

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 290

[Docket No. FR-3970-F-02]

RIN 2502-AG59

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Sale of HUD-Held Multifamily Mortgages

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Department's regulations governing the sale of multifamily mortgages. It adds a provision protecting leases of residential tenants in the event of foreclosure of certain mortgages after they have been sold by HUD. This rule continues the protections already provided to tenants that are receiving project-based federal rental assistance or Section 8 tenant-based rental assistance. This rule also clarifies a requirement added by the earlier interim rule which continued, after the mortgage was sold by HUD, the prohibition on project owners against discrimination in admitting tenants based on their holding Section 8 certificates or vouchers. This rule clarifies that this requirement continues until the mortgage debt is satisfied. These amendments are intended to further the Department's efforts to return its inventory of HUD-held multifamily mortgages to the private sector in a manner that is beneficial to HUD and the residents of these projects.

**EFFECTIVE DATE:** July 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Audrey Hinton, Associate Director for Program Operations, Office of Multifamily Asset Management and Disposition, Office of Housing, Room 6160, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-3730, Ext. 2691. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1-800-877-8399 (Federal Information Relay Service TTY).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 6, 1996, the Department published an interim rule (61 FR 4850) which added two sections to 24 CFR part 290 that provided certain tenant protections when HUD sold multifamily mortgages. On March 21, 1996, as part of its effort to reinvent and streamline all of its regulations, the Department

published a final rule that contained a complete revision of 24 CFR part 290. That final rule contained the pertinent sections and indicated that HUD would republish the sections in a final rule after considering public comment.

Section 290.112 of the interim rule (now § 290.37) provided that, in the sale of delinquent mortgages on subsidized projects and partially-assisted unsubsidized, HUD will require project purchasers, including foreclosure purchasers, to assume federal rental subsidy contracts. In addition, mortgage purchasers may not foreclose in a manner that would terminate such assisted tenants' leases.

The interim rule preamble discussion of the then § 290.112 also sought comment on adding a requirement that existing leases of unassisted tenants in such projects must be maintained after foreclosure for a period equal to the remaining term of the lease or one year, whichever period is shorter, if the leases could otherwise be extinguished under state foreclosure law. The Department did not actually effectuate this provision in the interim rule because it did not believe it had a basis to forego prior public comment.

Section 290.114 of the interim rule (now § 290.39) provided that owners of subsidized projects and partially-assisted unsubsidized projects will continue to be subject to a prohibition against discriminating against certificate and voucher holders after a mortgage sale without insurance. In addition, for all mortgages that are delinquent when sold by HUD, owners both of subsidized projects and unsubsidized projects must agree to record a covenant running with the land to continue this obligation through the maturity date of the mortgage as part of the consideration of a loan restructuring or compromise of the mortgage indebtedness with the mortgage purchaser. Alternatively, if the mortgage purchaser forecloses, this nondiscrimination obligation would apply to the project purchaser at foreclosure.

The preamble to the interim rule (61 FR 4581) also provided additional guidance on how HUD intends to implement the then § 290.110(b) (now § 290.35(b)).

The Department received one public comment on the interim rule, which supported the changes made by the interim rule. The commenter did not directly respond to the issue, raised in the preamble, of safeguarding the possessory rights of unassisted tenants after foreclosure.

#### Changes Effectuated by This Final Rule

This final rule amends § 290.37(b) to adopt the change proposed in the preamble to the interim rule. Namely, it requires a mortgagee (and its successors and assigns) that purchases from HUD a delinquent mortgage on a subsidized project or a partially-assisted unsubsidized project and subsequently forecloses the mortgage to ensure that the purchaser at foreclosure takes possession subject to the rights of residential tenants who are not receiving federal project-based or Section 8 tenant-based rental assistance. This tenant protection lasts for the remaining term of the lease or for one year, whichever period is shorter.

The scope and duration of this tenant protection is similar to that which would apply under section 369E of the Multifamily Mortgage Foreclosure Act of 1981, as amended, (12 U.S.C. 3713(c), see also 24 CFR 27.45(b)) when HUD forecloses on a mortgage that it holds.

The amendment does not affect residential tenants who receive rental assistance. They are protected by existing requirements now in § 290.37(b)(1) (§ 290.112(b) in the interim rule). Under that section, the mortgage purchaser and its successors and assigns, if they foreclose, must foreclose in a manner that does not interfere with any lease related to federal project-based assistance or any lease related to tenant-based, Section 8 housing assistance payments.

This final rule makes one additional change to clarify the duration of the nondiscrimination against certificate and voucher holders requirement in current § 290.39. Section 290.39 (§ 290.114 of the interim rule) prohibits a project owner from unreasonably refusing to lease a unit because the tenant is a certificate or voucher holder. The prohibition applies to owners of subsidized projects or partially-assisted unsubsidized projects. Section 290.39(c)(2) of the current rule provides that "This requirement shall continue until the mortgage is paid in full, including by a mortgage prepayment, except as provided in paragraph (d) of this section." The intent of this provision was to continue the nondiscrimination requirement for as long as the project was subject to the mortgage debt. (See the preamble discussion of § 290.114 in the interim rule at 61 FR 4583.) The above-quoted rule text, however, is unclear as to the effect of a satisfaction of the mortgage with less than a full payment. This rule amends § 290.39 to state explicitly that the nondiscrimination requirement

continues in effect until the mortgage debt is satisfied.

#### Other Matters

##### *Environmental Impact*

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

##### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to HUD administrative procedures, and do not impinge upon the relationship between Federal government and State and local governments.

##### *Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not

subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

##### *Regulatory Flexibility Act*

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

##### List of Subjects in 24 CFR Part 290

Low and moderate income housing.  
Mortgage insurance.

Accordingly part 290 of Title 24 of the Code of Federal Regulations is amended as follows:

#### **PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS AND CERTAIN MULTIFAMILY PROJECTS SUBJECT TO HUD-HELD MORTGAGES**

1. The part heading for part 290 is revised as set forth above.
2. The authority citation for part 290 is revised to read as follows:

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

##### **§ 290.30 [Amended]**

3. In § 290.30, paragraph (a) is amended by removing the reference to

“§ 290.32(a)(2)” and adding in its place “§ 290.31(a)(2)”.

4. In § 290.37, paragraph (b) is revised to read as follows:

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

\* \* \* \* \*

(b) In the event of foreclosure of the mortgage sold by HUD, the mortgage purchaser and its successors and assigns:

(1) Shall foreclose in a manner that does not interfere with any lease related to federal project-based assistance or any lease related to tenant-based, Section 8 housing assistance payments; and

(2) Shall foreclose in manner that ensures that the right of possession of the purchaser at a foreclosure sale shall be subject to the terms of any residential lease not subject to paragraph (b)(1) of this section for the remaining term of the lease or for one year, whichever period is shorter.

\* \* \* \* \*

3. In § 290.39, paragraph (c)(2) is revised to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) This requirement shall continue in effect until the mortgage debt is satisfied.

\* \* \* \* \*

Dated: June 11, 1996.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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