemaking Portal at <https://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <https://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on this site to submit comments electronically.

Forms approved by OMB will be available on [regsinfo.gov](https://www.reginfo.gov). You can use the control number to access the document (click on information collection review and then hit search using the control number). Additionally, HUD will maintain the approved forms on the collection point, HUD Clips Forms Resource, currently available through [https://www.hud.gov/program\\_offices/administration/hudclips/forms](https://www.hud.gov/program_offices/administration/hudclips/forms), or at a successor resource designated by HUD.

### **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 on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

### **Environmental Impact**

This proposed rule does not direct, provide for assistance or loan and mortgage insurance

for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

## **List of Subjects**

### **24 CFR Part 203**

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

### **24 CFR Part 206**

Aged, Condominiums, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

### **24 CFR Part 291**

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

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 203, 206, and 291 as follows:

#### **PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z-16, 1715u, and 1715z-21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

2. Add § 203.413 to read as follows:

#### **§ 203.413 Amount of payment – Single Family Sale assignments.**

- (a) *Time of payment.* Upon an assignment of a mortgage insured under this part that is

acceptable to the Commissioner, made pursuant to a Single Family Sale and in accordance with § 291.609 or § 291.619 of this chapter, the Commissioner shall pay to the mortgagee the unpaid principal balance of the loan at the time of assignment and an amount calculated in accordance with the Participating Servicer Agreement (PSA), as defined in § 291.601 of this chapter.

(b) *Acceptability criteria.* For assignment, the mortgagee must determine and certify the mortgage satisfies the Commissioner's acceptability criteria for the Single Family Sale. Acceptability criteria includes satisfaction of the Single Family Sale loss mitigation eligibility requirements and exclusion of low-value mortgages secured by vacant properties.

(c) *Reduction in claim.* The mortgagee's claim for insurance will be reduced for failure to take the required actions within the specified schedule of dates for the Single Family Sale, as specified in the PSA.

(d) *Curtailment of Debenture Interest.* HUD will curtail Debenture Interest at the thirtieth (30<sup>th</sup>) day following the earliest anticipated claim submission date, as identified on the schedule of dates in the PSA, if:

- (1) The mortgagee's claim for insurance is not submitted to HUD; or
- (2) The claim for insurance is in a suspended status.

(e) *Debenture Interest.* For purposes of this section, *Debenture Interest* means interest at the debenture rate as computed by HUD in accordance with its rules and requirements for such calculations, on the unpaid principal balance as of the claim payment date, *plus* the approved reimbursable expenses identified in the PSA, *minus* any amount of such interest or expenses that would have been curtailed or for which the Participating Servicer would have been denied reimbursement pursuant to HUD's requirements for servicing defaulted notes and processing claims, including § 203.402(k)(1)(i) and (ii), had the Participating Servicer conveyed title to the property securing the Single Family Loan to the Secretary rather than assigned the Single Family Loan in connection with an insurance claim.

(f) *Rejection of claim.* HUD may reject the mortgagee's claim for insurance and exclude

the related mortgage from settlement if within the thirty (30)-day period prior to the claim's submission cut-off date, as identified on the schedule of dates in the PSA:

- (1) Any insurance claim is not submitted; or
- (2) Any suspended insurance claim is not resolved.

#### **PART 206 – HOME EQUITY CONVERSION MORTGAGE INSURANCE**

3. The authority citation for part 206 continues to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715z-20; 42 U.S.C. 3535(d)

4. Add § 206.130, under the undesignated center heading "Claim Procedure," to read as follows:

#### **§ 206.130 Amount of payment – HECM Single Family Sale assignments.**

(a) *Time of payment.* Upon an assignment of a mortgage insured under this part that is acceptable to the Commissioner, made pursuant to a HECM Single Family Sale and in accordance with § 291.609 or § 291.619 of this chapter, the Commissioner shall pay to the mortgagee the unpaid principal balance of the loan at the time of assignment and an amount calculated in accordance with the Participating Servicer Agreement (PSA), as defined in § 291.601 of this chapter.

(b) *Acceptability criteria.* For assignment, the mortgagee must determine and certify the mortgage satisfies the Commissioner's acceptability criteria for the Single Family Sale.

(c) *Reduction in claim.* The mortgagee's claim for insurance will be reduced for failure to take the required actions within the specified schedule of dates for the Single Family Sale, as specified in the PSA.

(d) *Curtailment of debenture interest.* HUD will curtail debenture interest at the thirtieth (30<sup>th</sup>) day following the earliest anticipated claim submission date, as identified on the schedule of dates in the PSA, if:

- (1) The mortgagee's claim for insurance is not submitted to HUD; or
- (2) The claim for insurance is in a suspended status.

(e) *Debt Interest*. For purposes of this section, *Debt Interest* means interest at the debt rate as computed by HUD in accordance with its rules and requirements for such calculations, on the unpaid principal balance as of the claim payment date, *plus* the approved reimbursable expenses identified in the PSA, *minus* any amount of such interest or expenses that would have been curtailed or for which the Participating Servicer would have been denied reimbursement pursuant to HUD's requirements for servicing due and payable notes and processing claims, including § 206.129(d)(3)(x), had the Participating Servicer foreclosed or the borrower sold the property in connection with an insurance claim.

(f) *Rejection of the claim*. HUD may reject the mortgagee's claim for insurance and exclude the related mortgage from settlement if, within the thirty (30)-day period prior to the claim's submission cut-off date, as identified on the schedule of dates in the PSA:

- (1) An insurance claim is not submitted; or
- (2) Any suspended insurance claim is not yet resolved.

## **PART 291 – DISPOSITION OF HUD-ACQUIRED AND -OWNED SINGLE FAMILY PROPERTY**

5. The authority citation for part 291 continues to read as follows:

**Authority:** 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

### **Subpart D – [Removed and Reserved]**

6. Remove and reserve subpart D, consisting of §§ 291.301 through 291.307.

7. Add subpart G, consisting of §§ 291.601 through 291.621, to read as follows:

### **Subpart G – Sale of HUD-Held Single Family Mortgage Loans Sec.**

- 291.601 Definitions.
- 291.603 Purpose, scope, and applicability.
- 291.605 Participating Servicers.
- 291.607 Qualified participants.
- 291.609 Bidding process.
- 291.611 Post-bid process and HUD's execution of the CAA.
- 291.613 Settlement requirements.
- 291.615 Purchaser servicing requirements.
- 291.617 General policy – Direct Sales of Single Family Loans.
- 291.619 Direct Sale of Single Family Loans process.

291.621 Disqualifications.

**§ 291.601 Definitions.**

For purposes of this subpart, the following definitions apply:

*Aggregate Loan Database (ALD)* means the electronic data file containing Single Family Loan information available for Qualified Participants to review before a Single Family Sale.

*Bidder Information Package (BIP)* means the documents prepared for participants in a Single Family Sale, which may include, but are not limited to, the following: an executive summary of the Programs; the Single Family Sale post-sale servicing and reporting requirements published by HUD; due diligence information and reports; Single Family Loan information; the Conveyance, Assignment and Assumption Agreement (CAA); bidding and settlement information; and necessary information and requirements as determined by the Secretary.

*Bidder Qualification Statement* means HUD Forms 9611 and 9612, or any form approved for similar purpose in the future as prescribed by the Secretary. (OMB number 2502-0576)

*Claim Date* means, with respect to each Single Family Loan, the date on which the Single Family Sale assignment claim is paid by HUD to the P-Servicer.

*Competitive Sale of Single Family Loans* means a sale of an individual or group of Single Family Loans to Qualified Participants through a bid process prescribed by the Secretary in competition with other Qualified Participants in accordance with § 291.609.

*Confidentiality Agreement* means a nondisclosure agreement under which the individual or entity seeking to participate in Single Family Sales agrees that Single Family Loan data and documentation shared with the individual or entity as due diligence will remain confidential in accordance with the terms of the agreement as determined by the Secretary.

*Conveyance, Assignment and Assumption Agreement (CAA)* means the contract between HUD and a Purchaser, along with all applicable exhibits and riders, that governs the terms of the Single Family Sale as prescribed by the Secretary. The CAA will include any sale-specific post-sale servicing and outcome requirements, representations, repurchase requirements, schedule of

dates, and reporting requirements published by the Secretary for the Single Family Sale through a Sale Notice.

*Cut-off date or claim submission cut-off date* means the last date specified by the Secretary on which the P-Servicer is permitted to submit to HUD a Single Family Sale insurance claim for payment under 24 CFR 203.413 and 206.130.

*Desk Guide* means the technical manual included in the PSA detailing the P-Servicer's steps for submitting Single Family Loans related to a Single Family Sale, including but not limited to the process for identifying eligible Single Family Loans, uploading due diligence files, and submitting insurance claims.

*Direct Sale of Single Family Loans* means a sale of an individual or group of Single Family Loans to a Qualified Participant through the process described in § 291.619.

*Home Equity Conversion Mortgage (HECM)* means reverse mortgages insured in accordance with 24 CFR part 206 under the FHA Home Equity Conversion Mortgage insurance program.

*Interim Servicing Agreement (ISA)* means the agreement between a Purchaser and P-Servicer that governs the servicing and administration of the purchased loans, including but not limited to transfer of mortgage information and loss mitigation evaluations, during the Interim Servicing Period in accordance with the terms prescribed by the Secretary.

*Interim Servicing Period* means the period commencing with Claim Date and ending with the Servicing Transfer Date.

*Low-value* means, in reference to a Mortgage, the value minimum stated in the Participating Servicer Agreement (PSA).

*Nonprofit organization* means an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. 501(c)(3)) and meets the qualification requirements prescribed by the Secretary for participation in a Single Family Sale.

*Participating Servicer (P-Servicer)* means a mortgagee that complies with § 291.605 and

submits Single Family Loans for a Single Family Sale.

*Participating Servicer Agreement (PSA)* means the agreement between HUD and a P-Servicer that governs the P-Servicer's submission of Single Family Loans to be sold in a Single Family Sale on terms as prescribed by the Secretary.

*Purchaser* means a Qualified Participant to which HUD has awarded one or more Single Family Loans through a Single Family Sale, as of the date of notification of the award.

*Qualified Participant* means an individual or entity that satisfies the requirements in § 291.607 for participation in Single Family Sales.

*Sale Notice* means an announcement published by HUD for an upcoming Single Family Sale and includes any stated mission objectives and additional sale, participant qualification, and loan eligibility requirements; representations; post-sale servicing, outcomes, and reporting requirements; and repurchase requirements for inclusion in the Qualification Statement, PSA, ISA, and CAA as applicable.

*Servicing Transfer Date* means, with respect to any Single Family Loan, the date on which the actual servicing duties for such Single Family Loan has been or will be transferred from the P-Servicer to the Purchaser's servicer. The latest Servicing Transfer Date will be set forth in a schedule of dates prescribed by the Secretary and included in the PSA, ISA, and CAA.

*Single Family Loan* means any HUD-selected eligible forward mortgage loan insured under section 203 of the National Housing Act (12 U.S.C. 1709) that has or will be assigned to HUD and any HUD-selected eligible HECM insured under section 255 of the National Housing Act (12 U.S.C. 1715z-20) that has or will be assigned to HUD, or any other eligible single family mortgage loans owned by the Secretary that will be sold in a Single Family Sale.

*Single Family Sale* means a Competitive Sale of Single Family Loans or Direct Sale of Single Family Loans conducted by HUD in accordance with this subpart.

*Vacant* means a mortgaged property is determined to be vacant or abandoned in accordance with the requirements of 24 CFR part 203 and FHA policy.

**§ 291.603 Purpose, scope, and applicability.**

The sale of Single Family Loans is at the discretion of the Secretary. All Single Family Loans will be sold without recourse to HUD and without FHA insurance. HUD may sell individual Single Family Loans or groups of Single Family Loans to Qualified Participants as a Competitive Sale of Single Family Loans, § 291.609, or as a Direct Sale of Single Family Loans, § 291.619. Nothing in this section shall be construed to prevent HUD from grouping Single Family Loans with other types of HUD assets for sale, including grouping any associated HUD-held mortgages subordinate to the respective assets. The procedures set out in this subpart, including any cross-referenced regulations, documentation, and published notices detailed in this subpart, govern the Single Family Sales.

**§ 291.605 Participating Servicers.**

(a) *Participation.* To participate in a Single Family Sale, a Participating Servicer must:

(1) Be an FHA-approved Mortgagee contributing eligible Single Family Loans and assigning loans to HUD; and

(2) Execute a PSA and agree to execute an ISA, as needed.

(b) *Sale.* For each Single Family Sale, the Participating Servicer must:

(1) Identify mortgages that meet the eligibility criteria in accordance with terms of the PSA;

(2) Conduct all sale activities in accordance with the PSA and ISA;

(3) Comply with any Single Family Sale and Loan Sale Notification requirements as prescribed by the Secretary through notice; and

(4) Comply with the terms of the Sale Notice.

(5) Ensure the Loan Sale Notification is provided to each borrower and any other parties as required by the Secretary and the Loan Sale Notification complies with all applicable law.

Loan Sale Notification requirements will be announced to the Participating Servicer through notice.

(c) *Claim payment requirements.* The Participating Servicer must comply with the claim payment process and requirements for Single Family Sales in accordance with the PSA and processes outlined in 24 CFR 203.413 and 206.130, as applicable.

(d) *Interim servicing.* During the Interim Servicing Period, the Participating Servicer must service the purchased Single Family Loans on behalf of the Purchaser in accordance with the ISA.

(e) *Transfer documents and servicing.* The Participating Servicer must conduct the servicing transfer of the Single Family Loans in accordance with the requirements of the PSA and ISA and must service the purchased Single Family Loans in accordance with all applicable state and Federal law requirements, including applicable Consumer Finance Protection Bureau (CFPB) requirements.

#### **§ 291.607 Qualified participants.**

(a) *Confidentiality Agreement and Bidder Qualification Statement.* Individuals or entities must become a Qualified Participant before they may bid or purchase Single Family Loans in a Single Family Sale. An individual or entity seeking to participate in a Single Family Sale must sign a Confidentiality Agreement and complete a Bidder Qualification Statement. The Secretary will specify which Bidder Qualification Statement form(s) are applicable to a particular Single Family Sale and any additional sale specific qualification criteria through notice. HUD will only provide access to sensitive Single Family Sale materials to Qualified Participants.

(b) *Process for determining Qualified Participant.* HUD will qualify any individual or entity seeking to participate in a Single Family Sale if they have met the qualification requirements and executed the applicable Bidder Qualification Statement for the Single Family Sale.

#### **§ 291.609 Bidding process.**

(a) *Sale notice.* The Secretary will prescribe requirements for a Single Family Sale through the Sale Notice. For each Single Family Sale, HUD will publish the PSA Addendum,

Desk Guide, ISA Addendum, CAA Addendum, and Sale Notices on HUD's public website.

(b) *Submission of bids.* All bids by a Qualified Participant must be submitted to HUD in accordance with the Sale Notice and the instructions in the BIP. By submitting a bid, the Qualified Participant is considered to have made an offer to purchase Single Family Loans as presented in the BIP. Submission of a bid constitutes acceptance of the terms and conditions set forth in the BIP. Along with the bid, the Qualified Participant must submit an executed copy of the CAA and ISA, as applicable.

(c) *Bids by brokers or agents.* Any bid submitted by a broker or agent for a Qualified Participant must be made in the name of the Qualified Participant and signed by the broker or agent as the attorney-in-fact for the Qualified Participant. All such bid documents must bind the Qualified Participant. Each bid must also include a power of attorney satisfactory to HUD as to form and content.

(d) *Earnest money deposits.* The Qualified Participant must submit to HUD, along with its bid, an earnest money deposit, as required in the CAA or Sale Notice. The earnest money deposit is nonrefundable for a Qualified Participant whose bid is selected for award and will be credited toward the purchase price. If a Qualified Participant's bid is not selected for any award, their earnest money will be returned.

(e) *Timing for withdrawal of bids.* A Qualified Participant may withdraw a submitted bid in accordance with the instructions in the BIP for a Single Family Sale. However, a previously submitted bid may not be withdrawn once the bidding has closed.

(f) *Termination of Single Family Sale.* HUD reserves the right to terminate a Single Family Sale in whole or in part at any time before the bid date.

(g) *Withdrawal of Single Family Loans.* HUD reserves the right to withdraw Single Family Loans from a Single Family Sale prior to the settlement date. Any earnest money deposits made by a Purchaser relating to withdrawn Single Family Loans will be retained by the Secretary and credited toward the total purchase price of the remaining Single Family Loans in

the pool, in accordance with the CAA and BIP. After the bid date, HUD can withdraw Single Family Loans or not deliver all the Single Family Loans for settlement for any reason, including those set forth in the BIP and CAA.

(h) *Rejection of bids.* At HUD's discretion, any bid may be rejected under the following circumstances:

(1) The bid does not conform with the instructions in the BIP;

(2) HUD determines that an award based on the bid would not be in the best interests of the Secretary because the award would not further HUD's fiduciary responsibility to the mutual mortgage insurance fund (MMIF) or any stated mission objectives in the Sale Notice; or

(3) HUD can also issue a conditional rejection that would provide the opportunity for the bid to be amended and resubmitted for acceptance upon fulfillment of HUD's requests.

#### **§ 291.611 Post-bid process and HUD's execution of the CAA.**

After HUD evaluates conforming bids, HUD may request an adjustment to a bid in accordance with the BIP. After any bid adjustments, HUD will select bids for award and provide notice of award in a manner set forth in the BIP. After selection of a Purchaser, HUD will execute the CAA.

#### **§ 291.613 Settlement requirements.**

(a) *Settlement payment.* On the settlement date of a Single Family Sale, the Purchaser must pay to HUD the settlement payment, consisting of the balance of the amount due on the bid price, as adjusted in accordance with the CAA.

(b) *Settlement statement.* When the Purchaser delivers to HUD the documents required at settlement and the settlement payment in paragraph (a) of this section, HUD will execute and deliver to the Purchaser a settlement statement and updated Single Family Loan schedule for the CAA to document the Single Family Loans sold to the Purchaser in the Single Family Sale.

(c) *Endorsement and assignment.* HUD may grant a temporary Limited Power of Attorney to the Purchaser to effect endorsement and assignment of the Single Family Loans to the Purchaser.

(d) *Purchaser's special purpose entity.* HUD may allow a Purchaser to endorse and assign Single Family Loans from HUD to Purchaser's special purpose entity acquisition vehicle on terms permitted in the CAA.

**§ 291.615 Purchaser servicing requirements.**

(a) *Purchaser post-sale servicing.* The Purchaser and its servicer, and any subsequent transferee of or servicer for the Single Family Loan, must comply with the terms of the CAA and the Sale Notice post-sale loss mitigation and outcome requirements. Post-sale requirements will include a requirement that any Single Family Loan that converts to real estate owned property via foreclosure or deed-in-lieu of foreclosure be offered for sale through a first look program, providing an exclusive listing period for owner occupant, nonprofit organization, governmental entities, and other prospective buyers as permitted by HUD. Post-sale requirements will also include requirements that Purchasers offer borrowers loss mitigation options that are as or more generous than the FHA loss mitigation options, a prohibition on reselling real estate owned property through a contract for deed or similar financing mechanism, a requirement that the Purchaser obtain prior approval from HUD before entering into a lease-purchase agreement with a prospective purchaser, and a prohibition on releasing liens on particular categories of properties, including vacant properties. Purchasers must take all lawful steps to service the Single Family Loans and collect amounts due in accordance with requirements as set forth by the CAA and all state and Federal law requirements, including applicable CFPB requirements.

(b) *Purchaser reporting requirements.* Purchasers must report on the post-sale servicing actions and outcomes obtained for each Single Family Loan purchased as prescribed by the CAA. HUD will publish reports for the public on loan and property outcomes and will include a breakdown of outcomes in different geographies. HUD will prescribe the reporting period as a

specified period after settlement in the CAA.

(c) *Remedy for performance failures.* HUD may pursue appropriate remedies, including, but not limited to, the ability to deny future participation in loan sales, for a Purchaser's failure to comply with Single Family Sale requirements, including CAA obligations.

**§ 291.617 General policy – Direct Sale of Single Family Loans.**

The Secretary may pursue a Direct Sale of Single Family Loans to individuals or entity type the Secretary determines may be eligible to qualify as set forth in the Sale Notice. The Direct Sale of Single Family Loans will be subject to the requirements of this subpart, excluding §§ 291.609 and 291.611. The Secretary will publish in the Sale Notice, sale specific Single Family Loan eligibility criteria.

**§ 291.619 Direct Sale of Single Family Loans process.**

(a) *Sale Notice.* The Secretary will prescribe requirements for a Direct Sale of Single Family Loans through a Sale Notice.

(b) *Sale feasibility.* In all stages of the Direct Sale of Single Family Loans process, HUD may determine whether continuation with the Direct Sale of Single Family Loans is feasible and in HUD's interest, consistent with HUD's fiduciary responsibility to the MMIF and any stated mission objectives.

(c) *Direct Sale of Single Family Loans process.* An individual or entity interested in purchasing Single Family Loans through a Direct Sale of Single Family Loans must:

(1) Meet the Secretary's prescribed requirements for the Direct Sale of Single Family Loans in the Sale Notice; and

(2) Submit a letter of interest to the Secretary that includes, at a minimum:

(i) The description of the individual or entity and a statement about how it would be able to satisfy the participant eligibility requirements and mission objectives, if any;

(ii) The geographic area of interest where the party wishes to purchase the loans;

(iii) The individual or entity's goals and how this purchase would assist in achieving

these goals through post-sale outcomes;

(iv) The approximate timeframe for the purchase;

(v) The approximate number of loans or, alternatively, the approximate gross sale amount desired; and

(vi) The organizational documents for an entity including, but not limited to organizational documents, any required authorizing resolutions, and disclosure of all nonprofit organization or private entity partnership interests in the Direct Sale of Single Family Loans transaction.

(d) *HUD determination.* Upon receipt of a letter in paragraph (c)(2) of this section, HUD will respond in writing to the submitter to confirm receipt of the letter and, if necessary, request additional information needed for a final determination.

(e) *Secretary's determination to proceed.* (1) If the Secretary makes a final determination to proceed, the Secretary will request from the individual or entity, a business plan proposal from the individual or entity that details its ability to meet any stated mission objectives in the Sale Notice along with its goals and how these goals will be achieved with post-sale outcomes. Business plans must be received by HUD within 30 business days of request.

(2) Upon receipt and review of business plan proposal, HUD will:

(i) Reject the business plan proposal;

(ii) Issue a conditional rejection that would provide the opportunity for a business plan proposal to be amended and resubmitted for approval upon fulfillment of HUD's request; or

(iii) Approve the business plan proposal.

(3) Upon approval of such business plan proposal, HUD and the individual or entity will begin the Direct Sale of Single Family Loans process that includes:

(i) An executed Confidentiality Agreement;

(ii) An executed Bidder Qualification Statement;

(iii) A P-Servicer executed PSA; and

(iv) Review of Single Family Loans from P-Servicer(s) or HUD.

(4) HUD and the individual or entity reviews the ALD and will agree on the Single Family Loan Sale List for the Direct Sale of Single Family Loans.

(f) *Direct Sale of Single Family Loans.* After satisfaction of the requirements in paragraph (d) of this section, HUD will conduct its valuation review, and issue a final price determination and a CAA, containing an estimated settlement date, to the individual or entity. If accepted, a final Settlement date is scheduled, and the Single Family Loan List is appended to the CAA.

(g) *Settlement.* HUD and the Purchaser will execute the CAA for settlement. The remaining settlement and transfer requirements will follow those in § 291.613.

#### **§ 291.621 Disqualifications.**

(a) *Fraudulent information.* If HUD determines there is any information indicating any certification or required document provided by any party participating in a Single Family Sale, including but not limited to P-Servicer, Purchaser, Qualified Participant, or a Purchaser's servicer, is false, misleading, or constitutes fraud or misrepresentation, HUD will not approve that party's participation in the Single Family Sale and will revoke any prior approval. The submission of false information or misrepresentation by an approved lender or mortgagee may result in the referral of the mortgagee to the Mortgagee Review Board.

(b) *Participant ineligibility.* An individual or entity is ineligible to participate in a Single Family Sale if, at the time of the Single Family Sale, that individual or entity is suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 180 or 2424, 24 CFR part 25, 48 CFR part 9, subpart 9.4, or under similar procedures of any other Federal agency.

(c) *Future participation.* Purchasers that made misrepresentations in the qualification process or failed to meet their contractual obligations under CAAs, including failing to meet post-sale requirements, for previous Single Family Sales in which they participated may be

disqualified from participation in one or more future Single Family Sales or for a set period of time at the discretion of the Secretary.

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