

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 291****[Docket No. FR-4116-F-01]****RIN 2502-AG81****Disposition of HUD-Acquired Single Family Property; Streamlining Final Rule****AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.**ACTION:** Final rule.

SUMMARY: This final rule amends HUD's regulations for the disposition of HUD-acquired single family property. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline these regulations by eliminating provisions that are redundant or are otherwise unnecessary. This final rule will make the single family property disposition program regulations clearer and more concise.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ann M. Sudduth, Director, Department of Housing and Urban Development, Room 9170, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708-0740 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**I. Regulatory Reinvention**

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the disposition of HUD-acquired single family properties in 24 CFR part 291 can be improved and streamlined by eliminating unnecessary provisions.

According to the President's regulatory reinvention initiatives, the Code of Federal Regulations (CFR) should contain only binding regulatory requirements. However, several sections in the single family property disposition regulations contain nonbinding guidance, information, or explanations. HUD will more appropriately provide this information through handbook guidance or other materials. By

removing provisions from the CFR that are not binding regulatory requirements, HUD will clarify to the reader which provisions are actually binding requirements. Furthermore, HUD has determined that some of the binding requirements in these regulations are no longer necessary. Therefore, through this final rule, HUD's regulations for the disposition of single family property will contain only those regulatory requirements that are necessary for the proper administration of the disposition program.

Specifically, this rule accomplishes the following:

1. This rule streamlines § 291.1 by revising paragraph (b) regarding nondiscrimination requirements. The nondiscrimination requirements in paragraph (b) are already contained in 24 CFR part 5, which was established by a final rule published on February 9, 1996 (61 FR 5198). This rule also eliminates paragraph (c), which was informational and nonbinding.

2. This rule consolidates most of the definitions throughout part 291 into § 291.5 to make them easier to find. This rule removes the definition for the term "revitalization area." This definition is unnecessary because, due to the other streamlining efforts in this rule, this term no longer appears in part 291. This rule also streamlines the definition of "tribe" by removing language that simply repeats a statutory provision.

3. This rule streamlines § 291.100 regarding HUD's general disposition policies by removing unnecessary cross-references and nonbinding information. It also revises paragraph (d)(2) to provide that when HUD decides to take back a purchase money mortgage (PMM) on a property, the mortgage will be available in an amount determined by the Secretary. This revision will give HUD more flexibility to offer the mortgage at a fair price.

4. This rule streamlines § 291.105 regarding the competitive sales procedure by removing language that is unnecessary or redundant. This rule also revises paragraph (f) by clarifying HUD's procedures regarding properties subject to an extended listing period. This clarification will assist the public by eliminating confusion regarding the procedures.

5. This rule streamlines § 291.110 regarding other sales procedures. This rule removes some of the specific information regarding other sales procedures that is nonbinding and that HUD could more appropriately provide through other means. This rule also revises this section slightly to clarify that a property will be sold to the first eligible purchaser submitting an

acceptable contract. (See § 291.110(a)(2)(i) of this final rule. The regulations previously provided that properties will be sold on a "first come-first served basis.")

6. This rule removes §§ 291.115 through 291.145. HUD has determined that the information and requirements in these sections no longer need to appear in the CFR.

7. This rule streamlines subpart C of part 291 regarding the rental of acquired property. This rule will provide HUD's general policy in § 291.200, but it will remove the information and requirements that no longer need to appear in the CFR.

8. This rule revises § 291.400 regarding the lease and sale of HUD-acquired property for the homeless. This rule removes language that is unnecessary or redundant. This rule also adds a new paragraph regarding applicant preapproval, which was previously located in § 291.410. It is necessary to retain this requirement to inform the public of the initial procedures for acquiring properties for the homeless.

9. This rule removes § 291.405. The definitions in this section will now appear in § 291.5.

10. This rule also removes § 291.410. HUD has determined that, with the exception of the requirement for applicant preapproval, which was moved to § 291.400, the information and requirements in § 291.410 no longer need to appear in the CFR.

11. This rule streamlines § 291.415 by removing paragraph (d) regarding property operating costs and insurance. The important requirements in that paragraph are disclosed in and enforceable through the terms of the lease, and it is unnecessary to retain them in the CFR.

12. This rule removes §§ 291.420 and 291.425. HUD has determined that the information and requirements in these sections no longer need to appear in the CFR.

13. This rule does not amend § 291.430 regarding the elimination of lead-based paint hazards.

14. This rule revises § 291.435 by removing paragraph (c), which provided that the requirements for intergovernmental review "are not applicable to applications under this subpart." It is unnecessary to maintain this information in the CFR.

This rule will result in the elimination of approximately nine pages of unnecessary regulations.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for

effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and clarifies existing procedures; it does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Environmental Impact

This rule does not have an environmental impact. This rule simply amends existing regulations by consolidating and streamlining provisions; it does not alter the environmental effect of the regulations being amended. As HUD developed the regulations in part 291, Findings of No Significant Impact with respect to the environment were made in accordance with regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Those findings remain applicable to this rule, and are 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 General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, thereby certifying that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations. It will have no adverse or disproportionate economic impact on small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic

or policy changes will result from this rule that would affect the relationship between the 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 will not have the potential for significant impact on family formation, maintenance, or 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4; approved March 22, 1995) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 291

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

Accordingly, for the reasons stated in the preamble, 24 CFR part 291, subparts A, B, C, and E are revised as set forth below:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 continues to read as follows:

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

2. Subparts A, B, and C are revised to read as follows:

Subpart A—General Provisions

Sec.

291.1 Purpose and scope.

291.5 Definitions.

Subpart B—Disposition by Sale

291.100 General policy.

291.105 Competitive sales procedures.

291.110 Other sales procedures.

291.150 Sanctions against fraudulent purchase.

Subpart C—Rental of Acquired Property

291.200 General policy.

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Subpart A—General Provisions

§ 291.1 Purpose and scope.

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties that are acquired by HUD or are otherwise in HUD's custody.

Detailed policies and procedures that must be followed in specific areas are issued by each HUD field office.

(2) The purpose of the property disposition program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

(b) *Nondiscrimination policy.* The requirements set forth in 24 CFR parts 5 and 110 apply to the administration of any activity under this part.

§ 291.5 Definitions.

The terms "*HUD*" and "*Secretary*" are defined in 24 CFR part 5.

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits a written expression of interest in eligible properties under subpart E of this part. Governmental entities include those that have general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies or state housing finance agencies). In the case of applicants leasing properties while their applications for Supportive Housing assistance are pending, "*applicant*" is defined in 24 CFR part 583.

Closing agent means a qualified firm or person under contract to HUD to administer closings involving the sale of HUD-acquired single family properties.

Competitive sale means a sale through a sealed bid process (or other bid process specifically authorized by the Secretary) in competition with other bidders in which properties have been publicly advertised to all prospective purchasers for bids.

Direct sale means a sale to a selected purchaser to the exclusion of all others without resorting to advertising for bids. Such a sale is available only to approved applicants.

Disposition means the sale, or lease with option to purchase, of eligible properties for use by the homeless.

Eligible properties means all vacant single family properties acquired by HUD under the Mutual Mortgage Insurance Fund, the Special Risk Insurance Fund, the General Insurance Fund, or other housing programs, except properties committed to other HUD programs.

Homeless means:

(1) Individuals or families who lack the resources to obtain housing, whose annual income is not in excess of 50 percent of the median income for the area, as determined by HUD, and who:

- (i) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- (ii) Have a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing, but excluding prisons or other detention facilities); or
- (iii) Are at imminent risk of homelessness because they face immediate eviction and have been unable to identify a subsequent residence, which would result in emergency shelter placement (except that persons facing eviction on the basis of criminal conduct such as drug trafficking and violations of handgun prohibitions shall not be considered homeless for purposes of this definition); or

(2) Handicapped persons who are about to be released from an institution and are at risk of imminent homelessness because no subsequent residences have been identified and because they lack the resources and support networks necessary to obtain access to housing.

Insured mortgage means a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*).

Investor purchaser means a purchaser who does not intend to use the property as his or her principal residence.

Lessee means the applicant, approved by HUD as financially responsible, that executes a lease agreement with HUD for an eligible property.

Occupant, for purposes of the lease and sale of HUD-acquired single family properties for the homeless, means a homeless individual or family that occupies an eligible property after that property has been leased to an applicant.

Owner-occupant purchaser means a purchaser who intends to use the property as his or her principal residence; a State, governmental entity, tribe, or agency thereof; or a private nonprofit organization as defined in this section. Governmental entities include those with general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies).

Preapproved means a commitment has been obtained from a recognized

mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

- (1) Have a voluntary board;
- (2)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or
- (ii) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles;
- (3) Practice nondiscrimination in the provision of assistance in accordance with the authorities described in § 291.435(a); and
- (4) Have nonprofit status as demonstrated by approval under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or demonstrate that an application for such status is currently pending approval.

Purchase money mortgage, or PMM means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

Single family property means a property designed for use by one to four families.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Tribe has the meaning provided for the term "Indian tribe" in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Subpart B—Disposition by Sale

§ 291.100 General policy.

(a) **Qualified purchaser.** (1) Anyone, regardless of race, color, religion, sex, national origin, familial status, age, or disability may offer to buy a HUD-owned property, except that:

- (i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and
- (ii) No nonoccupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased "subject to") of an insured mortgage who has defaulted, thereby causing

HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property.

(2) HUD will not offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property.

(3) HUD will offer tenants accepted under the occupied conveyance procedures outlined in 24 CFR 203.670 through 203.685 the right of first refusal to purchase the property only if:

- (i) The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to HUD to be offered the right of first refusal; or
- (ii) State or local law requires that tenants be offered the right of first refusal.

(b) **List price.** The list price, or "asking price," assigned to the property is based upon an appraisal conducted by an independent real estate appraiser using nationally recognized industry standards for the appraisal of residential property.

(c) **Method of sale.** (1) HUD sells properties on an "as-is" basis, without repairs or warranties. The principal method of sale is the competitive sales procedure. Where appropriate, the Secretary may use another sales procedure, as described in § 291.110.

(2) Properties may be sold under the following programs:

(i) **Insured.** A property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1) will be offered for sale in "as-is" condition with FHA mortgage insurance available.

(ii) **Insured with repair escrow.** A property that requires no more than \$5,000 for repairs to meet the intent of the MPS, as determined by the Secretary, will be offered for sale in "as-is" condition with FHA mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(iii) **Uninsured.** A property that fails to qualify under either paragraph (c)(2)(i) or (ii) of this section will be offered for sale either in "as-is" condition without mortgage insurance available, or under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).

(d) **Financing.** (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed five years. Mortgagors must meet FHA mortgage credit standards.

(e) *Environmental requirements and standards.* Sales under this part are subject to the environmental requirements and standards described in 24 CFR part 50, as applicable.

(f) *Flood insurance requirements.* Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a.

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR part 35 and 24 CFR part 200, subpart O.

(h) *Open listings.* Except as provided in paragraph (i) of this section, properties are sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

(i) *Asset management and listing contracts.* (1) A field office may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(2) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser's broker must submit the bid to HUD through the exclusive broker.

§ 291.105 Competitive sales procedure.

(a) *General.* (1) Properties are sold to the general public on a competitive bid basis through local real estate brokers, except as provided in § 291.100(h).

(2) For properties being offered with mortgage insurance, priority will be given to owner-occupant purchasers, as defined in § 291.5, for a period of up to 30 days, as determined by HUD. For properties offered without mortgage insurance, priority will be given to governmental entities and nonprofit

organizations prior to other owner-occupant purchasers.

(b) *Net offer.* The net offer is calculated by subtracting from the bid price the dollar amounts for the following:

(1) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties.

(2) In the case of properties sold under the insured sales with repair escrow program, the repair escrow amount is also deducted from the bid to determine the net offer.

(c) *Acceptable bid.* HUD will accept the bid producing the greatest net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. The greatest net return is calculated based on the net offer, as described in paragraph (b) of this section.

(d) *Bid period.* After properties are initially advertised, bids are accepted for a 10-day period, with all offers received during the 10 days considered to have been received simultaneously, except as described in paragraph (e) of this section. Offers received on a property before the 10-day bidding period begins will be returned. Offers received after the 10-day period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the 10-day period.

(e) *Full price offers.* HUD field offices that operate under a "full price offer" program open offers at specified times during the 10-day bidding period. If an offer for the full list price and otherwise meeting the terms of the offering is received, it will be accepted at the time of the opening and the 10-day bid period cancelled.

(f) *Extended listing period.* Properties not sold at the bid opening will remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled daily bid opening. Properties that fail to sell within 30 days after being offered for competitive bidding will be reanalyzed and relisted. If a property's price or terms are changed, it will be subject to

another competitive bidding period as described in paragraph (d) of this section.

(g) *Bid requirements.* (1) All bids submitted, whether during the 10-day bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form prescribed by HUD, signed by both the submitting real estate broker and the prospective purchaser. If the purchase is to be an insured sale, a field office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid.

(2) Unless the Secretary specifically authorizes another bid process, bids must be placed in sealed envelopes marked with the property number, address, and return address of the broker. All bids not indicating that the purchaser will occupy the property will be considered as investor offers.

(3) Noncomplying bids will be returned to the broker with an explanation for the noncompliance decision and information about whether the property is still available.

(h) *Earnest money deposits.* (1) The amount of earnest money deposit required for a property with a sales price of \$50,000 or less is \$500, except that for vacant lots the amount is 50 percent of the list price. For a property with a sales price greater than \$50,000, the amount of earnest money deposit required in the area is set by the field office, in an amount not less than \$500 or more than \$2,000. Information on the amount of the required earnest money deposit is available from the field office or participating real estate brokers.

(2) All bids must be accompanied by earnest money deposits in the form of a cash equivalent as prescribed by the Secretary, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. If a bid is accepted by HUD, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total or partial forfeiture for failure to close a sale.

(i) *Multiple bids.* Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective purchaser. If a purchaser submits multiple bids on the same property, only the bid producing the highest net return to HUD will be considered. If a prospective owner-occupant purchaser submits a bid on more than one property, the first of those bids that produces the greatest net return to HUD will be accepted and all other bids from that purchaser will be eliminated from

consideration. However, if the prospective owner-occupant purchaser has submitted the only acceptable bid on another property, then that bid must be accepted and all other bids from that purchaser on any other properties will be eliminated from consideration.

(j) *Opening the bids.* Unless the Secretary specifically authorizes another bid process:

(1) The bids will be opened publicly at a time and place designated by the HUD field office.

(2) Each bid will be announced when opened, and acknowledgment made of the offer that produces the greatest net return to HUD. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(k) *Counteroffers.* If all bids received on a property are unacceptable, a field office may notify all bidders or their brokers that HUD will accept an offer equalling a predetermined net acceptable price. Bidders must submit an acceptable offer before the established bid cut-off period, to be determined by the field office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, award will be determined by drawing lots.

(Approved by the Office of Management and Budget under OMB control numbers 2502-0306, 2502-0059, and 2502-0429)

§ 291.110 Other sales procedures.

(a) *Direct sales of properties without mortgage insurance to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and qualified private nonprofit organizations that have been preapproved to participate by HUD, according to standards determined by the Secretary, may purchase properties directly from HUD at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs.

(2)(i) Purchasers under paragraph (a)(1) of this section must designate geographical areas of interest, by ZIP code, to appropriate HUD field offices. Upon request, for those properties not eligible for mortgage insurance, and before they are publicly listed, field

offices will notify governmental entities and nonprofit organizations in writing when eligible properties become available in the areas designated by them. Field offices will coordinate the dissemination of the information to ensure that if more than one purchaser designates a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. A property in this section will be sold to the first eligible purchaser submitting an acceptable contract.

(ii) Purchasers under paragraph (a)(1) of this section must notify HUD of preliminary interest in specific properties within five days of the notification of available properties (if notification is by mail, the five days will begin to run five days after mailing). Those properties in which purchasers express an interest will be held off the market for a 10-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the 10-day consideration and inspection period, properties in which no governmental entity or nonprofit organization has expressed a specific intent to purchase will be offered for sale under the competitive bid process. Properties in which a governmental entity or nonprofit organization expressed an intent to purchase, during the 10-day period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to 10 days, as determined by HUD, following expiration of the 10-day consideration and inspection period, and no other governmental entity or nonprofit organization has expressed an interest, then the property will be offered for sale under the competitive bid process.

(3) In order to ensure that properties purchased at a discount are being utilized for expanding affordable housing opportunities, HUD may require, as appropriate, periodic, limited information regarding the purchase and resale of such properties, and certain restrictions on the resale of such properties.

(b) *Sales to other individuals or entities.* HUD may also seek to dispose of properties through other methods, such as direct sales to displaced persons, sales of razed lots, bulk sales, auctions, or direct sales to other

individuals or entities that do not meet any of the categories specified in this section, if a finding is made by the Assistant Secretary for Housing-Federal Housing Commissioner or his or her designee in writing that such sales would further the goals of the National Housing Act (12 U.S.C. 1701 et seq.) and would be in the best interests of the Secretary. These sales will be upon such terms and conditions as the Secretary may prescribe.

(Approved by the Office of Management and Budget under OMB control number 2502-0306)

§ 291.150 Sanctions against fraudulent purchase.

False certification by a purchaser concerning occupancy of single family properties financed by an insured mortgage is a violation of 18 U.S.C. 1001, which may result in the required prepayment of the mortgage in the amount of the difference between the downpayment made and the downpayment required if the loan had been processed as an investor purchaser loan, or in criminal prosecution.

Subpart C—Rental of Acquired Property

§ 291.200 General policy.

HUD will lease acquired property to comply with other designated HUD programs, or when the Secretary determines that it is in the interest of HUD. Leases may include an option to purchase in appropriate circumstances.

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3. Subpart E is amended by revising §§ 291.400, 291.415, 291.435, and 291.440 and by removing §§ 291.405, 291.410, 291.420, and 291.425 to read as follows:

Subpart E—Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

§ 291.400 Purpose and scope.

(a) *Purpose.* HUD seeks to assist individuals and families who are homeless by providing them with transitional housing and appropriate supportive services with the goal of helping them move to independent living. Therefore, HUD will make available, to applicants approved by HUD, certain HUD-acquired single family properties for use by the homeless.

(b) *Applicant preapproval.* Before a field office may notify an applicant of eligible properties, the applicant must be preapproved by HUD, according to procedures available from the field office.

(c) *Property available for lease with option to purchase.* HUD will make available up to 10 percent of its total inventory of properties, before or after they are listed for sale to the public.

(d) *Property available under a McKinney Act Supportive Housing program lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement to Supportive Housing program applicants for acquisition grants under 24 CFR part 583.

(e) *Properties available for sale.* Eligible properties will be available for competitive sale or direct sale for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent.

(f) *Concentration of properties.* To the extent practicable and possible, HUD will avoid excessive concentration in a single neighborhood of properties leased or sold under this subpart.

(g) *Failure to comply with requirements.* Failure to comply with this subpart, or a lease issued under this subpart, may result in termination from the program.

(Approved by the Office of Management and Budget under OMB control number 2502-0412)

§ 291.415 Lease with option to purchase properties for use by the homeless.

(a) *Certification.* Eligible properties are available for lease to applicants, approved by HUD, that certify that the property will be utilized only for the purpose of providing transitional housing for the homeless during the lease term, and that the intended use of the property will be consistent with all local laws and regulations. The lease agreement will be in a form prescribed by the Secretary. Lessees must execute a sublease with occupants in a form prescribed by the Secretary limiting an occupant's tenancy to no longer than two years.

(b) *Term of lease.* (1) A lease of an eligible property may be negotiated for such time as the lessee requires, not to exceed one year. Leases are renewable, at the option of the lessee and with the approval of HUD, at the end of the first lease term for up to four additional one-year terms, on a year-to-year basis, provided the lessee has met the requirements under this program.

(2) Approvals for lease renewals will be denied if HUD determines that the lessee has not complied with the requirements of this part of the lease.

(3) A property will not be leased to a lessee for a period longer than five years. At the end of the five-year period, if the lessee has not exercised the option to purchase, HUD will notify the lessee

to vacate the property and, if necessary, will take appropriate action under the eviction laws of the jurisdiction in which the property is located. All property returned to HUD must be vacant, and will be placed on the market for sale to the general public.

(4) Within 30 days of leasing a property from HUD or within 30 days after a property is vacated, a lessee must sublease the property to the homeless, unless a longer period is approved by HUD.

(c) *Rent.* (1) The lessee must pay HUD a nominal rent of \$1 for each one-year lease period.

(2) A lessee may charge rent, including utilities, to an occupant at a rate appropriate to the financial means of the occupant. Unless HUD approves after consideration of such factors as the cost of operating housing in the area and the amount of the lessee's contributions to the program, such rent may not exceed the highest of:

(i) Thirty percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(ii) Ten percent of the family's monthly income; or

(iii) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(3) In no event may the rent charged an occupant exceed the occupant's pro rata share of the lessee's costs of operating the property.

(d) *Damage to leased properties.* Any damage to leased property caused by the intentional or negligent acts of the lessee or occupants must be repaired by the lessee at its own expense. If the lessee does not make the necessary repairs within a reasonable time after the damage occurs, HUD may, at its option, make the repairs and charge the cost to the lessee. Failure by the lessee to make the necessary repairs or to reimburse HUD for the cost of repairs will constitute grounds for termination of the lease and may result in termination from the program.

(e) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the lower of the fair market value established at the time of the initiation of the lease or at the time of the sale, less a discount determined appropriate by the Secretary

but not less than 10 percent, provided lessees agree to use the properties either to house low-income tenants for a period of not less than 10 years or to resell the properties to low-income buyers. If the lessee does not agree to such conditions, the lessee must purchase the properties at the higher of the fair market value at the time of the initiation of the lease or at the time of the sale, less 10 percent. Any repairs to or rehabilitation of a property done by a lessee during the lease term will not be reflected in the purchase price.

(2) Sales of leased properties will be on as-is, all-cash basis. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. The purchaser must pay all other closing costs.

§ 291.435 Applicability of other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following Federal requirements apply to lessees and purchasers under this subpart:

(a) *Nondiscrimination and equal opportunity.* (1) The nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 are modified as follows:

(i) As applicable, lessees and purchasers must also comply with the Americans With Disabilities Act (42 U.S.C. 12131) and implementing regulations in 28 CFR parts 35 and 36.

(ii) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and Executive Order 11246 (30 FR 12319, 12935, 3 CFR, 1946-1965 Comp., p. 339; Executive Order 11625 (36 FR 19967, 3 CFR, 1971-1975 Comp., p. 616); Executive Order 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198; and Executive Order 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393) do not apply to this subpart.

(2) Lessees or purchasers that intend to serve designated populations of the homeless must comply, within the designated population, with the requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and disability.

(3) If the procedures that the lessee or purchaser intends to use to make known the availability of housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the availability of the housing.

(4) The lessee or purchaser must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(b) *Conflicts of interest.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the lessee or purchaser of property under this subpart, or who is in a position to participate in a decisionmaking process or gain inside information with regard to the lease or

purchase of the property, may obtain a personal or financial interest or benefit from the lease or purchase of the property, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

§ 291.440 Recordkeeping requirements.

Each lessee must establish and maintain sufficient records to enable the Secretary to determine whether the

requirements of this subpart have been met. This includes, where available, racial, ethnic, gender, and disability status data on the applicants for, and beneficiaries of, this homeless initiative.

(Approved by the Office of Management and Budget under OMB control number 2502-0412)

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Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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