

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 290 and 886**

[Docket No. FR-3715-F-02]

RIN 2502-AG30

**Office of Assistant Secretary for Housing—Federal Housing Commissioner; Disposition of Multifamily Projects and Sale of HUD-Held Multifamily Mortgages****AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.**ACTION:** Final rule.

**SUMMARY:** This final rule implements at 24 CFR part 290 the regulatory requirements under the Multifamily Housing Property Disposition Reform Act of 1994 that affect the management and disposition of HUD-owned properties and properties with HUD-held mortgages, and the sale of HUD-held multifamily mortgages. Conforming changes are made to part 886.

**EFFECTIVE DATE:** April 22, 1996.**FOR FURTHER INFORMATION CONTACT:**

Barbara D. Hunter, Director, Program Management Division, Office of Multifamily Asset Management and Disposition, Department of Housing and Urban Development, Room 6182, 451 7th Street SW, Washington, DC 20410. Telephone (202) 708-3944; TDD (202) 708-4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act Statement**

The information collection requirements contained in § 290.9 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0204. 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 valid control number.

**I. Statutory and Regulatory Background**

On August 17, 1993 (58 FR 43708), the Department published a final rule amending its requirements for the management and disposition of HUD-owned multifamily housing projects. The regulation, at 24 CFR part 290, implemented HUD's statutory authority, contained in section 207 (k) and (l) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to

handle and dispose of such real property.

Section 203 was amended by section 181 of the Housing and Community Development Act of 1987 (1987 Act), section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (1988 Act), and section 579 of the National Affordable Housing Act of 1990 (NAHA). A final rule published on August 17, 1993 implemented the NAHA amendments. Generally, the statutory amendments specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and very low-income housing, and included certain projects with HUD-held mortgages within the scope of section 203.

In the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102-233, approved April 11, 1994), section 203 was completely revised. An interim rule amending 24 CFR part 290 to reflect the new statutory amendments was published on March 2, 1995 (60 FR 11844) with a 60 day public comment period. The Department received no comments on the interim rule.

**II. Changes Made by the Final Rule—Regulatory Reinvention**

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. In keeping with the President's mandate to reinvent and reform regulations, the Department is taking advantage of the publication of this final rule to streamline part 290. The entire part has been re-drafted to eliminate text that only repeats the statutory language, or provisions that are only advisory (rather than binding) or non-exclusive. Instead of consisting of nine subparts, A through I, as did the interim rule, this final rule has only two subparts: subpart A—Disposition of Multifamily Projects, and subpart B—Sale of HUD-Held Multifamily Mortgages.

One goal of reinventing regulations is to remove rule text that only repeats statutory language. To achieve this goal, rules will only contain legally binding requirements that are in addition to those contained in a statute. This will streamline regulations, avoid redundancy, and remove the problems that result when a rule that echoes the language of a statute becomes inconsistent with new statutory

amendments. The period before a rule is amended to conform to new statutory language is often one of confusion and uncertainty as to which law applies. The final rule promulgated here does not, therefore, repeat any statutory language; it contains only those provisions that clarify the statutory procedures, or provisions that address those areas that give the Secretary discretion to act.

The remaining regulatory text is further pruned to eliminate provisions that are only advisory (rather than binding) or non-exclusive. An example of such a provision is the listing in § 290.42(d)(3) of the interim rule of persons included in the definition of "displaced person." This listing is prefaced by the phrase, "This includes, but is not limited to:", which indicates that it only provides examples, and is not exclusive or complete. Such lists of examples are more appropriate for inclusion in guidance materials (such as the appendix which follows this rule) than in rules.

The consolidated statutory and regulatory procedures for the disposition of multifamily properties, which were contained in the interim rule, have been placed in an appendix to this final rule. The final rule will be codified in the Code of Federal Regulations; the appendix will not be codified. However, the appendix is available to the public as a single document which provides a unified overview of the disposition process. The user-friendly features of the interim rule, its tables and question-and-answer format, are retained as features of the appendix.

A number of consolidating and clarifying adjustments are also made to the regulatory language that remains in part 290. The requirements for the timing of any disposition-related notifications (i.e., pre-foreclosure notification to tenants and units of general local government; pre-disposition community and tenant input notification; state and local government right of first refusal notification) are combined into a single provision, at § 290.11, which states that notifications will be made, as appropriate, (1) 60 or more days before HUD forecloses on a project, or (2) before, or not more than 30 days after, HUD acquires a project. By making it clear that notifications that may be made up to 30 days after acquisition may also be made before acquisition, the rule confirms that the notification provisions are meant to complement, rather than impede, the disposition process. For instance, in the case of a negotiated sale to a State or local government (including public

agencies), waiting until after acquisition to provide the statutorily required state and local government right of first refusal notification could delay a disposition for 90 days. Providing this notification earlier in the process allows for a more expeditious disposition.

A correction is made in the table entitled "Pre-Disposition Notification Requirements," which now appears in the appendix. In the interim rule, the timing for providing notice to tenants and the community was listed as 60 days in the table, and 30 days in the rule text. The time period in the table is here conformed to 30 days.

This rule also includes two provisions, at §§ 290.37 and 290.39, added to the Sale of HUD-Held Multifamily Mortgages subpart by an interim rule published on February 6, 1996 (61 FR 4580). These provisions are included in this rule to present the complete part 290 in its current form. However, after considering comments submitted on these provisions, they will be republished separately as a final rule.

As an additional matter, the Department is taking advantage of the publication of this rule to provide notice of section 401 of Pub. L. 104-99 (110 Stat. 26, approved January 26, 1996), which provides that, "During fiscal year 1996, the Secretary of Housing and Urban Development may manage and dispose of multifamily properties owned by the Secretary, including the provision of the grants from the General Insurance Fund (12 U.S.C. 1735c) for the necessary costs of rehabilitation and other related development costs and multifamily mortgages held by the Secretary without regard to any other provision of law."

### III. Other Matters

Any assistance made available to a purchaser under this rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, e.g., a Federal Register Notice published April 9, 1991 (56 FR 14436) entitled "Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance").

### Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public

inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

### Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These requirements governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

### Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism*, that this rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the rule would impose terms and conditions on States that acquire projects under this rule, that is clearly the intent of the authorizing legislation, and therefore no further review is necessary or appropriate.

### Executive Order 12606, the Family

HUD has determined that this rule will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, *The Family*, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

The Catalog of Federal Domestic Assistance Program number and title are 14.156, Lower Income Housing Assistance Program (Section 8).

### List of Subjects

#### 24 CFR Part 290

Low and moderate income housing.  
Mortgage insurance.

#### 24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), for the reasons stated

in the preamble, title 24 of the Code of Federal Regulations is amended by adopting the amendments to part 886 of the interim rule published in the Federal Register of March 2, 1995 (60 FR 11844) as final without change, and by revising part 290, to read as follows:

## PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

### Subpart A—Disposition of Multifamily Projects

- Sec.
- 290.1 Applicability.
  - 290.3 Definitions.
  - 290.7 Occupancy requirements.
  - 290.9 Setting rental rates.
  - 290.11 Notification requirements.
  - 290.13 Negotiated sales.
  - 290.15 Disposition plan.
  - 290.17 Displacement of tenants and relocation assistance.
  - 290.19 Restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders.
  - 290.21 Computing annual number of units eligible for substitution of tenant-based assistance or alternative uses.
  - 290.23 Rebuilding.
  - 290.25 Determination not to preserve a project or a part of a project.

### Subpart B—Sale of HUD-Held Multifamily Mortgages

- 290.30 General.
- 290.31 Sale of current mortgages securing subsidized projects.
- 290.33 Sale of delinquent mortgages securing subsidized projects.
- 290.35 Sale of HUD-held mortgages securing unsubsidized projects.
- 290.37 Requirements for continuing federal rental subsidy contracts.
- 290.39 Nondiscrimination in admitting certificate and voucher holders.

Authority: 12 U.S.C. 1701z-11, 1701z-12, 1713, 1715b, 1715z-1b; 42 U.S.C. 3535(d).

### Subpart A—Disposition of Multifamily Projects

#### § 290.1 Applicability.

The requirements of this part supplement the requirements of 12 U.S.C. 1701z-11 for the management and disposition of multifamily housing projects and the sale of HUD-held multifamily mortgages. The goals and objectives of this part are the same as the goals and objectives of 12 U.S.C. 1701z-11, which shall be referred to in this part as "the Statute."

#### § 290.3 Definitions.

The terms *Department* and *URA* are defined in 24 CFR part 5. The following definitions apply to this part:

*Cooperative* means a nonprofit, limited equity, or consumer cooperative as defined under 24 CFR part 213. It

may include mutual housing associations.

*HUD-owned project* means a multifamily project that has been acquired by HUD.

*Market area* means the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants, as determined by HUD, taking into consideration the knowledge of the HUD office with jurisdiction over the project of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas.

*Multifamily housing project* means a multifamily project that is or was insured under sections 207, 213, 220, 221(d)(3), 221(d)(4), 223(f), 231, 236, or 608 of the National Housing Act (12 U.S.C. 1713, 1715e, 1715k, 1715l, 1715n, 1715v, 1715z-1, or 1742-1746); or is or was subject to a loan under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); or was a Real Estate Owned (REO) multifamily project transferred by the Government National Mortgage Association to the Department. Multifamily housing project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act (12 U.S.C. 1715l); or mobile home parks under section 207(m) of that Act (12 U.S.C. 1713); or vacant land; or property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere ("HOPE") program.

*Multifamily project* means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act or is or was subject to a loan under section 202 of the Housing Act of 1959, or a hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Multifamily project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act (12 U.S.C. 1715k), which are classified as single family homes.

*Nonprofit organization* means a corporation or association organized for purposes other than making a profit or gain for itself. Stockholders or trustees do not share in profits or losses. Profits are used to accomplish the charitable, humanitarian, or educational purposes of the corporation.

*Preexisting tenant* means a family that resides in a unit in a multifamily

housing project immediately before the project is acquired under this part by a purchaser other than the Department.

*Subsidized project* means a multifamily housing project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD, pursuant to this regulation, was receiving any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l) (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437 note) (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (excluding payments of tenant-based Section 8 assistance) (hereinafter, project-based Section 8 assistance).

*Sufficient habitable, affordable, rental housing is available* means that the HUD office with jurisdiction determines that there is an adequate supply of habitable, affordable housing for low- and very low-income families available in the market area. Submarkets, consisting of portions of units of general local government, may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (e.g., the housing market is balanced), as well as those in which there is an excess supply of rental housing (e.g., the housing market is soft). Rental markets that do not have an adequate supply (e.g., tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the

determination of whether sufficient habitable, affordable, rental housing is available using established market analysis techniques, and will consider information that demonstrates:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(4) A significant number, or proportion, of the households holding Section 8 certificates or rental vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

*Unsubsidized project* means a multifamily housing project that is not a subsidized project.

*Useful life* means, generally, twenty years, but it may be more or less, as determined by the Department.

#### § 290.7 Occupancy requirements.

(a) *Multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession.* Occupancy in a multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily housing projects who are eligible for assistance in accordance with the displacement and relocation provisions at § 290.17.

(b) *Evictions.* Eviction from a HUD-owned multifamily housing project is governed by 24 CFR part 247, subpart B.

(c) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and

safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.17 to tenants required to vacate the premises.

#### **§ 290.9 Setting rental rates.**

Because of the subsidies involved in making multifamily housing projects affordable, the setting of rents involves two steps: first, establishing the rent on a unit that will be paid to the owner, and second, determining the rent that the tenant pays (with the difference made up by a subsidy), using a number of procedures to obtain income verification and notify tenants of changes in rent. These procedures for a property owned by HUD or where HUD is mortgagee-in-possession are explained below.

(a) *Setting unit rents.* Except as modified by this section, for a property where HUD is mortgagee-in-possession (MIP), HUD will set unit rents in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program; or for a property owned by HUD, rents will be set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project.

(b) *Setting rents payable by tenants.* (1) *Tenant rent.* The rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project, as affected by any of the factors in paragraphs (b)(2) through (b)(4) of this section. However, if a tenant does not certify income as required by this section, the tenant must pay the unit rent as determined under the rent setting requirements in paragraph (a) of this section.

(2) *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD will deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage

of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(3) *Rent adjustments for project viability.* For a HUD-owned project, HUD may adjust the rent provided for in paragraphs (b)(1) or (b)(2) of this section if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(4) *Tenants who are rental voucher or rental certificate holders.* Tenants assisted with rental vouchers or certificates certify their income to the public housing agency (PHA) administering the assistance, and pay rent pursuant to the policies and procedures governing such assistance.

(c) *Income verification and rent notification procedures.* (1) *Income certification by tenants.* (i) *In subsidized projects.* (A) For families residing in subsidized projects, when HUD becomes MIP or owner, HUD will request an income certification from each family as soon as practicable after HUD initially assumes management, unless the family's income has been examined by the owner or by HUD not more than four months before HUD's assumption of management.

(B) For each family applying for admission to subsidized projects, HUD will request an income certification to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with part 813 of this title.

(ii) *In unsubsidized projects.* (A) For tenants in occupancy when HUD becomes mortgagee-in-possession or owner of an unsubsidized project, HUD may request an income certification from families who are not paying a subsidized rent.

(B) For families applying for admission to such projects, HUD will request sufficient information for income verification to determine the family's ability to pay the unit rent.

(2) *Notice of increases in the amount of rent payable.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or a project where HUD is mortgagee-in-possession, HUD will provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed

rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices of rent increases to all tenants must be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(3) *Disclosure and verification of Social Security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this title.

(4) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this title.

(Approved by the Office of Management and Budget under control number 2502-0204.)

#### **§ 290.11 Notification requirements.**

(a) *In general.* HUD may combine two or more of the required notifications, as appropriate, to simplify the disposition process.

(b) *Timing of notifications.* Disposition-related notifications (i.e., pre-foreclosure notification to tenants and units of general local government; pre-disposition community and tenant input notification; state and local government right of first refusal notification) will be made, as appropriate:

(1) 60 or more days before HUD forecloses on a project; or

(2) Before, or not more than 30 days after, HUD acquires a project.

(c) *Methods of notification.* (1) *To tenants.* Pre-disposition notification will be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession or owner of a project, the notice will also be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(2) *To units of general local government.* Pre-disposition notification to a unit of general local government

will be sent to the chief executive officer of the unit of general local government by first class mail. For purposes of receiving or sending any notices or information under this part, the unit of general local government is its chief executive officer, or the person designated by the chief executive officer to receive or send the notice or information.

(3) *To the community or any other party.* HUD will consult with tenants and their organizations, officials of units of general local government, and other entities as HUD determines to be appropriate, to identify community recipients of any required notification. Any notice required to be made to any party other than a tenant or a unit of general local government will be sent by first class mail.

(d) *Content of notifications.* Notifications will, as appropriate, identify the project acquired or to be foreclosed by HUD; provide the general terms and conditions concerning the sale, future use, and operation of the project as proposed by HUD; indicate the time by which any offers must be made or any comments must be submitted; and state that the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD Field Office.

#### **§ 290.13 Negotiated sales.**

When HUD conducts a negotiated sale involving the disposition of a project to a person or entity without a public offering, the following provisions apply:

(a) HUD may negotiate the sale of any project to an agency of the federal, State, or local government.

(b) When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD, and/or a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a subsidized project to:

(1) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(2) A cooperative (e.g., nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low-income) housing;

(3) A nonprofit entity that will continue to operate the project as low-income housing and whose governing board is composed of project residents;

(4) A State or local governmental entity with the demonstrated capacity to

acquire, manage, and maintain the project as housing available to and affordable by low-income residents;

(5) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(6) Other nonprofit organizations.

#### **§ 290.15 Disposition plan.**

(a) *In general.* Before disposing of a HUD-owned multifamily housing project, HUD will develop an initial and a final disposition plan for the project that specifies the minimum terms and conditions for the disposition of the project, the sales price that is acceptable to HUD, and the assistance that HUD plans to make available to a prospective purchaser.

(b) *Environmental requirements.* HUD will perform, and include in the final disposition plan, the environmental reviews required by 24 CFR part 50.

#### **§ 290.17 Displacement of tenants and relocation assistance.**

(a) *Scope of section.* This section applies to all HUD-owned multifamily housing projects and all multifamily housing projects subject to HUD-held mortgages. When HUD is not the mortgagee-in-possession or owner, the owner of the project shall comply with this section, if HUD has authorized the demolition of, repairs to, or conversion of the use of the multifamily housing project.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) from a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily housing project, but is not subject to paragraph (d) of this section (e.g., occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily housing project or as a direct result of the foreclosure of a HUD-held mortgage on

a multifamily housing project or sale of a HUD-owned project without federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement shall be provided at least 60 days before displacement, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD; and

(4) Such other federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels.* (1) *General.* The requirements of this paragraph apply to any displacement that results whenever assistance under 24 CFR part 886, subpart C, (or other federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily property by a third party. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of "initiation of negotiations".* Under the URA, for purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the transfer of title to the purchaser.

(3) *Definition of displaced person.* The term "displaced person" means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. However, a person does not qualify as a "displaced person" if:

(i) The person is excluded under 49 CFR 24.2(g)(2);

(ii) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of

applicable federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(iii) The person moves into the property after transfer of title to the purchaser; or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who must relocate temporarily (e.g., to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance notice of the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

**§ 290.19 Restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders.**

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative

purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

**§ 290.21 Computing annual number of units eligible for substitution of tenant-based assistance or alternative uses.**

(a) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* The number of units eligible, as permitted by the Statute, for this form of substitution within the 10 percent limit will be estimated at the beginning of each fiscal year, taking into consideration the aggregate number of subsidized project units disposed of by HUD in the immediately preceding fiscal year and the disposition activity planned for the current fiscal year.

(b) *Alternate uses.* The number of units eligible for alternate uses in any fiscal year, as permitted by the Statute, will be determined at the beginning of the fiscal year as the applicable percentages (i.e., either 10 percent or 5 percent) of the estimated total number of units to be disposed of in the fiscal year, taking into consideration the total number of units in multifamily housing projects disposed of by the Department in the immediately preceding fiscal year, and the extent of the disposition activity planned in the current fiscal year.

**§ 290.23 Rebuilding.**

HUD may provide project-based assistance to support the rebuilding of a HUD-owned multifamily housing project only. The required determination that rebuilding the project would be less expensive than substantial rehabilitation means that the costs to HUD for rebuilding are such that the monthly debt service needed to amortize the cost of relocating tenants, demolition, site preparation, rebuilding, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are within 120 percent of the most recently published Section 8 Fair Market Rents for Existing

Housing (24 CFR part 888, subpart A), and would be less expensive than rehabilitation.

**§ 290.25 Determination not to preserve a project or a part of a project.**

HUD may determine to demolish, or otherwise dispose of, a HUD-owned multifamily housing project, or any portion of such a project, or to foreclose a HUD-held mortgage on a multifamily housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- and very low-income families under appropriate circumstances which may include one or more those listed in paragraphs (a) through (g) of this section. If HUD decides not to preserve an occupied multifamily housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in § 290.17.

(a) The costs to HUD of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market.

(b) Construction is substantially incomplete.

(c) Preservation is not feasible because of environmental factors that cannot be mitigated by HUD or the purchaser. For example, when the project is located on a site that cannot be made to comply with the Section 8 Site and Neighborhood standards in 24 CFR 886.307(k) because of factors that adversely affect the health, safety and general welfare of residents such as air pollution; smoke; mud slides; fire or explosion hazards. Preservation may also be infeasible because of significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection; high crime rates; drug infestation; or lack of public community services needed to support a safe and healthy living environment for residents.

(d) HUD determines the project is unfit for rehabilitation.

(e) Rehabilitation would cost more than constructing comparable new housing.

(f) A reduction in the number of units in the project will enhance long-term project viability, for example, demolition of a building to provide

space for a playground, open space, or combining one-bedroom units to create larger units for families.

(g) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located.

#### **Subpart B—Sale of HUD-Held Multifamily Mortgages**

##### **§ 290.30 General.**

(a) Except as otherwise provided in § 290.32(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis. HUD retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. However, when a qualifying mortgage is offered for sale, the procedures set out in this subpart will govern the sale.

(b) References in subpart B of this part to mortgages securing subsidized projects include HUD-held purchase money mortgages on subsidized projects.

##### **§ 290.31 Sale of current mortgages securing subsidized projects.**

HUD will sell current mortgages securing subsidized projects, as follows:

(a) *Current mortgages with FHA mortgage insurance* will be sold either:

(1) On a competitive basis to FHA-approved mortgagees; or

(2) On a negotiated basis, to State or local governments, or to a group of investors that includes an agency of a State or local government if, in addition to meeting the requirements of the Statute, the sales price is the best price that HUD can obtain from an agency of a State or local government while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(b) *Current mortgages without FHA mortgage insurance* will be sold if HUD can offer protections equivalent to those listed for an insured sale in paragraph (a) of this section.

##### **§ 290.33 Sale of delinquent mortgages securing subsidized projects.**

Delinquent mortgages securing subsidized projects will be sold only if, as part of the sales transaction:

(a) The mortgages are restructured; and

(b) Either FHA mortgage insurance or equivalent protections are provided.

##### **§ 290.35 Sale of HUD-held mortgages securing unsubsidized projects.**

HUD's policy for selling HUD-held mortgages securing unsubsidized projects is as follows:

(a) *Current mortgages* may be sold with or without FHA mortgage insurance.

(b) *Delinquent mortgages* may be sold without FHA mortgage insurance. However, delinquent mortgages will not be sold if:

(1) HUD believes that foreclosure is unavoidable; and

(2) The project securing the mortgage is occupied by very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage.

##### **§ 290.37 Requirements for continuing federal rental subsidy contracts.**

For any mortgage that, at the time HUD offers the mortgage for sale without FHA mortgage insurance, is delinquent and secures a subsidized project or unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the "subsidized project" definition in § 290.3:

(a) The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant running with the land as part of any loan restructuring or of a final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall continue in effect until the last federal project-based rental assistance contract expires by its own terms. The covenant shall provide that, except where otherwise approved by HUD, a project purchaser shall agree to assume the obligations of any outstanding:

(1) Project-based federal rental subsidy contract; and

(2) Tenant-based Section 8 housing assistance payments contract with a public housing agency and the related lease.

(b) In the event of foreclosure of the mortgage sold by HUD, the mortgage purchaser and its successors and assigns shall not foreclose in a manner that interferes with any lease related to federal project-based assistance or any lease related to tenant-based, Section 8 housing assistance payments.

##### **§ 290.39 Nondiscrimination in admitting certificate and voucher holders.**

(a) *Nondiscrimination requirement.* For any mortgage described in paragraphs (c) or (d) of this section that HUD sells without FHA mortgage insurance, the project owner shall not unreasonably refuse to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise

discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is a certificate or voucher holder under 24 CFR part 982.

(b) *Inapplicability to current mortgages securing unsubsidized projects that receive no project based-assistance.* The nondiscrimination requirements of this section do not apply to any mortgage that is current under the terms of the mortgage at the time HUD offers it for sale, if the mortgage secures an unsubsidized project that does not receive any of the forms of project-based assistance enumerated in paragraphs (4)(i) to (4)(iv) of the "subsidized project" definition in § 290.3.

(c) *Applicability to mortgages securing unsubsidized projects receiving project-based assistance (partially-assisted projects) or securing subsidized projects.* (1) The nondiscrimination requirement in paragraph (a) of this section applies to the project owner upon the sale of a mortgage without FHA mortgage insurance if, at the time HUD offers it for sale, the mortgage secures:

(i) An unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the "subsidized project" definition in § 290.5; or

(ii) A subsidized project, as defined in § 290.3.

(2) This requirement shall continue in effect until the mortgage is paid in full, including by a mortgage prepayment, except as provided in paragraph (d) of this section.

(2) A subsidized project, as defined in § 290.3.

This requirement shall continue in effect until the mortgage is paid in full, including by a mortgage prepayment, except as provided in paragraph (d) of this section.

(d) *Covenant requirement for all delinquent mortgages sold without FHA mortgage insurance.* This paragraph (d) applies to the sale of any mortgage that is delinquent at the time HUD offers it for sale without FHA mortgage insurance, without regard to the subsidy status of the project. The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant running with the land as part of any loan restructuring or final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall set forth the nondiscrimination requirement in paragraph (a) of this section. The covenant shall continue in



effect until a date that is the same as the maturity date of the mortgage sold by HUD.

Dated: March 7, 1996.

Nicolas P. Retsinas,  
*Assistant Secretary for Housing—Federal Housing Commissioner.*

[Note: The following guide to part 290 will not be codified in title 24 of the Code of Federal Regulations.]

## GUIDE

### Disposition of Multifamily Projects and Sale of HUD-Held Multifamily Mortgages—Guide

#### General Provisions

1. What subjects does this guide cover?
2. What are HUD's management and disposition goals?
3. What definitions apply in this guide?
4. What provisions may be waived?

#### Management and Maintenance Provisions

5. What maintenance and management standards apply to multifamily housing projects?
6. How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?
7. What occupancy requirements apply to multifamily housing projects?
8. How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

#### Notification Requirements

9. How will HUD provide required notifications?
10. What notification must be given before foreclosure?
11. Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?
12. What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

#### Disposition Procedures

13. What are the different methods that may be used for the disposition of a multifamily housing project?
14. What qualities does HUD look for in a purchaser?
15. What kind of disposition plan will HUD prepare before selling a project?

#### Required Actions For All Multifamily Housing Projects

16. What actions must be taken in the disposition of all multifamily housing projects?
17. What actions must be taken concerning tenants who are displaced

by the disposition of a multifamily housing project?

18. What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?

19. What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

#### Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

20. What are the basic actions that may be taken in the disposition of a subsidized project?

21. What alternatives to the basic actions are available in the disposition of subsidized projects?

#### Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

22. What are the basic actions that may be taken in the disposition of an unsubsidized project?

23. What alternatives to the basic actions are available in the disposition of an unsubsidized project?

#### All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

24. What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?

25. May HUD reduce the sales price for a project?

26. May HUD require additional use and rent restrictions?

27. May HUD provide short-term loans to facilitate the sale of a project?

28. Under what conditions may HUD provide up-front grants?

29. What additional tenant-based assistance may HUD offer?

30. How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?

31. What disposition assistance may be available to rebuild a multifamily housing project?

32. What emergency assistance funds may be provided to tenants?

33. Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

#### General Provisions

1. What subjects does this guide cover?

This guide sets out, in a single document, the combined statutory (section 101 of the Multifamily Housing Property Disposition Reform Act of

1994, hereinafter, "the Statute," codified at 12 U.S.C. 1701z-11) and regulatory (24 CFR part 290) requirements for the management and disposition of multifamily projects. Except as provided in paragraph (b) of this section, the requirements described in this guide apply to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or had a mortgage insured under the National Housing Act, or which were subject to a loan or a capital advance under Section 202 of the Housing Act of 1959.

(b) The requirements described in this guide do not apply to multifamily projects being foreclosed by HUD for which the decision to foreclose has been made before March 2, 1995, the effective date of the interim rule which implemented the Multifamily Housing Property Disposition Reform Act of 1994 at 24 CFR part 290, nor to HUD-owned projects where the initial disposition program has been approved before March 2, 1995. For such projects, the procedures in the regulations at 24 CFR 290 in effect immediately prior to March 2, 1995 apply, unless HUD determines, on a case-by-case basis, to apply the new requirements.

2. What are HUD's management and disposition goals?

(a) HUD's goals are to carry out the management and disposition of HUD-owned multifamily projects and multifamily projects subject to HUD-held mortgages in a manner that:

(1) Is consistent with the National Housing Act, section 203 of the Housing and Community Development Amendments of 1978, and other relevant statutes;

(2) Will protect the financial interests of the Federal Government; and

(3) Will, in the least costly fashion among reasonable available alternatives, address the goals of:

(i) Preserving certain housing so that it can remain available to and affordable by low-income persons;

(ii) Preserving and revitalizing residential neighborhoods;

(iii) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(iv) Minimizing the involuntary displacement of tenants;

(v) Maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;

(vi) Minimizing the need to demolish multifamily housing projects;

(vii) Adhering to fair housing requirements; and



(viii) Disposing of such projects in a manner consistent with local housing market conditions.

(b) *Competing goals.* In determining the manner in which a project is to be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the purposes of the Statute.

3. What definitions apply in this guide?

The following definitions apply in this guide:

*Affordable* means, with respect to a unit of a multifamily housing project:

(1) For a unit occupied by a very-low income family, the unit rent does not exceed 30 percent of 50 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(2) For a unit occupied by a low-income family other than a very low-income family, the unit rent does not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(3) The unit, or the family residing in the unit, is receiving assistance under Section 8 of the United States Housing Act of 1937.

*Cooperative* means a nonprofit, limited equity, or consumer cooperative as defined under 24 CFR part 213. It may include mutual housing associations.

*Department* means the United States Department of Housing and Urban Development, or HUD.

*HUD-owned project* means a multifamily project that has been acquired by HUD.

*Low-income family* means a low-income family as defined at 24 CFR part 813.

*Market area* means the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants, as determined by HUD, taking into consideration the knowledge of the HUD office with jurisdiction over the project of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas.

*Multifamily housing project* means a multifamily project that is or was insured under sections 207, 213, 220, 221(d)(3), 221(d)(4), 223(f), 231, 236, or 608 of the National Housing Act; or is or was subject to a loan under section 202 of the Housing Act of 1959; or was a Real Estate Owned (REO) multifamily project transferred by the Government National Mortgage Association to the

Department. Multifamily housing project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act; or mobile home parks under section 207(m) of that Act; or vacant land; or property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere ("HOPE") program.

*Multifamily project* means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act or is or was subject to a loan under section 202 of the Housing Act of 1959, or a hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Multifamily project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act, which are classified as single family homes.

*Nonprofit organization* means a corporation or association organized for purposes other than making a profit or gain for itself. Stockholders or trustees do not share in profits or losses. Profits are used to accomplish the charitable, humanitarian, or educational purposes of the corporation.

*Preexisting tenant* means a family that resides in a unit in a multifamily housing project immediately before the project is acquired under this part by a purchaser other than the Department.

*Project-based assistance* means assistance that is attached to a structure.

*Subsidized project* means a multifamily housing project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD, pursuant to the Statute, was receiving any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (excluding payments of tenant-based Section 8 assistance) (hereinafter, project-based Section 8 assistance).

*Sufficient habitable, affordable, rental housing is available* means that the HUD office with jurisdiction determines that there is an adequate supply of habitable, affordable housing for low- and very low-income families available in the market area. Submarkets, consisting of portions of units of general local government, may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (e.g., the housing market is balanced), as well as those in which there is an excess supply of rental housing (e.g., the housing market is soft). Rental markets that do not have an adequate supply (e.g., tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination of whether sufficient habitable, affordable, rental housing is available using established market analysis techniques, and will consider information that demonstrates:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(4) A significant number, or proportion, of the households holding Section 8 certificates or rental vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

*Tenant-based assistance* means rental assistance that is not attached to a structure.

*Unit of general local government* means a city, town, township, county, parish, village, or other general purpose political subdivision of a State.

Unsubsidized project means a multifamily housing project that is not a subsidized project.

*URA* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655).

*Useful life* means, generally, twenty years, but it may be more or less, as determined by the Department.

*Very low-income family* means a very low-income family as defined at 24 CFR part 813.

#### 4. What provisions may be waived?

The Assistant Secretary for Housing may waive any regulatory provision issued under the statute. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a Federal Register notice informing the public of all waivers granted under this section in accordance with the HUD Reform Act of 1989 and HUD policies regarding publication of waivers.

#### Management and Maintenance Provisions

#### 5. What maintenance and management standards apply to multifamily housing projects?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

- (1) That is HUD-owned;
- (2) For which HUD is mortgagee-in-possession; or
- (3) That is subject to a mortgage held by HUD.

(b) *Maintenance and Management standards.* With respect to projects within the scope of this section, HUD or the owner, as appropriate, shall:

- (1) To the greatest extent possible, maintain all occupied projects in a decent, safe, and sanitary condition, and in compliance with any standards established by the Department and under applicable State or local laws,

rules, ordinances, or regulations relating to the accessibility and physical condition of the housing;

- (2) Maintain full occupancy;

(3) Maintain projects for purposes of providing rental or cooperative housing; and

(4) Manage projects in accordance with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR parts 100 et al, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 that prohibit discrimination against disabled individuals in Federally-assisted activities, and 24 CFR part 9, which prohibit discrimination against disabled individuals in Federally-conducted activities; Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR part 1, which prohibit discrimination based on race, color, or national origin in programs receiving Federal financial assistance; the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146, which prohibit discrimination based on age in programs receiving Federal financial assistance; and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

6. How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

- (1) That is HUD-owned;
- (2) For which HUD is mortgagee-in-possession; or
- (3) That is subject to a mortgage held by HUD.

(b) *Contracting for management services.* (1) With respect to projects within the scope of this section, HUD may, or may require the owner to, contract for management services for the project with for-profit and nonprofit entities and public agencies, including public housing agencies, on a negotiated, competitive bid, or other basis, at a price determined by HUD to be reasonable, with a manager determined by HUD to be capable of:

- (i) Implementing a sound financial and physical management program that

is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in a decent, safe, and sanitary condition, and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing, and any such standards established by HUD;

(ii) Responding to the needs of tenants and working cooperatively with tenant organizations;

(iii) Providing adequate organizational, staff, and financial resources to the project; and

(iv) Meeting such other requirements as HUD may determine to be necessary or appropriate.

(2) HUD will conduct outreach efforts to minority-owned and female-owned businesses to become managers of the HUD-owned projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises), Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138 (National Women's Business Enterprise Policy).

#### 7. What occupancy requirements apply to multifamily housing projects?

(a) *Multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession.* Occupancy in a multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily housing projects who are eligible for assistance in accordance with the displacement and relocation provisions at section 17 of this guide.

(b) *Evictions.* Eviction from a HUD-owned multifamily housing project is governed by 24 CFR part 247, subpart B.

(c) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in section 17 of this guide to tenants required to vacate the premises.

## PROJECT RENTS WHILE HUD IS MIP OR OWNER

Unit rents .....	<i>Unit rents</i> in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program while HUD is mortgagee-in-possession (MIP), or in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project (section 8(a) of this guide).
Rents payable by tenants .....	<ol style="list-style-type: none"> <li>1. <i>Tenant rent.</i> Rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project (section 8(b)(1) of this guide).</li> <li>2. <i>Rent when tenant does not certify income.</i> If a tenant does not certify income, the tenant must pay the unit rent (section 8(b)(1) of this guide).</li> <li>3. <i>Utility allowance.</i> For a tenant whose rent is based on a percentage of adjusted income, HUD will use a utility allowance to reduce the rent (section 8(b)(2) of this guide).</li> <li>4. <i>Project viability.</i> HUD may adjust the rent to promote project viability (section 8(b)(3) of this guide).</li> <li>5. <i>Tenants with rental vouchers or certificates.</i> Tenant pays rent in accordance with policies and procedures governing such assistance (section 8(b)(4) of this guide).</li> </ol>

8. How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

Because of the subsidies involved in making multifamily housing projects affordable, the setting of rents involves two steps: first, establishing the rent on a unit that will be paid to the owner, and second, determining the rent that the tenant pays (with the difference made up by a subsidy), using a number of procedures to obtain income verification and notify tenants of changes in rent. These procedures are explained below.

(a) *Setting unit rents.* Except as modified by this section, for a property where HUD is mortgagee-in-possession (MIP), HUD will set unit rents in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program; or for a property owned by HUD, rents will be set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project.

(b) *Setting rents payable by tenants.*  
(1) *Tenant rent.* The rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project, as affected by any of the factors in paragraphs (b)(2) through (b)(4) of this section. However, if a tenant does not certify income as required by this section, the tenant must pay the unit rent as determined under the rent setting requirements in paragraph (a) of this section.

(2) *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay

directly to the provider of the utility or service, HUD will deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(3) *Rent adjustments for project viability.* For a HUD-owned project, HUD may adjust the rent provided for in paragraphs (b)(1) or (b)(2) of this section if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(4) *Tenants who are rental voucher or rental certificate holders.* Tenants assisted with rental vouchers or certificates certify their income to the public housing agency (PHA) administering the assistance, and pay rent pursuant to the policies and procedures governing such assistance.

(c) *Income verification and rent notification procedures.*

(1) *Income certification by tenants.* (i) *In subsidized projects.* (A) For families residing in subsidized projects, when HUD becomes MIP or owner, HUD will request an income certification from each family as soon as practicable after HUD initially assumes management, unless the family's income has been examined by the owner or by HUD not more than four months before HUD's assumption of management.

(B) For each family applying for admission to subsidized projects, HUD will request an income certification to

determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with 24 CFR part 813.

(ii) *In unsubsidized projects.* (A) For tenants in occupancy when HUD becomes mortgagee-in-possession or owner of an unsubsidized project, HUD may request an income certification from families who are not paying a subsidized rent.

(B) For families applying for admission to such projects, HUD will request sufficient information for income verification to determine the family's ability to pay the unit rent.

(2) *Notice of increases in the amount of rent payable.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or a project where HUD is mortgagee-in-possession, HUD will provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices of rent increases to all tenants must be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(3) *Disclosure and verification of Social Security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of

Social Security Numbers, as provided by part 200, subpart T, of this title.  
(4) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of

tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of

consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 200.

#### PRE-DISPOSITION NOTIFICATION REQUIREMENTS

Pre-foreclosure (section 10 of this guide).	<p>1. <i>Timing.</i> Not later than 60 days before foreclosure on any mortgage.</p> <p>2. <i>Recipients.</i></p> <ul style="list-style-type: none"> <li>(i) Tenants of the project, and</li> <li>(ii) The unit of general local government in which the project is located.</li> </ul> <p>3. <i>Contents.</i></p> <ul style="list-style-type: none"> <li>(i) General terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose; and,</li> <li>(ii) Whether temporary or permanent relocation is anticipated, and, if so, available displacement and relocation assistance.</li> </ul>
Right of first refusal (section 11 of this guide).	<p>1. <i>Timing.</i> Before, or not more than 30 days after, HUD acquires title to a multifamily housing project.</p> <p>2. <i>Recipients.</i></p> <ul style="list-style-type: none"> <li>(i) The appropriate unit of general local government;</li> <li>(ii) Public housing agencies in the project's market area;</li> <li>(iii) The State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located.</li> </ul> <p>3. <i>Contents.</i></p> <ul style="list-style-type: none"> <li>(i) Description of the project;</li> <li>(ii) Invitation to recipients to make bona fide offers to purchase the project;</li> <li>(iii) Offer of right of first refusal for period of up to 90 days;</li> <li>(iv) Method by which the recipient may respond to HUD.</li> </ul>
Notice to tenants and the community (section 12 of this guide).	<p>1. <i>Timing.</i> Before, or not more than 30 days after, HUD acquires title to a multifamily housing project.</p> <p>2. <i>Recipients.</i></p> <ul style="list-style-type: none"> <li>(i) To the tenants of the project;</li> <li>(ii) To the unit of general local government in which the project is located; and</li> <li>(iii) To the community in which the project is located.</li> </ul> <p>3. <i>Contents.</i></p> <ul style="list-style-type: none"> <li>(i) Description of the project;</li> <li>(ii) Proposed general terms and conditions concerning the sale, future use, and operation of the project;</li> <li>(iii) Invitation for tenants and their organizations, units of general local government, and other public or nonprofit entities to submit comments on the disposition plan, and/or proposals for disposition which will be considered by HUD in making its property disposition determination.</li> </ul>

#### Notification Requirements

9. How will HUD provide required notifications?

(a) *In general.* HUD may combine two or more of the notifications required by the Statute, as appropriate, to simplify the disposition process. Disposition-related notifications (i.e., pre-foreclosure notification to tenants and units of general local government; pre-disposition community and tenant input notification; state and local government right of first refusal notification) will be made, as appropriate:

(1) 60 or more days before HUD forecloses on a project, or

(2) Before, or not more than 30 days after, HUD acquires a project.

(b) *Methods of notification.* (1) *To tenants.* The notices required to be made to tenants under the Statute will be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession or owner of a project, the notice will also be posted in the project office and

in appropriate conspicuous and accessible locations around the project.

(2) *To the unit of general local government.* The notice required to be made to a unit of general local government under the statute will be sent to the chief executive officer of the unit of general local government by first class mail. For purposes of receiving or sending any notices or information under the statute, the unit of general local government is its chief executive officer, or the person designated by the chief executive officer to receive or send the notice or information.

(3) *To the community or any other party.* HUD will consult with tenants and their organizations, officials of units of general local government, and other entities as HUD determines to be appropriate, to identify community recipients of any notification required by the statute. Any notice required to be made to any party other than a tenant or a unit of general local government will be sent by first class mail.

10. What notification must be given before foreclosure?

(a) *Timing and recipients of notice.* Not later than 60 days before foreclosing on any mortgage held by the Department on any multifamily housing project, HUD will provide notice of the proposed foreclosure sale to the tenants of the project and to the unit of general local government in which the project is located.

(b) *Contents of notice.* The notice will describe the general terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose on a purchaser other than HUD through the foreclosure. The notice will also state whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of displacement and relocation assistance available as described in section 17 of this guide.

11. Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?

(a) *Timing and recipients of notice.* Before, or not more than 30 days after,

HUD acquires title to a multifamily housing project, HUD will provide notice of the right of first refusal to the appropriate unit of general local government, as well as public housing agencies in the project's market area, and the State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and contain an invitation to recipients to make bona fide offers to purchase the project. The notice will state:

(1) That for a period specified in the notice, not to exceed 90 days from the time the notification is made, HUD will not sell or offer to sell the project other than to a recipient of the notice, unless the recipients notify HUD sooner that they will not make an offer to purchase the project;

(2) That if a recipient expresses interest within the specified period in acquiring the project, HUD will consult with the interested parties in the preparation of the disposition plan and the terms and conditions of the sale of the project. HUD will accept a bona fide offer to purchase the project if the offer complies with the terms and conditions of the disposition plan for the project, or is otherwise acceptable to HUD;

(3) The method by which the recipient may respond to HUD with an expression of interest or a bona fide offer, or by which the recipient may notify HUD that an offer will not be made.

12. What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

(a) *Timing and recipients of notice.* Before, or not more than 30 days after, HUD acquires title to a multifamily housing project, HUD will provide notice of HUD's acquisition and proposed disposition of the project to the tenants of the project, to the unit of general local government, and to the community in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and the general terms and conditions

concerning the sale, future use, and operation of the project as proposed by HUD. The notice will, as appropriate, state:

(1) HUD has acquired the project.

(2) During HUD's ownership, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition.

(3) HUD is developing a final disposition plan for the project.

(4) HUD normally seeks to sell HUD-owned projects as rapidly as possible.

(5) HUD's interest in learning of tenant, community, and local government plans and capacity for the acquisition of the project for use as rental or cooperative housing.

(6) HUD's final determination of the terms and conditions to be imposed on the disposition of the project will not be made until after HUD considers the comments received from tenants, the community, and the unit of general local government within the specified comment period.

(7) A brief description of a proposed manner of disposition of the project.

(8) A description of the pending notice of the right of first refusal to purchase the project as described in section 11 of this guide.

(9) That alternative uses of units in the project may be part of the project's disposition, and that:

(i) Some of the units in the project may be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project;

(ii) Some of the units in the project may be used in any manner, if the Department and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals;

(iii) Such alternative uses of units may only take place if:

(A) Tenant-based Section 8 rental assistance is made available to each eligible family residing in the project that is displaced as a result of such actions; and

(B) The Department determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

(10) That for any very low-income family who is a preexisting tenant of the project who upon disposition of the project would be required to pay rent in an amount in excess of 30 percent of the adjusted income of the family:

(i) For a period of 2 years beginning upon the date of the acquisition of the project under the disposition, the rent for the unit occupied by the family may not be increased above the rent charged immediately before the acquisition; and

(ii) The family shall be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

(11) Whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of relocation assistance available as described in section 17 of this guide.

(12) That tenants and their organizations, units of general local government, and other public or nonprofit entities are invited to submit comments on the disposition plan, and/or proposals (e.g., expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident initiative), which will be considered by HUD in making its property disposition determination.

(13) That comments must be submitted to HUD within 30 days of receipt of the notice.

(14) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office.

#### METHODS OF DISPOSITION

Foreclosure sales. (section 13(a) of this guide).

HUD may dispose of a project at a foreclosure sale:

1. In accordance with the Multifamily Mortgage Foreclosure Act, or
2. In accordance with other Federal or State foreclosure law.

Sale of HUD-owned projects. (section 13(b) of this guide).

HUD may sell a HUD-owned project using any of the following procedures:

1. Competitive bid;
2. Auction;
3. Request for proposals;
4. Negotiated sale, as described in section 13(b)(1) and (2); or
5. Any other method, on such terms as HUD considers appropriate.

## METHODS OF DISPOSITION—Continued

Transfer for use under other HUD programs. (section 13(c) of this guide).	<p>HUD, under an agreement, may transfer a multifamily housing project:</p> <ol style="list-style-type: none"> <li>1. To a public housing agency (PHA) for use of the project as public housing; or</li> <li>2. To an entity eligible to own or operate 202 or 811 supportive housing.</li> </ol>
---	---

## Disposition Procedures

13. What are the different methods that may be used for the disposition of a multifamily housing project?

HUD may use any of the following methods, as appropriate, for the disposition of a multifamily housing project:

(a) *Foreclosure sales.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure law, on such terms as HUD considers appropriate to further the goals and purposes stated in section 2 of this guide.

(b) *Sale of HUD-owned projects.* HUD may dispose of a HUD-owned multifamily project by competitive bid, auction, request for proposals, or other method, on such terms as HUD considers appropriate to further the goals and purposes stated in section 2 of this guide. When HUD conducts a negotiated sale involving the disposition of a project to a person or entity without a public offering, the following provisions apply:

(1) HUD may negotiate the sale of any project to an agency of the Federal, State, or local government.

(2) When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD, and/or a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a subsidized project to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (e.g., nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low-income housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as housing available to and affordable by low-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(c) *Transfer for use under other HUD programs.*

(1) *In general.* Subject only to the requirements of an agreement under paragraph (c)(2) of this section, HUD may transfer a multifamily housing project:

(i) To a public housing agency (PHA) for use of the project as public housing; or

(ii) To an entity eligible to own or operate housing assisted under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act for use as supportive housing under either of those sections.

(2) *Transfer agreement.* An agreement providing for the transfer of a project as described in paragraph (c)(1) of this section must:

(i) Contain such terms, conditions, and limitations as HUD determines to be appropriate, including requirements to ensure use of the project as public housing, supportive housing under section 202 of the Housing Act of 1959, or supportive housing under section 811 of the Cranston-Gonzalez National Affordable Housing Act, as applicable; and

(ii) Ensure that no tenant of the project will be displaced as a result of the transfer.

14. What qualities does HUD look for in a purchaser?

(a) *Foreclosure sales.* HUD will dispose of a multifamily housing project through a foreclosure sale only to a purchaser that the Department determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under

applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department.

(b) *HUD-owned multifamily housing projects.* Sales of HUD-owned multifamily housing projects may be made only to a purchaser determined by the Department to be capable of:

(1) Satisfying the conditions of the disposition plan, as described in section 15 of this guide, for the project;

(2) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department;

(3) Responding to the needs of the tenants and working cooperatively with tenant organizations;

(4) Providing adequate organizational, staff, and financial resources to the project; and

(5) Meeting such other requirements as HUD may determine to be appropriate for the particular project.

15. What kind of disposition plan will HUD prepare before selling a project?

(a) *In general.* Before disposing of a HUD-owned multifamily housing project, HUD will develop an initial and a final disposition plan for the project that specifies the minimum terms and conditions for the disposition of the project, the sales price that is acceptable to HUD, and the assistance that HUD plans to make available to a prospective purchaser.

(b) *Market-wide plans.* In developing the disposition plan under this section for a HUD-owned multifamily housing project located in a market area in which at least 1 other HUD-owned multifamily housing project is located, HUD may coordinate the disposition of HUD-owned multifamily housing projects located within the same market area to the extent and in such a manner as the Department determines appropriate to carry out the goals and

purposes stated in section 2 of this guide.

(c) *Sales price.* The sales price in the disposition plan will be reasonably related to the intended use of the project after the sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under Section 8 of the United States Housing Act of 1937, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that HUD considers appropriate.

(d) *Community and tenant input.* In developing the initial and final disposition plans, HUD will consider any timely input from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project, including the comments received in response to the notice described in section 12 of this guide. To obtain this input, HUD may provide technical assistance, directly or indirectly, and may use amounts available for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, subtitle C of

the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or the Statute, for the provision of such technical assistance. Recipients of technical assistance funding under the provisions referred to in this subparagraph may provide technical assistance to the extent of such funding, notwithstanding the source of the funding.

(e) *Environmental requirements.* HUD will perform, and include in the final disposition plan, the environmental reviews required by 24 CFR part 50.

#### TABLE OF ACTIONS TO FACILITATE DISPOSITION

All Multifamily Housing Projects .....	<p><i>Required Actions</i></p> <ol style="list-style-type: none"> <li>1. Displacement requirements (section 17 of this guide).</li> <li>2. Very-low income preexisting tenant—2 year rent freeze if rent after disposition more than 30 percent of adjusted income (section 18 of this guide).</li> <li>3. Nondiscrimination against Section 8 certificate holders and voucher holders (section 19 of this guide).</li> </ol>
Subsidized Projects .....	<p><i>Basic Actions</i></p> <ol style="list-style-type: none"> <li>1. Provide project-based Section 8 assistance to at least all units that, before acquisition or foreclosure, received: Rent Supp, RAP, Sec. 23, project-based Section 8 (section 20(a) of this guide).</li> <li>2. Vacancy in any assisted unit must be filled by a family that is eligible for the assistance (section 20(b) of this guide).</li> <li>3. Rent and use restrictions on BMIR, 236, or 202 subsidized project units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 (section 20(c) of this guide).</li> </ol> <p><i>Alternatives to Basic Actions</i></p> <ol style="list-style-type: none"> <li>1. Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects (section 21(a) of this guide).</li> <li>2. Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units (section 21(b) of this guide).</li> <li>3. Use of the additional assistance and restrictions permitted by the Statute (section 21(b) of this guide).</li> </ol>
Unsubsidized Projects .....	<p><i>Basic Actions</i></p> <ol style="list-style-type: none"> <li>1. Provide project-based Section 8 assistance for all units that, before acquisition or foreclosure, received assistance under:               <ol style="list-style-type: none"> <li>(i) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);</li> <li>(ii) The property disposition program under section 8(b) of such Act;</li> <li>(iii) The project-based certificate program under section 8 of such Act;</li> <li>(iv) The moderate rehabilitation program under section 8(e)(2) of such Act;</li> <li>(v) Section 23 of such Act (as in effect before January 1, 1975);</li> <li>(vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or</li> <li>(vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965 (section 22(a) of this guide).</li> </ol> </li> <li>2. Provide tenant-based Section 8 assistance to preexisting tenants of LMSA-assisted units (section 22(b) of this guide).</li> </ol> <p><i>Alternatives to Basic Actions</i></p> <ol style="list-style-type: none"> <li>1. Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units (section 23(a) of this guide).</li> <li>2. Use of the additional assistance and restrictions permitted by the Statute (section 23(b) of this guide).</li> </ol>
All Multifamily Housing Projects .....	<p><i>Additional Actions</i></p> <ol style="list-style-type: none"> <li>1. Discounted sales price (section 25 of this guide).</li> <li>2. Additional use and rent restrictions (section 26 of this guide).</li> <li>3. Short-term loans (section 27 of this guide).</li> <li>4. Up-front grants (section 28 of this guide).</li> <li>5. Additional tenant-based assistance (section 29 of this guide).</li> <li>6. Alternative uses (section 30 of this guide).</li> <li>6. Rebuilding (section 31 of this guide).</li> <li>7. Emergency assistance funds (section 32 of this guide).</li> <li>8. Determination not to preserve (section 33 of this guide).</li> </ol>



## All Multifamily Housing Projects—Required Actions

16. What actions must be taken in the disposition of all multifamily housing projects?

The requirements regarding tenants who are displaced (section 17 of this guide), unassisted very low-income tenants (section 18 of this guide), and nondiscrimination against Section 8 certificate holders and voucher holders (section 19 of this guide), apply in the disposition of all multifamily housing projects.

17. What actions must be taken concerning tenants who are displaced by the disposition of a multifamily housing project?

(a) *Scope of section.* This section applies to all HUD-owned multifamily housing projects and all multifamily housing projects subject to HUD-held mortgages. When HUD is not the mortgagee-in-possession or owner, this section applies to the owner of the project, if HUD has authorized the demolition of, repairs to, or conversion of the use of the multifamily housing project.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of the Statute, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) from a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily housing project, but is not subject to paragraph (d) of this section (e.g., occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily housing project or as a direct result of the foreclosure of a HUD-held mortgage on a multifamily housing project or sale of a HUD-owned multifamily housing project without federal financial assistance), the displaced tenant is to be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided at least 60 days before displacement, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable (and where appropriate, accessible), decent, safe, and sanitary dwelling unit in a HUD-owned multifamily housing project, in a public housing project, or in another HUD subsidized multifamily housing project,

(ii) Assistance under the Section 8 Certificate program (see 24 CFR 882.209(a)(4)(ii)(B)) or the Housing Voucher program (see 24 CFR 887.155(c)), if the assistance is available; or

(iii) The right to return, whenever possible, to a repaired or rebuilt unit.

(5) Such other federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels.* (1) *General.* Whenever assistance under 24 CFR part 886, subpart C (or other federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily housing project by a third party, any resulting displacement is subject to this paragraph. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of "initiation of negotiations".* Under the URA, for purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term "displaced person" means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes, but is not limited to:

(A) A person that moves permanently from the real property after receiving notice requiring such move, if the move

occurs on or after the date of the transfer of title to the purchaser.

(B) Any person that HUD determines was displaced as a direct result of acquisition, rehabilitation or demolition for an assisted project.

(C) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the transfer of title to the purchaser, if the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, sanitary, and where appropriate, accessible dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or that is affordable, as defined in this part.

(D) A tenant-occupant of a dwelling unit who is required to relocate temporarily for the project, but does not return to the building/complex, if either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex for the project, if either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (d)(3)(i) of this section, a person does not qualify as a "displaced person" if:

(A) The person is excluded under 49 CFR 24.2(g)(2).

(B) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(C) The person moves into the property after transfer of title to the purchaser.

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who must relocate temporarily (e.g., to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

18. What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?

HUD will require that for a period of 2 years, beginning upon the date of disposition of a multifamily housing project, the rent for any unit occupied by a very low-income family, that is a preexisting tenant and that would be required to pay a rent that is more than 30 percent of the adjusted income (as defined in part 813) of the family, may not be increased above the rent charged immediately before the acquisition. Such a family will also be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

19. What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

20. What are the basic actions that may be taken in the disposition of a subsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of a subsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in section 21 of this guide, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance to assist at least all of a subsidized project's units that were covered, before acquisition or foreclosure, by the rent subsidies (Rent Supp, RAP, Sec. 23, project-based Section 8) included in the definition of a subsidized project.

(b) *Assisted units—tenant eligibility restrictions.* The contract for project-based Section 8 assistance in accordance with paragraph (a), above, will provide that when a vacancy occurs in any unit that requires such assistance, but which was occupied by a family ineligible for such assistance, the owner will lease the available unit to a family that is eligible for the assistance.

(c) *Unassisted units—use and rent restrictions.* HUD will require use or rent restrictions on BMIR, 236, or 202

subsidized projects to ensure that units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 rent subsidies remain available and affordable for the remaining useful life of the project.

21. What alternatives to the basic actions are available in the disposition of subsidized projects?

In the disposition of a subsidized project, HUD may take the following alternative actions instead of the basic actions listed in section 20 of this guide:

(a) *Unit substitution: assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects.* Instead of providing project-based Section 8 assistance as described in section 20(a) of this guide, HUD may, in unsubsidized projects located in the same market area, provide project-based Section 8 assistance to units to be occupied by very low-income persons, or impose use and rent restrictions to assure that units remain available to and affordable by very low-income families for the remaining useful life of the project. When this unit substitution procedure is used, the total number of unsubsidized project units provided with assistance and/or placed under use and rent restrictions must be at least equal to the number of subsidized project units that would have received project-based Section 8 in the absence of unit substitution. In addition, HUD will make tenant-based Section 8 assistance available to low-income families residing in the subsidized project's units that would have received project-based Section 8 assistance if this unit substitution alternative had not been used.

(b) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as described in section 20(a) of this guide, HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units that would have been eligible for the project-based Section 8 assistance as described in section 20 of this guide. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance in not more than 10 percent of the aggregate number of subsidized project units disposed of by HUD in any fiscal year, and only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable

housing for very low-income families and other low-income families using tenant-based assistance. The number of units eligible for this form of substitution within the 10 percent limit will be estimated at the beginning of each fiscal year, taking into consideration the aggregate number of subsidized project units disposed of by HUD in the immediately preceding fiscal year and the disposition activity planned for the current fiscal year.

(c) *Additional actions.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of a subsidized project as described in section 20(a) of this guide, HUD may make use of the additional actions to facilitate the disposition of multifamily housing projects as described in sections 24 through 33 of this guide.

#### Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

22. What are the basic actions that may be taken in the disposition of an unsubsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of an unsubsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in section 23 of this guide, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance for all of an unsubsidized project's units that were covered, before acquisition or foreclosure, by an assistance contract under:

(1) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (the 1937 Act) (as in effect before October 1, 1983);

(2) The property disposition program under section 8(b) of the 1937 Act;

(3) The project-based certificate program under section 8 of the 1937 Act;

(4) The moderate rehabilitation program under section 8(e)(2) of the 1937 Act;

(5) Section 23 of the 1937 Act (as in effect before January 1, 1975);

(6) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(7) Section 8 of the 1937 Act, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965.

(b) *LMSA-assisted units—provision of tenant-based section 8 assistance.* HUD will provide tenant-based Section 8

assistance for families that are preexisting tenants of unsubsidized projects in units that, immediately before foreclosure or acquisition of the project by HUD, were covered by an assistance contract under the loan management set-aside program under section 8(b) of the United States Housing Act of 1937.

23. What alternatives to the basic actions are available in the disposition of unsubsidized projects?

In disposing of an unsubsidized project, HUD may take the following alternative actions instead of the basic actions listed in section 22 of this guide:

(a) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as described in section 22 of this guide, HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units eligible for the project-based Section 8 assistance as described in section 22 of this guide. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

(b) *Additional actions.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of an unsubsidized project as described in section 22 of this guide, HUD may make use of the additional assistance and restrictions for the disposition of multifamily housing projects as described in sections 24 through 33 of this guide.

#### All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

24. What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?

The additional actions to facilitate disposition available under this subpart are intended to replace, supplement or make more cost effective the Section 8 assistance that would otherwise be required, and are to be provided in a manner consistent with the goals and purposes stated in section 2 of this guide and, unless otherwise noted:

(a) On terms that will ensure that at least the units in the project otherwise

required to receive project-based Section 8 assistance as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project) are available to and affordable by low-income persons for the remaining useful life of the project, with use or rent restrictions as HUD may prescribe; and

(b) With tenant-based Section 8 assistance to any very low-income families who would have received project-based assistance under Section 8 as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project), but because of action taken as described in sections 24 through 33 of this guide, did not receive such assistance, and are left residing in units of the project with rents that exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937 for very low-income families.

25. May HUD reduce the sales price for a project?

HUD may reduce the selling price of a project. The sales price for a project will be reasonably related to the intended use of the property as affordable housing for very low-income tenants after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of project-based Section 8 assistance being made available by HUD in the disposition of the project, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Department considers appropriate.

26. May HUD require additional use and rent restrictions?

HUD may require units in a project to be subject to use or rent restrictions to provide that the units will be available to and affordable by low- and very low-income persons for the remaining useful life of the project.

27. May HUD provide short-term loans to facilitate the sale of a project? HUD may provide short-term loans to facilitate the sale of a multifamily housing project if:

(a) Authority for such loans is provided in advance in an appropriation Act;

(b) The loan has a term of not more than 5 years;

(c) HUD determines, based upon documentation provided by the purchaser, that the purchaser has obtained a commitment of permanent financing to replace the short-term loan

from a lender who meets standards established by the Department; and

(d) The terms of the loan are consistent with prevailing practices in the marketplace or the provision of the loan results in no cost to the Government, as defined in section 502 of the Congressional Budget Act of 1974.

28. Under what conditions may HUD provide up-front grants?

HUD may utilize the budget authority provided for contracts issued under this part for project-based Section 8 assistance to (in addition to providing project-based Section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other HUD-approved related development costs to reduce the level of Section 8 contract rents if HUD determines that action under this section is more cost-effective than providing project-based Section 8 assistance as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project).

29. What additional tenant-based assistance may HUD offer?

To facilitate the sale of a multifamily housing project, HUD may make tenant-based Section 8 assistance available to families residing in a multifamily housing project who are eligible to receive tenant-based assistance but who do not qualify for project-based assistance.

30. How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?

(a) *In general.* Notwithstanding any other provision of law, after providing notice to and an opportunity for comment by preexisting tenants, HUD may allow up to:

(1) 10 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be made available for uses other than rental or cooperative uses, such as, low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

(2) 5 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be used in any manner, if HUD and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

(b) *Computation of number of eligible units.* The number of units eligible for alternate uses in any fiscal year will be determined at the beginning of the fiscal year as the applicable percentages in paragraphs (a)(1) or (2) of this section (i.e., either 10 percent or 5 percent) of the estimated total number of units to be disposed of in the fiscal year, taking into consideration the total number of units in multifamily housing projects disposed of by the Department in the immediately preceding fiscal year, and the extent of the disposition activity planned in the current fiscal year.

(c) *Displacement protection.* HUD may take actions under paragraph (a) of this section only if:

(1) Tenant-based Section 8 assistance is made available to each family eligible for such assistance residing in the project that is displaced as a result of such actions; and

(2) HUD determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

31. What disposition assistance may be available to rebuild a multifamily housing project?

(a) Notwithstanding any provision of section 8 of the United States Housing Act of 1937, HUD may provide project-based assistance as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project) to support the rebuilding of a HUD-owned multifamily housing project rebuilt or to be rebuilt (in whole or in part and on-site, off-site, or in a combination of both) in connection with a disposition under this part, if HUD determines all of the following:

(1) The project is not being maintained in a decent, safe, and sanitary condition;

(2) The costs to HUD for rebuilding are such that the monthly debt service needed to amortize the cost of relocating tenants, demolition, site preparation, rebuilding, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A), and would be less expensive than rehabilitation;

(3) The unit of general local government in which the project is located approves the rebuilding and makes a financial contribution or other commitment to the project determined by HUD to be satisfactory;

(4) The rebuilding is a part of a local neighborhood revitalization plan

approved by the unit of general local government.

(b) The provisions described in section 17 of this guide apply to any tenants of the project who are displaced through an action taken under paragraph (a) of this section.

32. What emergency assistance funds may be provided to tenants?

HUD may make arrangements with State agencies and units of general local government of States receiving emergency assistance under part A of title IV of the Social Security Act for the provision of assistance under that Act on behalf of eligible families who would reside in any multifamily housing projects.

33. Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

HUD may determine to demolish, or otherwise dispose of, a HUD-owned multifamily housing project, or any portion of such a project, or to foreclose a HUD-held mortgage on a multifamily housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- and very low-income families under appropriate circumstances which may include one or more of those listed in paragraphs (a) through (g) of this section, below. If HUD decides not to preserve an occupied multifamily housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in section 17 of this guide.

(a) The costs to HUD of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market.

(b) Construction is substantially incomplete.

(c) Preservation is not feasible because of environmental factors that cannot be mitigated by HUD or the purchaser. For example, when the project is located on a site that cannot be made to comply with the Section 8 Site and Neighborhood standards in 24 CFR 886.307(k) because of factors that adversely affect the health, safety and general welfare of residents such as air pollution; smoke; mud slides; fire or explosion hazards. Preservation may also be infeasible because of significantly deteriorated surrounding

neighborhood conditions with inadequate police or fire protection; high crime rates; drug infestation; or lack of public community services needed to support a safe and healthy living environment for residents.

(d) HUD determines the project is unfit for rehabilitation.

(e) Rehabilitation would cost more than constructing comparable new housing.

(f) A reduction in the number of units in the project will enhance long-term project viability, for example, demolition of a building to provide space for a playground, open space, or combining one-bedroom units to create larger units for families.

(g) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located.

[FR Doc. 96-6791 Filed 3-20-96; 8:45 am]

BILLING CODE 4210-27-P