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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for  
Housing-Federal Housing  
Commissioner

24 CFR Part 291

[Docket No. FR-3814-I-01]

RIN 2502-AG42

### Sale of HUD-Held Single Family Mortgages

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule sets forth HUD's policies and procedures for the sale of HUD-held single family mortgages. HUD intends to sell a large portion of its single family mortgages, including both performing and nonperforming mortgages, without recourse and without FHA insurance. HUD intends to sell these mortgages to reduce losses to the FHA fund, decrease its inventory of single family mortgages, and improve the servicing of these mortgages.

**DATES:** *Effective Date:* October 2, 1995.

*Sunset Provision:* Sections 291.300 through 291.307 shall expire and shall not be in effect after September 30, 1996, unless prior to September 30, 1996, HUD publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

*Comments due date:* October 30, 1995.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. eastern time) at the above address. HUD will not accept comments sent by facsimile (FAX).

**FOR FURTHER INFORMATION CONTACT:** Joseph Bates, Director, Single Family Servicing, Office of Housing, Room 9178, Department of Housing and Urban Development, 451 Seventh Street SW.,

Washington, D.C. 20410, telephone (202) 708-1672. Hearing- or speech-impaired individuals may call the TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Housing and Urban Development's (HUD's) inventory of single family mortgages is large and growing. Since October 1986, HUD's portfolio of single family mortgages has increased from approximately 49,000 to its current level of approximately 90,000. This portfolio consists of: (1) mortgages assigned pursuant to section 230 of the National Housing Act, (2) mortgages assigned pursuant to section 221(g)(4) of the National Housing Act (automatically assigned mortgages), and (3) purchase money mortgages issued when HUD sold single family properties from its own inventory or issued a mortgage in connection with the settlement of *Ferrell v. Pierce*. In the future, HUD anticipates that it will acquire between 17,000 and 20,000 new single family mortgages each year.

Although most of the single family mortgages in HUD's inventory have outstanding delinquencies under the mortgage, about 60 percent of these mortgages are current under forbearance agreements. Almost 40 percent of these mortgages are in default on their mortgage obligations under forbearance and repayment agreements. Another 20 percent have little hope of ever paying off arrearages and so remain in danger of foreclosure over time. The Office of Management and Budget has acknowledged the problems associated with HUD-held single family mortgages by designating single family loan servicing a High Risk Area. Internal audits by HUD's Inspector General (IG) have also found significant deficiencies with HUD's management of its portfolio of single family mortgages, and the IG has recommended that HUD implement a single family mortgage sale program.

In June 1994, HUD held a preliminary sale of nonperforming loans, which benefitted HUD (and therefore the public treasury) in two ways. First, the sale brought a price that was higher than the recovery rate on foreclosures of these loans. Second, if HUD had kept these loans in the Secretary-held portfolio, foreclosures would have occurred over a period of years; therefore the sale eliminated continued debt accruals. Furthermore, HUD's experience selling performing loans (section 221(g)(4)) leads it to believe that their value will be higher in the private sector, where greater flexibilities in loan

servicing will increase collection rates and reduce the potential for default and foreclosure over time. HUD also benefits from the sale of all loans because HUD's staff is then freed to focus on more mission-critical elements of insurance operations. Therefore, to reduce future losses to the FHA fund and decrease HUD's inventory of assigned mortgages, HUD intends to conduct a program of regular sales of all HUD-owned single family mortgages. During the first 12 months following the effective date of this sales program, HUD intends to sell approximately 40,000 performing and nonperforming mortgages totaling approximately \$2.0 billion.

##### Section 230 Assignment Program

HUD's portfolio includes defaulted mortgages assigned to HUD pursuant to section 230 of the National Housing Act. These mortgages were originated by a private lender and insured by HUD under title II of the National Housing Act. Most of these loans are market rate, unsubsidized loans. However, a very small percentage of the loans in HUD's portfolio are subsidized under section 235 of the National Housing Act.

Before a mortgage can be assigned to HUD, the following conditions must be met: (1) The mortgagor must receive a notice of the mortgagee's intention to foreclose; (2) At least three full monthly mortgage payments remain unpaid; (3) The property is the mortgagor's principal place of residence; (4) The mortgagor does not own other property subject to a mortgage insured or held by HUD; (5) Circumstances beyond the mortgagor's control caused the default and rendered the mortgagor unable to correct the delinquency within a reasonable time or make full mortgage payments; and (6) There is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a period of reduced or suspended payments (not to exceed 36 months), and will be able to pay the mortgage in full either by its maturity date or, if necessary, within 10 years following the maturity date.

Under this Section 230 assignment program, HUD assumes the mortgage lenders' rights and obligations under the mortgages (in return for payment of the lenders' mortgage insurance claims) and works out forbearance agreements to allow the homeowners to pay delinquencies over the periods of the mortgages. In addition to forbearance relief, homeowners whose mortgages are accepted for the section 230 mortgage assignment program may be entitled to make reduced or suspended payments for up to 36 months. After this initial 36 months, mortgagors must pay at least

the full monthly amount due under the mortgage, plus an additional amount to pay off the accrued default amount (as the mortgagor's income permits). The mortgage term may be extended up to 120 months if necessary to pay off the entire mortgage debt, including the accrued default.

### Section 235 Mortgages

With regard to the Section 235 mortgages, 24 CFR 235.375(a)(1) states that the assistance payments contract shall terminate when the insurance contract terminates (except for an assignment to the Secretary). Therefore, HUD will not be making any assistance payments to the purchasing mortgagees on behalf of the mortgagors for these mortgages. However, to minimize the effect on mortgagors of the sale of these mortgages and the termination of assistance payments, HUD will cause a reduction in the interest rates on the mortgages to a rate that is the higher of the floor rate that was in effect when the loan was made or the effective rate that the mortgagor is paying at the time of the reduction in the rate. The floor rate for each mortgage is contained on form HUD9300.

### Mortgages Acquired as Automatic Assignments

HUD's portfolio also includes automatically assigned mortgages insured pursuant to section 221 of the National Housing Act, with special privileges under section 221(g)(4) of that Act. Section 221(g)(4) of the National Housing Act provides a "put" to the holders of certain pre-November 1983 mortgages. These lenders were granted the right to assign FHA-insured mortgages back to FHA at par in the 21st year of the mortgage, provided that each mortgage was not in default at the expiration of 20 years from the date the mortgage was endorsed for insurance, and all documentation was in order. Since automatically assigned mortgages were current when assigned to HUD, these mortgagors have not had occasion to request and obtain foreclosure avoidance relief in a manner provided under the Section 230 assignment program.

### Purchase Money Mortgages

HUD's portfolio also includes certain purchase money mortgages that were given in the early 1980s to facilitate sales of HUD properties acquired as a result of foreclosure claims. These mortgages have a variety of terms and conditions, but the mortgagors do not have rights under Section 230 or the *Ferrell* court settlements.

The remaining purchase money mortgages in HUD's portfolio resulted from settlement of various *Ferrell* litigation actions. Mortgagors who should have been accepted for mortgage assignment were provided with mortgages similar to their foreclosed mortgage, and the replacement purchase money mortgages were created on properties that had been in HUD's inventory of acquired properties. These mortgagors have continuing rights under Section 230 and the *Ferrell* stipulation. In some cases there are also second mortgages recorded.

### Sales Policy

HUD intends to sell any or all of these single family mortgages, regardless of the ways in which HUD acquired them, including both performing and nonperforming mortgages. The mortgages will be sold without FHA insurance and without recourse to HUD. However, limited representations and warranties may be provided as will be described in the Mortgage Loan Sales Agreements.

For ease of marketing, and to maximize its return, HUD will package the mortgages with the assistance of a financial advisor. These pools of mortgages could contain any combination of performing and nonperforming mortgages, automatically assigned mortgages, mortgages assigned to HUD pursuant to section 230 of the National Housing Act, or purchase money mortgages. Furthermore, nothing in this interim rule shall be construed to prevent HUD from packaging single family mortgages with other types of HUD assets for sale.

While HUD may pool the different categories of HUD-held mortgages for purposes of selling the mortgage, each category of mortgages will carry its own servicing requirements. For example, mortgagors under section 221(g)(4) may have a future right of assignment-like relief. Therefore, the servicer of such a mortgage would have to offer the same or similar forbearance relief as is available in the Section 230 assignment program before being able to foreclose upon the mortgage.

Any investor determined eligible by the Secretary may bid to purchase a pool of single family HUD-held mortgages. However, HUD will require that the purchaser place the mortgages with a HUD-approved mortgagee for servicing for the remaining life of the mortgages. In addition, parties whose names currently appear on HUD's most recent "Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees," or who are on probation, under a limited denial of participation,

subject to a withdrawal of approval, or otherwise sanctioned, are ineligible to bid, either as an individual or participant, for any of the loan pools.

### Sales Procedure

Under this interim rule, HUD will make available a sample of the mortgage loan files to prospective bidders for due diligence work for a period of time before the bidding deadline. The interim rule does not, however, contain details as to the sales procedure and terms of the sale. For each sale, HUD intends to publish the procedures for the sale and the terms of the sale in the Bid Package.

### Justification for Interim Rule

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). As noted above in the "Background" section of this preamble, both the Office of Management and Budget and HUD's Inspector General have noted the deficiencies in HUD's management of its single family mortgage portfolio. Unless a program of regular mortgage sales is implemented immediately, HUD's mortgage servicing problems will grow increasingly worse, with continued losses to the FHA fund. Therefore, HUD finds that prior public procedure would be contrary to the public interest. However, HUD is allowing for a full 60-day public comment period, after which it will consider the relevant issues raised by the commenters in its development of a final rule.

In establishing this single family mortgage sales program, HUD is acting consistently with the National Housing Goals established in section 2 of the Housing Act of 1949 (42 U.S.C. 1441). HUD has determined that, due to its scarce staff resources, transferring servicing functions to the private sector will greatly improve the servicing of these mortgages. In addition, HUD has carefully considered the protection of mortgagors' rights to foreclosure avoidance relief, both in the provisions of this interim rule (§ 291.307) and in the terms of the sales agreements. Therefore, HUD is furthering the national goal of providing a "decent home and a suitable living environment for every American family."

HUD has adopted a policy of setting an expiration date for an interim rule, so that the regulatory provisions will expire unless a final rule is published before that date. This "sunset"

provision appears in § 291.300 of this interim rule, and provides that the interim rule will expire on the date 13 months from publication.

### Regulatory Reform

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of Regulatory Reinvention, HUD is reviewing all its regulations to determine whether they can be eliminated, streamlined, or consolidated with other regulations. As part of this review, this interim rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, HUD welcomes comments on how this interim rule may be made more understandable and less burdensome.

### Other Matters

#### Executive Order 12866

The Office of Management and Budget (OMB) reviewed this interim rule under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

#### Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this interim rule relate only to HUD administrative procedures, and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

#### Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

Specifically, the requirements of this interim rule relate to the sale of certain HUD assets, and do not impinge upon the relationship between the Federal government and State and local governments. As a result, the interim

rule is not subject to review under the Order.

#### Executive Order 12606, The Family

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

#### Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in doing so certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This interim rule will not affect the ability of small entities, relative to larger entities, to bid for and acquire HUD-held mortgages.

#### Regulatory Agenda

This interim rule was listed as item number 1433 in HUD's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23370) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

#### List of Subjects in 24 CFR Part 291

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

Accordingly, for the reasons stated in the preamble, a new subpart D is added to 24 CFR part 291 to read as follows:

#### PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

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

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

2. A new subpart D, consisting of §§ 291.300 through 291.307, is added to read as follows:

#### Subpart D—Sale of Hud-Held Single Family Mortgages

Sec.

- 291.300 Effective date.
- 291.301 Definitions.
- 291.302 Purpose and general policy.

- 291.303 Eligible bidders.
- 291.304 Bidding process.
- 291.305 Evaluation and selection of bids.
- 291.306 Closing requirements.
- 291.307 Servicing requirements.

#### Subpart D—Sale of Hud-Held Single Family Mortgages

##### § 291.300 Effective date.

Sections 291.300 through 291.307 shall expire and shall not be in effect after September 30, 1996, unless prior to September 30, 1996, HUD publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of §§ 291.300 through 291.307.

##### § 291.301 Definitions.

For purposes of this part, the following definitions apply:

*Single family mortgage* means a mortgage on a single family property assigned to HUD pursuant to Section 230 of the National Housing Act, a mortgage on a single family property insured by HUD pursuant to Section 221 of the National Housing Act, a mortgage on a single family property issued in connection with the settlement of *Ferrell v. Pierce*, a non-*Ferrell* purchase money mortgage issued by HUD on a single family property sold from HUD's inventory, or any other single family mortgage owned by HUD and representing an asset to HUD's title II mortgage insurance funds.

*Single family property* means a residence containing a dwelling for one to four families.

##### § 291.302 Purpose and general policy.

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

**§ 291.303 Eligible bidders.**

HUD will provide information on the eligibility of bidders in the Bid Package, a Notice in the **Federal Register**, or other means, at the Secretary's full discretion. However, an individual, partnership, corporation, or other legal entity will not be eligible to bid for any loan pool, either as an individual or a participant, if at the time of the sale that individual or entity is:

(a) On HUD's most recent "Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees";

(b) On probation or under a limited denial of participation; or

(c) Subject to a withdrawal of approval or other sanctions.

**§ 291.304 Bidding process.**

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

(b) *Effect of bid.* By submitting a bid, the bidder is making an offer to purchase single family mortgage loans as presented in the Bid Package. Submission of a bid shall constitute acceptance of the terms and conditions set forth in the Bid Package and the Mortgage Loan Sale Agreement.

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

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

(i) If the bidder changes the documents prescribed in the Bid Package;

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

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

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

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

**§ 291.305 Evaluation and selection of bids.**

HUD will evaluate bids, approve successful bids, and notify the successful bidder in a manner set forth in the Bid Package.

**§ 291.306 Closing requirements.**

(a) *Earnest money deposit.* An earnest money deposit will be required in an amount to be determined by HUD and must be submitted to HUD by Fed Wire within 24 hours (counting only business days) of notification of approval of the winning bid. The earnest money deposit is nonrefundable to the winning bidder and will be credited toward the purchase price.

(b) *Execution of Mortgage Loan Sale Agreement.* At closing, the successful bidder and HUD will execute a Mortgage Loan Sale Agreement.

(c) *Withdrawal of Loans.* HUD reserves the right, in its sole discretion and for any reason whatsoever, to withdraw loan assets from a pool prior to the closing date. Any earnest money deposits relating to withdrawn loan assets will be retained by HUD and credited toward the total purchase price of the remaining loan assets in the pool, in accordance with the Mortgage Loan Sale Agreement.

**§ 291.307 Servicing requirements.**

(a) *Use of HUD-approved Mortgagees.* All mortgages must be serviced by HUD-approved mortgagees for the remaining life of the mortgage. A purchaser that is not a HUD/FHA approved mortgagee must retain a HUD/FHA approved mortgagee to service the mortgage.

(b) *Continuation of Mortgagor Rights.* The purchaser may take all lawful steps to collect the amounts due under the mortgages, including foreclosure of the mortgages. However, the purchaser and its servicer, and any subsequent transferee of the mortgage loan, shall be fully bound by the terms of the Mortgage Loan Sale Agreement, including those terms that provide the mortgagor with any rights regarding forbearance, assistance, or reinstatement of the mortgage. The Mortgage Loan Sale Agreement will contain provisions for substantially equivalent relief to the relief provided by section 230 of the National Housing Act, if such relief is applicable to the mortgage.

(c) *Purchasers' Protection of Mortgagor's Rights.* (1) *Assigned mortgages during forbearance period.* This paragraph (c)(1) explains how a purchaser (or a servicer of a purchased mortgage) must service a mortgage that was assigned to HUD under section 230 of the National Housing Act, for which less than 36 months has expired since the mortgage was assigned to the Secretary. Such a purchaser is entitled to collect from the mortgagor a full, reduced, or suspended payment, depending upon mortgagor income available for application to the mortgage, under a forbearance

agreement. If a mortgagor defaults under the forbearance agreement, the purchaser may allow reinstatement if the mortgagor pays all or a substantial part of the arrearages accrued under the forbearance agreement, including late charges.

(2) *Assigned mortgages after forbearance period.* This paragraph (c)(2) explains how a purchaser (or a servicer of a purchased mortgage) must service a mortgage that was assigned to HUD under section 230 of the National Housing Act, for which more than 36 months have expired since the mortgage was assigned to the Secretary. Such a purchaser may require a minimum payment of the full monthly payment due under the mortgage. A purchaser may take any lawful action to ensure that arrearages do not continue to increase. A purchaser may require a mortgagor to pay increased monthly mortgage payments under a new forbearance agreement to reduce the amount in arrears if the mortgagor has available income to support the increased payments. A purchaser shall allow a mortgagor who defaults in making required payments to reinstate. Reinstatement is accomplished by acceptance of a payment that represents the additional arrearage the mortgagor has incurred from the time the mortgagor failed to make a required monthly payment under any outstanding forbearance agreement, or under the terms of the mortgage if the forbearance agreement has expired. If a mortgagor repeatedly defaults in making required mortgage payments, a purchaser may decline to allow mortgagors to reinstate the mortgages.

(3) *Section 221 Mortgages.* This paragraph (c)(3) explains how a purchaser (or a servicer of a purchased mortgage) must service a mortgage assigned to HUD under section 221(g)(4) of the National Housing Act. Such a purchaser must provide a mortgagor who defaults under the terms of the mortgage foreclosure avoidance relief that is substantially equivalent to that which the mortgagor could have otherwise sought under section 230 of the National Housing Act if the mortgage was still insured by HUD.

(4) *Non-Ferrell Purchase Money Mortgages.* A purchaser of purchase money mortgages that did not result from the settlements of the various *Ferrell* litigation actions does not have to provide relief under section 230 of the National Housing Act, as such relief is described in paragraphs (c)(1) and (c)(2) of this section.

(d) *Section 235 Mortgages.* Since the assistance payments contract will terminate upon the sale of the

mortgages, in accordance with 24 CFR 235.375(a)(1), the purchasing mortgagees will not receive any assistance payments from the Secretary on behalf of the mortgagors. However, the Secretary will cause a reduction in the interest rates on the mortgages to a rate that is the higher of the floor rate that is shown on the form HUD9300 for the particular mortgage, or the effective rate of interest that the mortgagor is paying at the time that the reduction in interest is made.

Dated: June 20, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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## ASSASSINATION RECORDS REVIEW BOARD

### 36 CFR Part 1405

#### Rules Implementing the Government in the Sunshine Act

**AGENCY:** Assassination Records Review Board.

**ACTION:** Final rulemaking.

**SUMMARY:** The Assassination Records Review Board (Review Board) was established by the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). This final rulemaking will constitute the Review Board's second rulemaking. All of the Review Board's regulations will eventually be codified at 36 CFR part 1400 *et seq.* This rulemaking is undertaken in response to the Government in the Sunshine Act (Sunshine Act). The Sunshine Act relates to meetings of agencies of the United States government that are headed by collegial bodies composed of two or more members, a majority of whom are appointed by the President with the advice and consent of the Senate. The Act provides that meetings, as defined in the Sunshine Act, shall be held in public except where stated exemptions apply.

**EFFECTIVE DATE:** These regulations are effective October 2, 1995.

**FOR FURTHER INFORMATION CONTACT:**

T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530, (202) 724-0088.

## SUPPLEMENTARY INFORMATION:

### Background

To discharge its responsibilities, the Review Board gathers as a collegial body at its Washington, D.C., office and at other locations as appropriate. Since the Review Board, including its staff, is a small agency, Review Board Members work both personally and collectively in the discharge of the Review Board's responsibilities. Review Board activities include such matters as: reviewing classified and restricted government records relating to the assassination of President Kennedy; determining whether such classified and restricted records should be opened and made available to the public; identifying additional assassination records in the possession of governments and individuals; holding public hearings related to assassination records; and ensuring government office compliance with the JFK Act.

The Sunshine Act defines meetings and sets certain requirements for advance public notice of such meetings (5 U.S.C. 552b(e)) and permits agencies to close meetings to public attendance and to withhold information regarding meetings where an agency finds that any of ten exemptions enumerated in the Sunshine Act applies, 5 U.S.C. 552b(c). The Act further sets forth the procedures that must be followed by agencies in invoking one of these exemptions, 5 U.S.C. 552b(d), (f). The Review Board is required to adopt, after opportunity for public comment, regulations to implement the Sunshine Act, 5 U.S.C. 552b(g).

Consistent with the requirement of 5 U.S.C. 552b(g), the proposed regulations implement the provisions of 5 U.S.C. 552b(b)-(f). This rule has been made following a review of the Sunshine Act, regulations promulgated and implemented by other collegial bodies under the Sunshine Act, and the opinion of the Supreme Court of the United States in *FCC v. ITT World Communications, Inc.*, 466 U.S. 463 (1984). The regulations are intended to follow the exemptions set forth in the Sunshine Act and to implement fully the Sunshine Act's procedural requirements regarding public notice of meetings, availability of transcripts or other records of meetings, and closure of meetings.

### Notice and Comment Process

The proposed Sunshine Act regulations were issued for comment in the Federal Register on June 26, 1995 with a closing date of July 26, 1995. In addition to being published in the **Federal Register**, the proposed

regulations were sent to six federal agencies with an interest in the Review Board's work (the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the National Archives, the Office of Management and Budget, and the Administrative Conference of the United States (ACUS)). The staff also sent copies of the regulations directly to fifteen individuals who have shown a particular interest in the work of the Review Board. Several of the individuals are closely connected with public interest groups that also had the opportunity to distribute copies more widely to their membership.

### Response to Comments

The Review Board received only four sets of comments, including one from the ACUS and the other three from the public (one of which was complimentary and offered no substantive changes).

ACUS proposed four possible amendments to the regulations, each of which was effectively incorporated in the final regulations. The first suggestion pertains to Section 1405.2, which permits the staff to brief Review Board members outside of formal meetings. ACUS stated that although the proposed regulation complied with the Sunshine Act, it would be advisable to ensure that briefings do not devolve into deliberations regarding Review Board business. The ACUS suggestion was incorporated by amending the section to include the following provision: "The General Counsel will inform the Review Board if developing discussions at a briefing or gathering should be deferred until a notice of an open meeting can be published in the Federal Register."

ACUS also proposed that the Review Board amend the regulations to require a vote for all changes to its agenda, including deletions. Although other agencies have permitted agenda deletions to be made without a recorded vote, the Review Board decided that it would be advisable to adopt the proposal of ACUS and delete Section 1405.7(c).

ACUS found some ambiguity with respect to the standard that would be applied towards the eventual release of the Review Board's own records in Section 1405.8, particularly those of the closed meetings. It is the Review Board's position that the eventual release of Review Board records should be made under the terms of the JFK Act (rather than FOIA). In order to clarify the standard under which Review Board records will themselves be reviewed for declassification, clarifying language was added.