

## Section 24

# FHA/HUD Qualification And Procedures



Unless you are familiar with a lender or you have access to current information about a lender it is difficult to know if a deal will be accepted. In the case of FHA mortgages there are some general guidelines to follow.

Updated guidelines can be found on the HUD website, [www.hud.gov](http://www.hud.gov) and on the document entitled PREFORECLOSURE SALES PROGRAM.

The verbatim text from the HUD document is included below with explanations in italics.  
From [www.hud.org](http://www.hud.org):

Revised – February 4, 2009 by HUD  
CDPE Revision - June 19, 2009

## PREFORECLOSURE SALES PROGRAM

The Preforeclosure Sale Program allows a Mortgagor in default to sell his or her home and use the sales proceeds to satisfy the mortgage debt, even if the proceeds are less than the amount owed. Ref: Mortgagee Letters 2003-19 and 2008-43.

### FACTS

- Outright sale of mortgaged property to a third party and must be an “arms length” transaction.

*The buyer and seller cannot have a prior relationship (mother and son, brother and sister, etc.). Arms length also refers to the buyer and seller having any financial agreement outside the closing.*

- Outstanding indebtedness includes; unpaid principal balance + delinquent interest + Partial Claim (if applicable).

*Under a HUD Partial Claim, the Department of Housing and Urban Development (HUD) agrees to advance funds to homeowner to bring loan current. A homeowner executes a Promissory Note and Subordinate Agreement. The advance is written as a note which carries 0% interest and is due and payable when the mortgage is satisfied (refinanced or sold). This would have taken place prior to the application for the PFSP.*

- HUD will pay up to \$1,000 incentive to the Mortgagor if closed within 3 months from the date of application; thereafter, the incentive is reduced to \$750.

HUD can pay if and only if the ratios below are met.

- HUD will pay an additional amount up to \$1,500 for the discharge of junior liens after the Mortgagor's incentive has been applied.

*This was previously up to \$2,000 including the funds paid to seller.*

- HUD allows all reasonable cost of the sale including up to 6% sales commission, local/state transfer tax stamp and other customary closing cost.

*This is excellent for sales agents since most conventional mortgage companies will negotiate commissions. If the ratios below are not met, an agent may have to discount his/her commissions in order to allow a deal to go through.*

- HUD allows up to 1% of the buyer's mortgage amount for closing costs to be included in the "Seller's Costs" on the HUD-1 for all transactions that involve a new FHA-insured mortgage.

*The 1% closing cost contribution is only available if the buyer is using an FHA mortgage. Tiered Net Sales Proceeds requirement is applicable as follows:*

o For the first 30 days of marketing, Mortgagees may only approve offers that will result in minimum net sale proceeds of 88% of the "As-Is" appraised Fair Market Value.

o During the next 30 days of marketing, Mortgagees may only approve offers that will result in minimum net sale proceeds of 86% of the "As-Is" appraised Fair Market Value.

o For the duration of the Preforeclosure Sale marketing period, Mortgagees may only approve offers that will result in minimum net sale proceeds of 84% of the "As-Is" appraised Fair Market Value.

*The above minimum net proceeds are based on net proceeds to lender after all acceptable closing costs and are based on “as-is” appraised Fair Market Value.*

- Unacceptable Settlement Costs:
  - o Repair reimbursements or allowances;
  - o Home Warranty Fees;
  - o Discount points or loan fees for non FHA-financing; and
  - o Lender’s title Insurance fee.
- Property Condition:
  - o Properties that have sustained damage may be eligible for the PFS option.
  - o If the cause of the damage is fire, flood, earthquake, tornado, boiler explosion (for condominium’s only) or mortgagee neglect (i.e., surchargeable damages as defined in 24 CFR Part § 203.378) mortgagees must obtain prior approval from the NSC at the address above.
  - o Prior to seeking this approval, the mortgagee must obtain the government’s estimate o Revised – February 4, 2009 of the cost to repair the surchargeable damage by contacting the HUD Management and Marketing (M&M) Contractor with jurisdiction for the geographic area where the property is located.
  - o A list of M&M Contractors can be found on the Internet at:  
<http://www.hud.gov/offices/hsg/sfh/reo/mm/mminfo.cfm>.

*If you are dealing with a property that has sustained substantial damage contact the lender to see if they will have a HUD M&M contractor do an estimate for you.*

- Under no circumstance should the Mortgagor be encouraged to default on their mortgage for the purpose of participating in the Preforeclosure Sale Program.

*This is critical; there are legal and ethical considerations agents open themselves to if they encourage a borrower to default.*

## ELIGIBILITY

- The property must be owner-occupied, no “walk-a ways” or investment properties.
- Exceptions: when it is verifiable that the need to vacate was related to the cause of default (job loss, transfer, divorce, death), and the subject property was not purchased as rental investment, or used as a rental for more than 18 months.

*If the owner left the property due to his hardship then he may still be eligible unless it was rented for over 18 months.*

- The Mortgagor must be 31 days or more delinquent at the time of the Preforeclosure Sale closing.

*As an agent you should disclose this requirement to your client however you should never encourage default. They need to be made aware of this issue.*

- The Mortgagor must provide documentation substantiating a reduction in income or an increase in living expense, and documentation that verifies the Mortgagors need to vacate the property (if applicable).

*This is identical to a hardship letter and the back up documentation you should collect in any short sale.*

## PROCEDURES

(1) Mortgagors who express an interest in the Preforeclosure Sale Option or who have been identified by the Mortgagee as a qualified candidate for the Preforeclosure Sale Program must be mailed a copy of the revised Information/Disclosure Form HUD-90035.

*This form is located on your disc and updates can be found on the HUD website.*

(2) The Mortgagee must obtain a standard “As Is” FHA appraisal which has been completed in accordance with the requirements of HUD Handbook 4150.2 (Valuation Analysis for Single Family One-to Four-Unit Dwellings). To this end, Mortgagees must:

- Obtain a standard electronically-formatted appraisal from an appraiser on FHA's Appraiser Roster. The selected appraiser must not share any business interest with the Mortgagor or the Mortgagor's agent. Appraisals obtained by the buyer, seller, real estate agent, or other interested parties may not be used to establish the Fair Market Value of the property for the Preforeclosure Sale Program. It is also important to note that:
  - o The appraisal must contain an "As-Is" Fair Market Value for the subject property;
  - o The appraisal will be valid for six (6) months; and
  - o Distress sales may not be used by the appraiser to establish comparable values unless they represent the only comparables within reasonable proximity of the subject property.
  
- Provide a copy of the appraisal to the homeowner, sales agent, or HUD, upon request.
  
- Mortgagees are reminded that in accordance with HUD regulations at 24 CFR Part §203.365 (c) they are responsible for the accuracy of all documentation used in the PFS decision, including accurate and complete appraisal information.

*This makes it critical that agents collect all documentation and provide it to the mortgage company or lender.*

In an effort to ensure that the most current Fair Market Value is used for the Preforeclosure Sale, a Mortgagee may obtain a new FHA appraisal, even if the property was appraised by an FHA Roster Appraiser within the preceding six (6) months.

In a declining market an updated appraisal can be requested and obtained by the lender.

To be reimbursed through HUD's claim filing process, the cost of the appraisal must be reasonable and customary for the market area where the appraisal is performed. The appraisal must be retained in the claim/servicing file, even if the Preforeclosure Sale is not approved or completed.

(3) The Mortgagee must obtain a title search or preliminary report verifying that the title is not impaired with un-resolvable title problems or with junior liens that cannot be discharged as

permitted by HUD.

*Junior liens must be \$1,500 or less for the purposed of approval.*

(4) When an application is accepted an *Approval to Participate* form is used. The date of this form becomes the starting date of the PFS participation. The *Approval to Participate* form must include the date by which a signed contract for sale must be obtained and minimum acceptable net sales price.

- The Mortgagor agrees to show good faith in attempting to market and sell the property.
- The Mortgagor must perform all normal property maintenance and repairs until closing of the Preforeclosure Sale.
- The Mortgagor must list the property with a licensed real estate broker, unrelated to the Mortgagor. The listing agreement must include a specific cancellation clause in the event the terms of the sale are not acceptable to HUD. *The agent must have an arms length relationship to the seller.*

(5) The Mortgagee delays foreclosure to allow pursuit of the Preforeclosure Sale.

*The foreclosure will be stalled for the entire length of the preforeclosure sale period. If a sale is not made the foreclosure will resume.*

(6) The Preforeclosure Sale period shall be four (4) months beginning upon Mortgagee approval (automatically extended two months for Mortgagees in Tier 1; or there is a signed Contract of Sale, but settlement can not occurred by the end of the fourth month).

(7) The Mortgagee should review marketing efforts with the Mortgagor and/or the Real Estate Broker/Agent on a monthly basis.

*The lender will want to see that the property is listed in the MLS, typically this is the only marketing confirmation they will need.*

(8) The sale closing must occur within six months (6), eight (8) months if Mortgagee is in Tier 1, from the date the Mortgagee notified the Mortgagor in writing of approval to participate in the Preforeclosure Sale Program.

*The status of the mortgage company as Tier 1 or 2 is decided by HUD.*

If you have any question you may contact NSC at:

**National Servicing Center**

[www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm](http://www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm)

E-mail: [hsg-lossmit@hud.gov](mailto:hsg-lossmit@hud.gov)

1-888-297-8685

**Frequently Asked Questions:**

<http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm>

PFS Forms: <http://www.hud.gov/offices/hsg/sfh/nsc/lmmltrs.cfm>