U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

December 24, 2008 **MORTGAGEE LETTER 2008-43**

TO: ALL HUD-APPROVED MORTGAGEES

ATTENTION: Single Family Servicing Managers

SUBJECT: Pre-Foreclosure Sale (PFS) Program - Utilizing the PFS Loss Mitigation Option to Assist Families Facing Foreclosure

High foreclosure rates continue to have devastating effects on families and neighborhoods. The Federal Housing Administration (FHA) remains committed to taking actions to help families avoid foreclosure. Since being introduced as a national program in 1994[1], the PFS Program has helped thousands of mortgagors in default to avoid foreclosure and transition to more affordable housing. The PFS Program can help many families who today are facing foreclosure. The PFS loss mitigation option allows a mortgagor in default to sell his or her home and use the sale proceeds in satisfaction of the mortgage debt when the proceeds are less than the amount owed.

This Mortgagee Letter (ML) serves to remind mortgagees of the relief that the PFS Program can bring to borrowers with FHA-insured mortgages. To facilitate greater use of this program, FHA has consolidated in this ML the requirements of the PFS Program that have been issued over the years, and has updated and clarified those requirements where needed, to better address the problems faced by mortgagors today and provide greater flexibility in considering a mortgagor's candidacy for participation in this program.

Key Features of the PFS Program

- Establishing Market Value –Mortgagees are reminded to ensure that properties in the PFS program are sold at or near fair market value as established by an independent appraisal, prepared by an appraiser on the FHA Appraisal Roster.

- Minimum List Price Requirements – Properties offered for sale under the PFS program are to be listed for sale at no less than the "as-is" appraised value as determined by a current FHA appraisal, obtained and reviewed by the mortgagee.

- Negative Equity – The ratio of 63% for the fair market value (FMV) to the outstanding mortgage balance (including unpaid principal and accrued interest) has been updated to address events in the current housing market, and replaced with tiered net sales proceeds.

[1] The regulations for the PFS Program are codified in 24 CFR 203.370.

- Tiered Net Proceeds Requirement – This ML incorporates guidelines for varying minimum net sales proceeds based on the length of time a property has been competitively marketed for sale.

- Marketing Documentation – Prior to accepting a discounted offer, evidence of competitive marketing from the selling broker is to be presented and mortgagees are to retain this documentation in the claim review file.

- Non-owner Occupant Exceptions – Mortgagees are authorized to grant reasonable exceptions to non-occupant mortgagors when documentation indicates a property was not purchased as a rental or used as a rental for more than 18 months, immediately preceding the approval into the PFS program.

- Removal of Repair Limitations –With prior approval from HUD, properties with surchargeable damage (i.e., damage caused by fire, flood, earthquake, hurricane, boiler explosion or mortgagee neglect) may be eligible for the PFS program if funds - sufficient to cover the government's estimated repair costs - are applied to reduce the outstanding debt when a claim is filed.

- Increase in Funds Available for Discharge of Subordinate Liens – In instances where a mortgagor has made an initial contribution/incentive of $750 or $1,000, the amount that can be used from sales proceeds for the discharge of liens or encumbrances (which represent an impediment to conveyance of marketable title) has been raised from $2,000 to $2,500.

- Change in Allowable Closing Costs – Subject to the stated ratios, 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.

Superseded and Updated Mortgagee Letters and Forms

This ML supersedes in its entirety ML 1994-45, "HUD's Nationwide Pre-Foreclosure Sale (PFS) Procedure". It also supersedes the section (pages 29-35) of ML 2000-05, "Loss Mitigation Program-Comprehensive Clarification of Policy and Notice of Procedural Changes" that describes Pre-Foreclosure Sale requirements.

Additionally, this ML updates, consolidates and/or eliminates the following HUD forms:

Form HUD-90035 (*Information Sheet)* and Form HUD-90036 (*Application to Participate)* have been consolidated to reflect updates made to the program and to delete any reference to HUD's former Assignment Program. The new Form HUD-90035 (*Information/Disclosure)* no longer requires the signature of the party providing homeownership counseling to the mortgagor. Form HUD-90036, *Application to Participate* is obsolete and no longer required.

Form HUD-90038 (*Homeownership Counseling Certificate)* is now obsolete. Form HUD-90054 (*Pre-Foreclosure Sale Data Reporting)* and Form HUD-92068-F (*Mortgage Assignment Program Request for Financials)* were both previously declared obsolete.

Form HUD-90041 (*Request for Variance)* has been slightly modified to reflect the new minimum net sales proceeds of 84%.

Form HUD-90045 (*Approval to Participate)* has been modified to provide a signature block for the mortgagor's signature(s) and new language describing HUD's current PFS Program.

Monitoring of Appraisals

Mortgagees are reminded that HUD performs monitoring reviews of appraisals and holds mortgagees accountable for the quality of appraisals on properties securing FHA-insured mortgages. As such, HUD may request electronically-formatted appraisals to review and ensure their accuracy. Mortgagees who submit appraisals that do not meet HUD's requirements are subject to the imposition of sanctions by the HUD Mortgagee Review Board in accordance with 24 CFR Part § 25.9 (ee) and Part § 203.5 (e)(3).

Information Collection Requirements

Paperwork reduction information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0464. In accordance with the Paperwork Reduction Act, HUD 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 OMB Control Number.

Mortgagees may direct questions or concerns regarding the Department's PFS procedures to the Customer Call Center for HUD's National Servicing Center (NSC). The toll free number is (888) 297-8685. Persons with hearing or speech impairments may reach this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

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Pre-Foreclosure Sale Introduction

The Pre-Foreclosure Sale (PFS) option allows mortgagors in default (resulting from an adverse and unavoidable financial situation) to sell their home at FMV and use the sale proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed. This option is appropriate for mortgagors whose financial situation requires that they sell their home, but they are unable to do so without FHA relief because the gross recovery on the sale of their property (i.e., sales price minus sales expenses) is less than the amount owed on the mortgage. HUD's home retention alternatives such as Special Forbearance, Mortgage Modification, or Partial Claim must first be considered and determined unlikely to succeed due to the mortgagor's financial situation. Mortgagees must maintain supporting documentation to demonstrate that a comprehensive review of the mortgagor's financial records was completed, and that the mortgagor did not have sufficient income to sustain the mortgage. Under no circumstances shall the PFS option be made available to mortgagors who have abandoned their mortgage obligation despite their continued ability to pay.

To participate in the program, mortgagors must be willing to make a commitment to actively market their property for a period of 3 months, during which time the mortgagee delays foreclosure action. Mortgagors who successfully sell to a third party within the required time may receive a cash consideration of up to $1,000. Mortgagees also receive a $1,000 incentive for successfully avoiding the foreclosure and complying with all the requirements of this ML. If the property does not sell, mortgagors are encouraged to use the deed-in-lieu of foreclosure (DIL) option, providing the title on the property is marketable. By following procedures and time frames included in this ML, a mortgagee may submit a FHA insurance claim and be compensated for the difference between the sale proceeds and the amount owed on the mortgage (including accrued interest and reimbursable costs).

A PFS sale must be an outright sale of the property. If a foreclosure occurs after the mortgagor unsuccessfully participated in the PFS process in good faith, neither the mortgagee nor HUD will pursue the mortgagor for a deficiency judgment.

Home Equity Conversion Mortgages (HECM) are not eligible for the PFS Program. The Code of Federal Regulations (CFR) provides special provisions for HECM short sales. Mortgagees should refer to 24 CFR Part § 206.125 (c) or contact HUD's NSC at the address below (Attention: HECM Housing Specialist) or email **hecmhelp@hud.gov**.

A. Loan Default

At the time the PFS closes, the loan must be in default (i.e., delinquent more than 30 days). Mortgagees may exercise their discretion to accept applications from mortgagors who are current but facing imminent default. However, by the date the PFS settlement occurs, the loan must be in default. Mortgagees should document this decision in the claim review file.

B. Mortgagor Qualifications

The PFS option may be extended to mortgagors who:

- Are in default as a result of an adverse and unavoidable financial situation. Adverse and unavoidable financial situations may include but are not limited to loss of job or verifiable income reduction and extensive medical expenses;

- Have negative equity as determined by an "as-is" FHA appraisal that indicates a property value less than 100% of the outstanding mortgage balance (including unpaid principal and accrued note rate interest) and any outstanding Partial Claim amounts, which are secured by a subordinate lien and/or a note. A PFS may be considered if the property's "as-is" appraised FMV slightly exceeds the mortgage payoff figure, but gross sales proceeds fall short of the amount needed to discharge the mortgage by more than $1,000;

- Are owner-occupants of a one-to-four unit single-family dwelling with a FHA-insured mortgage under Title II of the National Housing Act. Mortgagees are authorized to grant reasonable exceptions to non-occupant borrowers when it can be demonstrated that the need to vacate was related to the cause of default (e.g., job loss, transfer, divorce, death), and the subject property was not purchased as a rental or used as a rental for more than 18 months prior to the mortgagor's acceptance into the PFS Program;

- Have only one FHA-insured loan. Mortgagees are authorized to make reasonable exceptions for mortgagors who have acquired an FHA-insured property through inheritance or co-signed a FHA-insured loan to further enhance the credit of another mortgagor; or

- Are not a corporation or partnership (i.e., unless a written request to utilize the PFS has been approved by HUD's National Servicing Center (NSC)). Requests for such approvals should be submitted to:

  U.S. Department of Housing and Urban Development
  National Servicing Center
  ATTENTION: Branch Chief
  301 NW 6th Street, Suite 200
  Oklahoma, OK 73102
  Phone Number: (888) 297-8685
  Fax Number: (405) 609-8405

C. PFS Program Participation

On the 32nd day but, no later than the 60th day of delinquency, the mortgagee shall send the delinquent borrower a pamphlet (HUD-PA-426, *How to Avoid Foreclosure)* about foreclosure avoidance. This pamphlet provides mortgagors with important information about loss mitigation alternatives, which include the pre-foreclosure sale option.

Mortgagees must inform mortgagors of the full spectrum of foreclosure-avoidance options prior to mortgagors' participation in the PFS Program. The mortgagee shall also advise that default counseling is available and highly recommended, though not required.

A mortgagor who has expressed an interest in the PFS option or who has been identified by the mortgagee as a qualified candidate for the PFS Program must be mailed a copy of the revised Form HUD-90035 (*Information/Disclosure).* Prior to mailing Form HUD-90035, the mortgagee must add its toll-free or collect telephone number to the form. Form HUD-90035 provides the mortgagor with appropriate PFS disclosures, information on housing counseling, and information about tax consequences. This disclosure form, the aforementioned pamphlet, and other HUD forms can be found on HUDclips at: **http://www.hudclips.org.**

D. Financial Analysis

Prior to signing Form HUD-90045 (*Approval to Participate)*, the mortgagee must request financial documentation to evaluate the mortgagor's ability to support the mortgage debt. The PFS option may not be offered to mortgagors who have sufficient personal resources to pay off their mortgage commitment.

The mortgagee may prescribe the form that the mortgagor must use to submit its financial information. Mortgagors may provide financial information during a telephone interview, electronically, via the regular mail, or in person. Regardless of how the mortgagor's financial information is obtained, the mortgagee must independently verify the financial information. Mortgagors with surplus income and/or other assets are required to re-pay the indebtedness through the use of a repayment plan.

The mortgagee must analyze the mortgagor's ability to meet the monthly mortgage obligation by:

- Estimating the borrower's fixed monthly expenses (e.g., mortgage payment, food, utilities, car payment, outstanding obligations, etc.);
- Estimating the borrower's anticipated monthly net income (making necessary adjustments for income fluctuations); and
- Subtracting expenses from income to determine the amount of surplus income available each month.

If the mortgagee's evaluation indicates that the mortgagor is not eligible for a PFS or another loss mitigation option, the mortgagee must immediately advise the mortgagor of this decision in writing, explaining the reason for denial and giving the mortgagor at least seven calendar days to respond. In the servicing or claim review file, the mortgagee must maintain all evidence (i.e., supporting documentation, including all communication logs) of compliance with HUD's Loss Mitigation Program requirements.

E. Property Value

Properties offered for sale through the PFS Program are to be listed at no less than the "As Is" value as determined by an appraisal 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 FMV of the property for the PFS Program. It also important to note that:

    1. The appraisal must contain an "as-is" FMV for the subject property;

    2. The appraisal will be valid for six months; and

    3. 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.

In an effort to ensure that the most current FMV is used for the PFS, a mortgagee may obtain a new FHA appraisal, even if the property was appraised by an FHA Roster Appraiser within the preceding 6 months.

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 PFS is not approved or completed.

F. Property Condition

Properties that have sustained damage may be eligible for the PFS option. 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. Prior to seeking this approval, the mortgagee must obtain the government's estimate 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. A list of M&M Contractors can be found on the Internet at: http://www.hud.gov/offices/hsg/sfh/reo/mm/mmingo.cfm.

Upon receipt of the government's repair estimate, the mortgagee must submit a Form HUD-90041 (*Request for Variance)* to the NSC to obtain the approval needed to enter into a PFS Agreement with the mortgagor.

In accordance with 24 CFR Part § 203.379 mortgagees are responsible for the cost of surchargeable property damage. If the property is being sold "As Is" subject to the damage, the mortgagee will be required to deduct the government's estimate of the cost of the damage from its PFS claim (See Appendix A - Claim Filing Instructions for Item 109).

If the property is being sold "As Repaired" and funds for surchargeable repairs will be escrowed or provided as a credit to the borrower at closing, the amount of the repair escrow or repair credit is not an allowable settlement cost as defined in Section J of this ML and may not be included in the net sales proceeds calculation.

If the damage is not surchargeable it is not necessary to obtain approval from NSC prior to approving the PFS Agreement. Regardless of the cause of the damage, the mortgagee must work with the mortgagor to file a hazard insurance claim and either use the proceeds to repair the property or adjust the claim by the amount of the insurance settlement (non-surchargeable damage) or the government's repair cost estimate.

Mortgagors are required to disclose any property damage to the mortgagee during the application or after the PFS approval. In the event a property sustains significant damage after a mortgagor has received approval to participate in the PFS program, the mortgagee must re-evaluate the property to determine if it continues to qualify for the PFS Program and terminate participation if the extent of the damage changes the property's FMV. .

G. Condition of Title

All properties sold under the PFS Program must have marketable title. Prior to execution of Form HUD-90045 (*Approval to Participate)* 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. If the mortgagee determines that these issues can be resolved, the mortgagor may be accepted into the PFS Program and resolution of said issues may be pursued while the property is being marketed.

Frequently, it is in the interest of all parties to facilitate the discharge of secondary liens in order to clear title. In some cases, junior lien holders will release a lien for a partial cash payment or a promissory note from the mortgagor. Mortgagors who have the financial ability to do so must be required to satisfy or obtain release of liens. Additionally, any incentive consideration payable to the mortgagor ($750 to $1,000) may be applied toward discharging liens.

If no other source of funds is available after applying the mortgagor's incentive amount, the mortgagee may obligate up to an additional $1,500 - for a total of $2,500 - from sale proceeds towards discharging liens or encumbrances to meet all required ratios.

- **Title I Liens** – If the first mortgagee discovers that a mortgagor has a HUD Title I (property improvement) loan secured by the property, the first mortgage holder must contact the Title I subordinate lien holder to advise of the mortgagor's participation in a PFS. The first mortgagee may be required to negotiate the release of the lien in order to proceed with a PFS.

  If the Title I loan has been assigned to HUD, the first mortgagee should contact HUD's Financial Operations Center for guidance. The Center's contact information is as follows:

  U.S. Department of Housing and Urban Development
  Financial Operations Center
  52 Corporate Circle
  Albany, New York 12203.
  1-800-669-5152/ fax (518) 862-2806

- **Section 235 Recapture -** Mortgagors with Section 235 mortgages may be eligible to participate in the PFS Program. However, the mortgagee must first determine if the loan is subject to recapture as referenced in Chapter 11 of HUD Handbook 4330.1, Rev. 4 (*Administration of Insured Home Mortgages).* Generally, if the mortgagor has no equity in the property, there will be no recapture amount owed to HUD under the subsidy provisions of the 235 mortgage. If a recapture amount is owed to HUD after completing the calculation, the mortgagee should contact HUD's NSC prior to approving the PFS.

- **Partial Claim –** The partial claim (unpaid subordinate mortgage) amount must be included in the total delinquency when calculations are made. Any outstanding balance on a partial claim note must be deducted from the net sale proceeds based on the tiered structure of 88%, 86% or the minimum of 84% of "as-is" appraised FMV.

H. Approval to Participate

After determining that a mortgagor and property meet the participation requirements herein, the mortgagee must notify the mortgagor using Form HUD-90045 (*Approval to Participate).* The form shall include the date by which the mortgagor's sales contract must be executed.

I. Participation Requirements

A mortgagor must acknowledge their decision to participate in the PFS program by signing and returning Form HUD-90045 (*Approval to Participate)* to the mortgagee within 7 days of receiving the form. The mortgagor's signature on Form HUD-90045 confirms their agreement to comply with the PFS Program requirements listed below. Mortgagees must monitor the PFS transaction in its entirety to ensure the mortgagors' compliance with these requirements and, should terminate a mortgagor's participation in the PFS Program in the event of noncompliance.

- **Use of Real Estate Broker** – The services of a real estate broker/agent must be retained to market a property within 7 days of the date the approval to participate is granted. The broker/agent must market the property within the pre-established time frame and list the property for the established sales price. The broker/agent selected should have no conflict of interest with the mortgagor, the mortgagee, the appraiser or the purchaser associated with the PFS transaction. Any conflict of interest, appearance of a conflict, or self-dealing by any of the parties to the transaction is strictly prohibited. A broker/agent shall never be permitted to claim a sales commission on a PFS of his or her own property or that of an immediate family member (e.g., spouse, sibling, parent, or child).

- **Pre-Existing Purchasers** – The requirement to engage a real estate professional does not apply if a mortgagor located a buyer for the property prior to being approved to participate in the PFS Program, providing all PFS requirements are met concerning appraisal requirements and minimum ratios for net sales proceeds.

- **Required Listing Disclosure** – The Listing Agreement must include the cancellation clause which reads as follows: "Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the Broker, and without payment of a commission or any other consideration if the property is conveyed to the mortgage insurer or the mortgage holder. The sale completion is subject to approval by the mortgagee."

- **Property Maintenance** – Until the PFS transaction has closed, the mortgagor must maintain the property in "ready to show" condition, make basic property repairs, and perform all normal property maintenance activities (e.g., interior cleaning, lawn maintenance, etc.).

- **Arms-Length Transaction** – Mortgagors and mortgagees must adhere to ethical standards of conduct in their dealings with all parties involved in a PFS transaction. The PFS must be between two unrelated parties and be characterized by a selling price and other conditions that would prevail in a typical real estate sales transaction.

- **Relocation Services** – A relocation service affiliated with the mortgagor's employer may contribute a fixed sum towards the proceeds of the PFS, without altering the arms-length nature of the sale. This contribution simply reduces the shortfall between the proceeds and the amount owed on the mortgage note. As with any other PFS, such a transaction must result in the outright sale of the property and cancellation of the FHA mortgage insurance.

J. Contract Approval

The mortgagee will have 5 working days from receipt of an executed Contract for Sale to respond back to the mortgagor using the Form HUD-90051 (*Sales Contract Review)*. The PFS transaction must be an outright sale of the premises.

No sale by assumption, regardless of provisions for release of liability, may be considered. The contract must not include contingencies that might delay or jeopardize a timely settlement.

Before approving any sales contract, the mortgagee must review the sales documentation to determine that there are no hidden terms or special agreements existing between any of the parties involved in the transaction. Additionally, the mortgagee must determine if the property was marketed at the gross offering price (close to FMV) and the minimum net sales proceeds' requirements (described herein) have been met. The mortgagee will be liable for any insurance claim overpayment on a PFS transaction that closes with net sales proceeds less than the percentages indicated below.

- **Net Sale Proceeds** – Regardless of the property's sale price, a mortgagee may not approve a PFS contract if the net sale proceeds fall below the minimum allowable thresholds stated herein. HUD has established guidelines for varying minimum net sales proceeds based on the length of time a property has been competitively marketed for sale.

  1. 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 FMV.

  2. 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 FMV.

  3. For the duration of the PFS marketing period, mortgagees may only approve offers that will result in minimum net sale proceeds of 84% of the "as-is" appraised FMV.

  4. Mortgagees have the discretion to deny or delay sales where an offer may meet or exceed the 84%, if it is presumed that continued marketing would likely produce a higher sale amount. However, the mortgagee is still limited to 4 to 6 months after the date of the mortgagor's approval to participate in the PFS Program.

- **Allowable Settlement Costs** – The term "Net Sale Proceeds" is defined as the sales price minus closing/settlement costs (i.e., reasonable and customary costs per jurisdiction that are deducted at settlement). Allowable settlement costs include:

  1. Sales commission consistent with the prevailing rate but, not to exceed 6%;

  2. Real estate taxes prorated to the date of closing;

  3. Local/state transfer tax stamps and other closing costs customarily paid by the seller including the seller's costs for a title search and owner's title insurance;

  4. Consideration payable to seller of $750 or $1,000 (i.e., if such consideration is not used to discharge junior liens);

5. Up to $2,500 to be used for the discharge of junior liens if closing occurs within 90 days. Within 90 days, the first $1,000 represents the mortgagor's consideration and the additional $1,500 represents FHA's consideration for a total of $2,500. If settlement occurs after 90 days, the first $750 represents the mortgagor's consideration and the additional $1,500 represents FHA's consideration for a total of $2,250;

6. Outstanding partial claim amount. This entire amount must be paid when calculating the net sales proceeds. The seller, buyer, or other interested party may contribute the difference if the net sales proceeds' amount falls below the allowable threshold; and

7. Up to 1% of the buyer's first mortgage amount if the sale includes FHA financing.

- **Unacceptable Settlement Costs** – The following costs may not be included in the net sales proceeds calculation, however, the seller may use their consideration of $750 or $1,000 for these settlement costs.

1. Repair reimbursements or allowances;

2. Home Warranty fees;

3. Discount points or loan fees for non FHA-financing; and

4. Lender's Title Insurance fee.

K. Duration of the Pre-Foreclosure Sale Period

Unless an extension has been approved by NSC, mortgagees have 4 months from the date of the mortgagor's approval to participate in the PFS Program. Mortgagees have a pre-approved extension of 2 additional months to complete the PFS if one of the following exists:

- The mortgagee is in the Tier 1 category under the Department's Tier Ranking System (TRS); or

- There is a signed Contract of Sale, but settlement has not occurred by the end of the fourth month following the date of the mortgagor's approval to participate in the PFS Program.

Mortgagees are reminded that, on a monthly basis, they must review a property's marketing status with the mortgagor and/or real estate broker.

L. Property Inspections

Mortgagees have a responsibility to ensure that insured properties are not subject to abandonment or waste, and are required to conduct property inspections on the 45th day following default if there has been no contact with the mortgagor. Property preservation and protection (P&P) inspections are not required during the PFS period if contact with the mortgagor is maintained, unless there is reason to suspect that the property has become vacant. Inspections to verify occupancy are reimbursable using Part C of the Form HUD-27011 (*Single Family Application for Insurance Benefits)*. However, funds expended for P&P work on an occupied property are not reimbursable.

M. Early Termination

A mortgagor may voluntarily terminate participation in the PFS Program at any time. PFS Program participation may also be terminated at the discretion of the mortgagee, for any of the following reasons:

- Un-resolvable title problems;
- Determination that the mortgagor is not acting in good faith to market the property;
- Significant change in property condition or value; and
- Re-evaluation of the information provided by the mortgagor indicates that the case does not qualify for the PFS option.

The mortgagee must forward the mortgagor a date-stamped written explanation for terminating his/her program participation. This letter shall also include the "end-of-participation" date for the mortgagor. The mortgagee must then resume appropriate servicing actions.

N. Failure to Complete a PFS

At the expiration of the PFS period, the mortgagee must re-evaluate available loss mitigation options. If the mortgagor's financial condition has improved to the point that reinstatement is a viable option, the mortgagee may undertake one of the home retention loss mitigation tools. If reinstatement is not feasible, the mortgagee should try to obtain a DIL of foreclosure before commencing foreclosure. An alternate loss mitigation option or first legal action to initiate foreclosure must be completed within 90 days of the expiration of the PFS period. If more than 90 days are needed to complete a DIL or initiate foreclosure or resume foreclosure, mortgagees must follow HUD's standard extension procedures and request an extension from the NSC.

O. Mortgagee Incentive

FHA will pay mortgagees an incentive fee of $1,000 for each completed PFS transaction that complies with all of the requirements in this ML. This fee may be claimed on line 129, Part B of Form HUD-27011.

P. Mortgagor Consideration

Mortgagors, acting in good faith, who successfully sell their properties using this option are relieved of their mortgage obligation and are entitled to a consideration of $750. If the closing occurs within 3 months of the approval to participate, the mortgagor will be entitled to $1,000. Unless the mortgagor's consideration is required to release junior liens, the mortgagor may elect to accept cash paid at closing. The mortgagor may also apply a portion of or the entire amount of consideration to offset sales costs not paid by HUD; including a home warranty plan fee, costs of optional repairs, and buyer's closing expenses. If the PFS is unsuccessful and foreclosure occurs, mortgagors who participate in the PFS Program in good faith will not be pursued for deficiency judgments by the mortgagee or HUD.

Q. Closing and Post Closing Responsibilities

Prior to closing, the mortgagee will provide the closing agent with a Form HUD-90052 (*Closing Worksheet)* which lists all amounts payable from sale proceeds. The closing agent will calculate the actual net sale proceeds and provide a copy of the Form HUD-1 (*Settlement Statement*) to the mortgagee. The mortgagee must review the actual terms of the transaction to ensure that they are in accordance with the earlier estimates prior to granting final approval of the PFS. The mortgagee is required to ensure that:

- The final terms of sale are consistent with the purchase contract;
- Only allowable settlement costs have been deducted from the seller's proceeds;
- The net sales proceeds will be equal to or greater than the allowable thresholds; and
- The Form HUD-90052 is included in the claim/servicing file.

Once the mortgagee gives final approval for the PFS and the settlement occurs, the closing agent must pay the expenses out of the proceeds, and must forward the net sales proceeds to the mortgagee. The closing agent must also forward a copy of the Form HUD-1 to the mortgagee to be included in the claim/servicing file.

A PFS must be reported to national credit bureaus as a "short sale". Mortgagees will be responsible for filing a Form 1099-A (*Acquisition or Abandonment of Secured Property*) with the Internal Revenue Service and reporting any discharge of indebtedness, in accordance with the Internal Revenue Code.

R. Claim Filing

HUD will reimburse the mortgagee for reasonable and customary costs of the appraisal, title search (if not included in the settlement statement), and the allowable percentage of legal fees for a postponed foreclosure, pending completion of the PFS.

Disbursements for taxes, assessments, hazard insurance and other allowable items payable before the date of the PFS closing are reimbursable only if they are not satisfied at closing. HUD will not pay property-related costs which were incurred after the PFS closing date.

HUD will monitor mortgagees by selecting and reviewing appraisals for risk assessment purposes. Electronic appraisals will be reviewed for accuracy and to ensure that FMVs were used in lieu of distressed sale values. HUD is now requiring mortgagees to enter the FMV in Block 30 on Part A of Form HUD-27011.

The consideration paid to the mortgagor and allowable amounts (i.e., which do not exceed $2,500) paid to release all junior liens must be reflected on the Form HUD-1 and must <u>not</u> be included on the Form HUD-27011. The mortgagee's incentive fee must be entered on line 129 of Part B of the Form HUD-27011.

Upon receipt of the portion of the sales proceeds designated for mortgage satisfaction, the mortgagee will satisfy the mortgage obligation and file a PFS claim for FHA insurance benefits via Form HUD-27011. The mortgagee must <u>not</u> submit an FHA insurance termination to the Department if a PFS claim will be filed.

If the mortgagee began the PFS process timely, then HUD will grant the mortgagee an automatic extension of 90 days after termination of the PFS to initiate another loss mitigation action or undertake the first legal action to institute foreclosure as described in Section "N" of this ML. To receive the extension, the ending date of the terminated or failed PFS transaction must be entered in Block 21 of Part A of the Form HUD-27011. A date that is no more than 90 days after the date listed in Block 21 must be entered in Block 19, to receive this extension. The claim for insurance benefits, (Parts A and B of Form HUD-27011), should be received by HUD within 30 days after the settlement date of the PFS transaction. If the sale proceeds have not been received from the closing agent, an extension must be requested from the NSC. The expiration date of the approved extension must be recorded in Block 20 on Part A of Form HUD-27011.

HUD will hold mortgagees, submitting excessive claims that do not meet the aforementioned required minimum allowable tiered-thresholds of 88%, 86%, or 84%, liable for excessive claim amounts. Claim filing instructions are located in Appendix A and these instructions supersede those found in Chapter 8 of HUD Handbook 4330.1 rev 1 (*FHA Single Family Claims*) For questions about filing a claim, please send an email to FHA_SFClaims@hud.gov. Mortgagees must include their Servicer Number, FHA Case Number, and a keyword phrase, such as "claim filing," "claims status," etc., in the e-mail subject line.

S. Reporting Requirements

Mortgagees are required to update HUD's Single Family Default Monitoring System (SFDMS) with 2 default status codes when utilizing the PFS Program. These codes are as follows:

- Status Code 15 to indicate that the mortgagor has been accepted into the PFS Program; and
- Status Code 17 to indicate that the PFS transaction has been completed.

Mortgagees must update SFDMS with Status Code 15 in the month that the mortgagor is approved to participate in the PFS Program. Mortgagees must continue to report the account under Status Code 15 during the entire time that the mortgagor is participating in the PFS Program. Once a PFS is complete (i.e., settlement has occurred and all funds have been received), mortgagees must report the account as Status Code 17 within 30 days of the PFS closing date. However, if no successful PFS transaction occurs and a DIL is obtained, the account should be reported as Status Code 47 in the month the DIL is recorded. Information on additional status codes along with instructions referring to bankruptcy, foreclosure, etc. are included in Mortgagee Letter 2006-15.

Mortgagees will be in compliance with HUD's reporting requirements when reporting codes are entered into the SFDMS within the above-prescribed timeframes. If reporting codes are not provided within the prescribed timeframes, the mortgagee will be subject to interest curtailment. Mortgagees are subject to interest curtailment if they do not initiate the PFS transaction or report the initiation of the PFS transaction to HUD via SFDMS timely.

T. Erroneous Termination of Mortgage Insurance

A mortgagee must not submit a Mortgage Insurance Termination in situations where the mortgagee has filed or intends to file a claim for FHA insurance benefits. HUD can only pay FHA mortgage insurance benefits when the mortgage insurance is in an "active" status. Mortgagees may direct questions or concerns regarding the Department's PFS procedures to the NSC's Customer Service Call Center. The center's toll free number is 1-888-297-8685.

Attachment:
Appendix A - Claim Instructions

Active Forms:
Form HUD-90035 *Information/Disclosure*
Form HUD-90041 *Request for Variance*
Form HUD-90045 *Approval to Participate. Property Sale Information/ Property Occupancy and Maintenance*
Form HUD-90051 *Sales Contract Review*
Form HUD-90052 *Closing Worksheet*
Form HUD-27011 *Single Family Application for Insurance Benefits*