

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 290

[Docket No. FR-4310-P-01]

RIN 2502-AH12

Up-Front Grants and Loans in the Disposition of Multifamily Projects

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish generally applicable requirements to govern the use of up-front grants and loans in the disposition of HUD-owned multifamily properties by defining the projects, sales, and purchasers eligible for up-front grants and loans, and setting both a maximum per-unit and overall cap for up-front grant amounts. This proposed rule would promote the affordability and viability of multifamily housing projects.

DATES: *Comments Due Date:* September 13, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Marc Harris, Supervisory Project Manager, Office of Portfolio Management in Multifamily Housing, Department of Housing and Urban Development, Room 6164, 451 7th Street SW, Washington, DC 20410, telephone (202) 708-2654. Hearing or speech-impaired individuals may call 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD's statutory authority to manage and dispose of HUD-held multifamily housing projects is contained in section 207(k) and (l) of the National Housing Act, in section 203 of the Housing and Community Development Amendments of 1978 (HCDA 1978) and in section 204 of the Departments of Veterans Affairs

and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (approved September 26, 1996, Public Law 104-204), (FY 1997 Appropriations Act). HCDA 1978 section 203 was amended by the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Public Law 102-233, approved April 11, 1994) which authorized the use of up-front grants for the necessary cost of rehabilitation and other related development costs at section 203(f)(4). This section also authorizes project-based assistance under section 8 of the United States Housing Act of 1937 as the source of funding for the up-front grants.

The Department's authority and discretion in matters relating to the disposition of multifamily housing projects was expanded by section 204 which permits HUD to manage and dispose of multifamily properties owned by the Secretary, "on such terms and conditions as the Secretary may determine". Section 204 was amended by section 213 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (approved October 27, 1997, Public Law 105-65) (FY 1998 Appropriations Act). Section 213 clarified that the General Insurance Fund could be used to provide grants and loans for the necessary costs of rehabilitation or demolition, but limited this authority to FYs 1997 and 1998. Section 206 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, (approved October 21, 1998, Pub.L. 105-276) (FY 1999 Appropriations Act) extends this authority for an additional year, through FY 1999. The use of the General Insurance Fund as authorized in these appropriations Acts, however, is limited to grants and loans for rehabilitation or demolition activities. Section 8 project-based assistance is the only source of up-front grant funding for total rebuilding. The FY 1999 Appropriations Act, however, did not provide any Section 8 project-based funds for property disposition.

The discretion conferred under section 204 of the FY 1997 Appropriations Act, as amended by the FYs 1998 and 1999 Appropriations Acts, is very broad, and HUD is, therefore, proposing this rule to implement generally applicable requirements for up-front grants and loans. The procedures in this rule would be followed for all up-front grants and loans made with whatever funds are authorized and available. If

Section 8 project-based assistance is not available, or if the authorization to use the General Insurance Fund is not extended beyond FY 1999, up-front grants and loans will not be available as an option in the disposition of multifamily projects.

This rule would add a new § 290.27 to part 290 to implement generally applicable requirements for eligible projects, sales and purchasers, and for a maximum grant or loan amount on a per-unit basis. Until the regulation takes effect, those portions of the Guidance Memorandum issued February 27, 1997, which conform with applicable statutes and regulations, may be used on a case-by-case basis.

HUD's goal in promulgating generally applicable eligibility requirements for up-front grants and loans is to promote the affordability and viability of multifamily housing projects. Under this proposed rule, to be eligible for an up-front grant or loan, a project would have to be currently serving very low-income residents (at least 50% of units occupied by very low-income residents at the time HUD approves a Disposition Program); be located in a housing market with a need for affordable housing (vacancy rate of habitable, affordable, multifamily housing is 4% or less); and generate sufficient income after rehabilitation or rebuilding to be viable and provide affordable housing for at least 20 years or the term of the loan, whichever is shorter.

The rule would also limit the use of up-front grants or loans in negotiated sales, which involve no competitive bidding among prospective purchasers, to three categories of purchasers: (1) the unit of general local government, including a public housing agency in the area in which the project is located, (2) the State in which the project is located, or (3) an agency of the federal government. Otherwise, an up-front grant or loan will only be considered as a possible option in a competitive sale. HUD has determined that these general limitations are appropriate measures to limit its exposure to loss and conserve housing resources. Making an up-front grant or loan an option in a negotiated sale with a unit of government is consistent with the statutory right, under HCDA 1974 section 203, of first refusal accorded such entities. State and local governments would also be more familiar and involved with local plans and needs, and would have greater authority and capacity to control local factors that could affect the viability and affordability of the project. In all other cases, a competitive sale is more appropriate to permit choice among a

range of plans and ensure the best use of up-front grant or loan amounts.

This rule would also provide for a grant or loan limit of 50 percent of the total development cost (TDC) per project, which may not exceed \$40,000 per affordable, finished unit. The actual grant or loan amount provided within these limits will be determined on a case-by-case basis depending upon rehabilitation, demolition, rebuilding, and other development costs approved by HUD. It will be the responsibility of the purchaser to obtain funds for the remaining rehabilitation, demolition or development costs. HUD has determined that it is appropriate to give the purchaser this responsibility because the purchaser's ability to raise the balance of funds necessary to complete the project provides assurance that other lenders or contributors have made an independent determination that the proposed plan for the project is viable, and that they are willing to commit to its success.

II. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements for the disposition of multifamily housing projects under 24 CFR part 290 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. This rule does not contain additional information collection requirements. 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.

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 Planning and Review

This rule has been reviewed in accordance with Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order

(although not economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

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 address only one aspect (up-front grants) of the requirements governing the management and disposition of HUD-owned multifamily housing projects, and should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell. Nevertheless, HUD is soliciting comment specifically to elicit issues of importance to small entities.

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. The specific requirements of this rule do not impose any additional terms and conditions on States or local governments that acquire projects under this rule, and therefore no further review is necessary or appropriate.

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR Part 290

Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 290 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for 24 CFR part 290 continues 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).

2. A new § 290.27 is added to subpart A to read as follows:

§ 290.27 Up-front grants and loans.

(a) *General.* HUD may provide up-front grants and loans for rehabilitation, demolition, rebuilding and other related development costs as part of the disposition of a multifamily housing project that is HUD-owned, upon making a determination that such a grant or loan would be more cost-effective than project-based rental assistance.

(b) *Eligible projects.* An up-front grant or loan can be made available in the sale of a HUD-owned multifamily housing project that:

(1) Has more than 50% of the units in the project occupied by very low-income residents at the time a disposition plan is approved by HUD;

(2) Is located in a housing market or submarket in which there is not sufficient habitable, affordable, rental housing, as defined in § 290.3;

(3) Will generate, after rehabilitation or rebuilding, sufficient rental income in a competitive market to cover all operating expenses, meet after sale debt service requirements, fund required reserves and throw-off positive cash flow;

(4) Will provide affordable housing for at least 20 years or the term of the loan, whichever is shorter, after the rehabilitation and/or rebuilding is completed; and

(5) Meets such other requirements, including deed restrictions, loan provisions, and monetary penalties for non-performance, as HUD may determine are appropriate on a case-by-case basis.

(c) *Eligible sales and purchasers—*(1) *Negotiated sales to governmental entities.* A negotiated sale of a project with an up-front grant or loan can only be made to the unit of general local government, which includes public housing agencies, in the area in which the project is located; or a State agency designated by the chief executive officer of the State in which the project is located; or an agency of the Federal government.

(2) *Other sales and purchasers.* All sales which provide up-front grants or loans to entities other than those described in paragraph (c)(1) of this section must be conducted through a competitive selection process. All general and limited partnerships or their nominees, joint ventures or other entities assembled for purposes of purchasing the project and which have

a governmental entity as a partner or other participant are considered profit motivated purchasers and not governmental entities, whether or not there is a non-profit, public, corporate or individual general partner.

(d) *Up-front grant or loan amount.*
The maximum that HUD will fund per

project in an up-front grant or loan is 50 percent of total development cost (TDC), or \$40,000 per affordable, finished unit, whichever amount is less. TDC covers construction materials, artisan services, professional services, developers services, and overhead, relocation and operating losses that are incurred to

plan, perform and complete repairs or rebuilding.

Dated: March 25, 1999.

William Apgar,

*Assistant Secretary for Housing-Federal
Housing Commissioner.*

[FR Doc. 99-18066 Filed 7-14-99; 8:45 am]

BILLING CODE 4210-27-P