

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR-4988-P-01]

RIN 2502-AH40

Disposition of HUD-Owned Single Family Assets in Revitalization Areas

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a statutorily established program to make HUD-held single family homes and mortgage assets available for sale to units of general local government, states, Indian tribes, nonprofit organizations, and for-profit entities (collectively, purchasers) to provide homeownership opportunities and to promote neighborhood revitalization. Revitalization areas would be identified through application of specified economic and housing criteria. The purchasers would then make available the assets in accordance with a HUD-approved plan to encourage homeownership and revitalize the area.

DATES: Comment Due Date: February 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be

viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Vance T. Morris, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410-8000, at 202-708-1672 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Information Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 204(h) of the National Housing Act—Disposition of Assets in Revitalization Areas

Section 602 of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998) amended section 204 of the National Housing Act (12 U.S.C. 1710) (NHA or the statute), by adding a new subsection (h), which provides the statutory framework for a new program for the disposition of HUD-owned single family assets in revitalization areas (see 12 U.S.C. 1710(h)). In 2004, section 204(h) was further amended by the Consolidated Appropriations Act, 2005

(Pub. L. 108-447, approved December 8, 2004).

Under section 204(h) of the NHA, HUD makes HUD-held single family homes and formerly insured mortgages on single family properties, referred to as “eligible assets,” “available for sale in a manner that promotes the revitalization, through expanded homeownership opportunities, of revitalization areas” (12 U.S.C. 1710(h)(1)). All properties involved are HUD-held properties; that is, they are properties that were subject to a mortgage insured by HUD and are now owned by HUD pursuant to the payment of insurance benefits under the NHA and the implementing regulations for the NHA programs that are codified in Chapter II of Title 24 of the Code of Federal Regulations (CFR). HUD-held mortgages may also be sold.

Key to the statutory scheme for this program is the concept of a “revitalization area,” (Revitalization Area). In accordance with section 204(h)(3) of the NHA (12 U.S.C. 1710(h)(3)), HUD is required to designate Revitalization Areas, which must meet one of the statutory criteria for designation (i.e., having very low median household income, a high concentration of eligible assets, or a low homeownership rate).

B. Eligible Purchasers

Under the statute, an eligible purchaser is a unit of general local government, state, Indian tribe, or a nonprofit organization, as stated in section 204(h)(4)(A) of the NHA (12 U.S.C. 1710(h)(4)(A)), or a for-profit entity, as stated in section 204(h)(5)(B) of the NHA (12 U.S.C. 1710(h)(5)(B)). The statute contemplates two categories of eligible purchasers—preferred purchasers and non-preferred purchasers.

Preferred purchasers are units of general local government, states, and Indian tribes having jurisdiction of the area where the assets are to be sold, as well as nonprofit organizations that make a commitment to purchase categories of single family assets in a specific area, known as an asset control area (ACA), where there is a need for increased homeownership opportunities. The statute requires that such purchasers be provided a preference in the sale of eligible assets. All other eligible purchasers are non-preferred purchasers under the statute. For-profit entities may not be preferred purchasers.

In accordance with section 204(h)(4) of the NHA (12 U.S.C. 1710(h)(4)), preferred purchasers must establish ACAs within Revitalization Areas.

During a period of time to be established by agreement, preferred purchasers must purchase all of the assets HUD owns in particular identified categories at the time the sale agreement is entered into and those that become available during the time period (see section 204(h)(4)(B)(ii) of the NHA (12 U.S.C. 1710(h)(4)(B)(ii)). Section 204(h)(4)(C) of the NHA (12 U.S.C. 1710(h)(4)(C)) directs that the preferred purchasers, in order to be eligible, must have the capacity to make the purchases.

In order to encourage the purchase of assets to use for HUD housing and revitalization purposes, section 204(h)(6)(B) of the NHA (12 U.S.C. 1701(h)(6)(B)) provides for discounts from the appraised value for preferred purchasers. Appraised value must be based on the market value of the property in "as-is" physical condition, taking into account: (1) The age and condition of major mechanical and structural systems, and (2) the value of the property appraised for homeownership. Section 204(h)(6) of the NHA also provides, in subsection (C), that "the Secretary of HUD, in the sole discretion of the Secretary, shall establish the discount * * * for an eligible asset" (see 12 U.S.C. 1701(h)(6)(C)). In establishing the discount, the Secretary may consider any factor deemed appropriate, including the condition of the property, the extent of the preferred purchaser's resources, the homeownership plan undertaken by the purchaser (see section I.C. below), and the financial safety and soundness of the Mutual Mortgage Insurance Fund. Non-preferred purchasers cannot receive discounts.

Preferred purchasers are recipients of federal financial assistance subject to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (section 504) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), because they obtain HUD properties at a discount. Preferred purchasers are, therefore, required to comply with the section 504 regulations in 24 CFR part 8, including accessibility requirements. Since non-preferred purchasers do not receive discounts and provide their own financing, they are not recipients of federal financial assistance.

C. Sale Agreement

Section 204(h)(7) of the NHA provides that sales of eligible assets may only be made pursuant to a sale agreement (Sale Agreement). The requirement for a Sale Agreement applies to both preferred purchasers and non-preferred purchasers. The Sale Agreement must: (1) Identify the category or categories of

assets to be purchased; (2) identify the boundaries of the Revitalization Area and, for a Preferred Purchaser, also the boundaries of the ACA; and (3) identify the source of financing that the purchaser will be using. For preferred purchasers, the Sale Agreement must also include a homeownership plan.

Section 204(h)(5)(A) of the NHA (12 U.S.C. 1710(h)(5)(A)) provides that the homeownership plan must have as its primary purpose the expansion of homeownership in, and the revitalization of, the ACA. Section 204(h)(5)(A) also provides that the homeownership plan must contain specific performance goals for increasing the rate of homeownership, and must also establish rehabilitation standards for real property that meet or exceed minimum standards for housing quality. For non-preferred purchasers, section 204(h)(5)(B) of the NHA (12 U.S.C. 1710(h)(5)(B)) requires that the Sale Agreement include a binding agreement that the purchaser meet certain performance goals for homeownership. However, by agreement, HUD may permit a lower rate of homeownership in "exceptional circumstances." Both preferred and non-preferred purchasers must certify compliance with the performance goals contained in the Sale Agreement (section 204(h)(7)(G) of the NHA; 12 U.S.C. 1710(h)(7)(G)).

II. This Proposed Rule

This proposed rule would create a new subpart G in 24 CFR part 291 to establish the regulations governing the sale of single family assets in Revitalization Areas. Part 291 contains HUD's regulations that address the disposition of HUD-held single family properties. This proposed rule would contain the administrative requirements to implement the program found in section 204(h) of the NHA (12 U.S.C. 1710(h)).

The proposed regulatory language tracks, as much as possible, the language of section 204(h) of the NHA where the statutory language is specific on how the program is to be implemented. This section of the preamble describes the most significant provisions of the proposed rule that build upon the statutory requirements described in Section I of this preamble.

1. *Definition of Eligible Buyer.* Under the proposed rule, an "eligible buyer," which refers to a family (which can consist of a single person) that ultimately buys the property from the preferred or non-preferred purchaser, would have to meet eligibility requirements. Buyers must either: (1) Have income of no more than 115

percent of the area median income and promise to reside in the property as owners for 3 years; or (2) have a member who is a "teacher," "police officer," or "firefighter/emergency medical technician," as those terms are defined under HUD's regulations codifying the Good Neighbor Next Door (GNND) Sales Program at 24 CFR part 291, subpart F.

As noted above in this preamble, the objective of the statute is to promote neighborhood revitalization, with an emphasis on increasing affordable housing opportunities. HUD believes that the income limitation on subsequent buyers helps to ensure both statutory objectives of revitalization and increased homeownership. The threshold of 115 percent of area median income reflects the cross section of income levels that HUD believes is a critical element of neighborhood revitalization. For example, the proposed income limitation is greater than the 80 percent of area median income that HUD uses to define a "low-income family" under its public and assisted housing programs authorized under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (see 24 CFR 5.603). At the same time, the income limitation focuses on increasing homeownership opportunities for those families for whom good quality homeownership opportunities have been more limited than for higher-income families.

The inclusion of police officers, teachers, and firefighters/emergency medical technicians is consistent with the goals of section 204(h) of the NHA and the GNND Sales Program, which seek to improve the quality of life in distressed communities by encouraging professionals, whose daily responsibilities represent a nexus to the needs of the community, to purchase and live in homes in these communities.

2. *Nonprofit Preferred Purchasers.* The definition of "preferred purchaser" at proposed § 291.605 would track the language in section 204(h)(4) of the NHA (12 U.S.C. 1710(h)(4)), which refers to a nonprofit organization, state, Indian tribe, or unit of general local government. The proposed rule further provides that preferred purchasers that are nonprofit organizations would also have to be on the Federal Housing Administration (FHA) Nonprofit Organization Roster under 24 CFR 200.194, and also will be required to have status as a tax-exempt organization under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c). These requirements will help to ensure that participating nonprofit organizations are qualified to participate in FHA activities and meet the eligibility criteria

established by the Internal Revenue Service for qualification as a nonprofit entity.

3. *Partnerships of Preferred Purchasers.* Preferred purchasers, such as a local government and a nonprofit organization, can form partnerships as defined in the rule. Each member of a partnership is separately responsible for meeting all program requirements, including application requirements and obligations under the Sale Agreement and Homeownership Plan.

4. *Revitalization Areas.* Section 291.610 of the proposed rule would address the meaning of Revitalization Areas and provide the details of the criteria for determining Revitalization Areas. This section would track the statutory requirements for a Revitalization Area stated in section 204(h)(3) of the NHA (12 U.S.C. 1710(h)(3)).

The proposed rule defines a Revitalization Area as an area designated by HUD as such and that meets the following criteria: (1) The area is a very low-income area, with a median income of less than 60 percent of the median income for the metropolitan area, or, if the area is not within a metropolitan area, a median income of less than 60 percent of the state median income; (2) there is a disproportionately high concentration of eligible HUD-held assets in the area resulting from a high rate of foreclosure of FHA-insured mortgages in the area, or the area is detrimentally impacted by eligible assets in the vicinity; or (3) the rate for homeownership is substantially below the rate for homeownership in the metropolitan area or, if the area is not within a metropolitan area, below that of the state in which the area is located.

Proposed § 291.610 further provides that HUD will review Revitalization Areas annually, and remove the designation of "Revitalization Area" from any geographical area that no longer meets the definition. This removal will occur at the earliest opportunity, such as upon the expiration of the term of the then-current Sale Agreement. However, the proposed rule specifies that such removal of designation shall not modify the terms of a Sale Agreement in effect at the time such designation is removed. A geographic area designated as a Revitalization Area shall continue to be

considered as such for purposes of the agreement until its expiration.

5. *Application Requirements.* Section 291.620 of the proposed rule would establish application submission requirements for entities wishing to participate as purchasers under the program. The proposed rule would establish submission requirements that apply solely to each category of preferred purchasers (units of general local government and nonprofit organizations) and non-preferred purchasers, as well as submission requirements applicable to all categories of purchasers. For example, the proposed rule provides that entities that seek to be preferred purchasers would be required to submit an application and that the application reflect no conflicts of interest, as provided in proposed § 291.670. Other documentation that would be required under the proposed rule includes organizational and financial information about the purchaser; an operating plan, including the acquisition schedule; and valid delegations of necessary authority to execute the required contracts and documents.

Section 291.625 of the proposed rule would establish the criteria for review and approval of applications. This section provides that application consideration would be based on the time and date of receipt of a complete application that meets the threshold requirements. The decision on whether or not an application is complete would be solely within HUD's discretion, and if HUD determines that an application is incomplete, HUD would notify the applicant in writing. In such a case, the application will be considered complete once HUD receives the additional materials and determines that they are adequate.

6. *Preference for Preferred Purchasers.* As noted, section 204(h)(4) (12 U.S.C. 1701(h)(4)) of the NHA requires that preferred purchasers be provided a preference in the sale of eligible assets. The proposed rule would implement the statutory preference in two ways. First, proposed § 291.625 provides that if an application from a preferred and a non-preferred purchaser for the same geographic area arrive on the same date, the application from the preferred purchaser will be deemed to have arrived first. Further, under § 291.655 of the proposed rule, HUD would offer

financing assistance to preferred purchasers.

7. *Minimum Standards for Housing Quality.* Section 204(h)(5)(B)(iii) of the NHA (12 U.S.C. 1710(h)(5)(B)(iii)) provides that all purchasers are responsible for rehabilitating each asset property purchased to comply with HUD-established minimum standards for housing quality. The proposed rule, at § 291.635, would implement this statutory requirement by providing that all properties purchased under the rule must meet, or be rehabilitated to meet, local building code standards. Any required rehabilitation would be at the purchaser's expense.

8. *Discounts for Preferred Purchasers.* As noted, section 204(h)(6)(B) of the NHA (12 U.S.C. 1701(h)(6)(B)) provides for discounts for preferred purchasers based on the appraised value of the asset as HUD, in its discretion, may determine. There are no discounts for non-preferred purchasers. Section 291.640 would implement three discount classes: (1) A 50 percent discount of the appraised value for assets with a value equal to or greater than \$50,000; (2) a discount of \$24,900 for properties with an appraised value greater than \$25,000 but less than \$50,000; and (3) properties with an appraised value of \$25,000 or less would have a purchase price of \$100.

The proposed discount structure reflects HUD's experience in administering Sale Agreements entered into on a case-by-case basis under the statutory authority of section 204(h) of the NHA. Under those agreements, preferred purchasers receive a discount of: (1) A 50 percent discount for properties with an appraised value equal to or greater than \$50,000; (2) a \$25,000 discount for properties with an appraised value greater than \$25,000 but less than \$50,000; and (3) a purchase price of one dollar for properties with an appraised value of \$25,000 or less. Table One and Table Two, below, compare the average appraised values, the average discounts, and the average costs of rehabilitating properties purchased in Fiscal Year (FY) 2006 and FY2007 under current Sale Agreements. The final column, which is captioned "Return to Community," provides the percentage by which the average cost of repairs exceeds the average dollar amount of the discount.

TABLE ONE—FY2007 DISCOUNT AND COST COMPARISONS

Appraisal category	Average appraisal value of properties acquired by preferred purchasers in FY 2007	Average HUD discount	Average repair cost	Return to community (repair over discount) (percent)
Equal to or Greater than \$50,000	\$85,390.07	\$42,695.04	\$60,594.12	142
Greater than \$25,000 but less than \$50,000	36,155.80	25,000.00	67,416.06	270
\$25,000 or less	19,028.26	19,027.26	57,537.41	302

TABLE TWO—FY2006 DISCOUNT AND COST COMPARISONS

Appraisal category	Average appraisal value of properties acquired by preferred purchasers in FY 2006	Average HUD discount	Average repair cost	Return to community (repair over discount) (percent)
Equal to or Greater than \$50,000	\$95,249.15	\$47,624.58	\$56,180.97	118
Greater than \$25,000 but less than \$50,000	35,738.28	25,000.00	62,525.17	250
\$25,000 or less	15,308.04	15,307.04	55,919.25	365

The discount structure being proposed by HUD for regulatory codification largely conforms to the discounts already being provided under current Sale Agreements entered into on a case-by-case basis. As Table One and Table Two demonstrate, the current discount structure reflects the economic realities faced by preferred purchasers. The data indicate that the “Return to Community” (the average cost of rehabilitation as a percentage of the dollar discount value) increases as average appraised value decreases. Accordingly, as an offset to these higher rehabilitation costs, a greater percentage discount is provided for the purchase of properties with lower appraised values. For example, in FY2007, the average discount for properties with appraised values of greater than \$50,000 was 50 percent of the average appraised value. The “Return to Community” of these properties was 142 percent. That same fiscal year, the “Return to Community” for properties with an appraised value of \$25,000 or less was 302 percent. The average discount for these properties was 99.99 percent of the average appraised value.

The proposed discount structure differs in some minor respects from that currently used. Most importantly, the proposed rule would increase from one to one hundred dollars the purchase price of properties with appraised values of less than \$25,000. This increase differentiates the ACA program from the “Dollar Home” program authorized under the NHA (see 12 U.S.C. 1715z–11a(b)), and which HUD

anticipates to implement through regulation in the near future.

The proposed discount structure, therefore, reflects current discounts that: (1) Are familiar to preferred purchasers, (2) have proven successful as an incentive to participation in the program, and (3) have succeeded in promoting the statutory goals of revitalization with an emphasis on homeownership.

9. *Appraisals of Asset Properties.* As noted, section 204(h)(6)(B) of the NHA (12 U.S.C. 1701(h)(6)(B)) provides that discounts for preferred purchasers be based on the appraised value of the property in “as is” physical condition. Section 291.645 of the proposed rule would implement this requirement. Under the proposed rule, HUD will order an appraisal by an appraiser on the FHA appraiser roster under 24 CFR part 200, subpart G, for each property in the ACA to be sold. However, an appraisal would not be required if the property was appraised by an appraiser from the FHA appraiser roster within the previous calendar year.

The purchaser may request an individual new appraisal if the request is made prior to sale and the purchaser demonstrates, in HUD’s sole discretion, a reasonable likelihood that a second appraisal would indicate a value that differs by 20 percent or more, higher or lower, from the original appraisal. Additional costs for any new appraisals would be borne by the purchaser, unless the new appraisal indicates a value that differs by 20 percent or more, higher or lower, from the original appraisal.

10. *Conveyance of Eligible Assets.* Section 291.650 of the proposed rule would provide for conveyance of eligible assets. Under this proposed rule, HUD would identify the categories of eligible assets along with the eligible assets available in those categories. The purchaser would respond by presenting an acquisition schedule for HUD review. HUD would consider the schedule along with the purchaser’s capacity, and either approve it or suggest modifications. HUD would provide notification of additional assets, as they become available according to a time schedule stated in the regulation.

To ensure compliance with the Sale Agreement, HUD will secure the sale of asset properties with a subordinate mortgage in the amount of the difference between the appraised value of the property and the sales price. HUD shall release the subordination upon compliance of the provisions of the Sale Agreement and sale of the asset property to an eligible buyer.

11. *Sales Price to Eligible Buyers.* The purchaser may elect to establish the sales price of asset properties to eligible buyers using either an individual transaction method or a portfolio-wide method.

Under the transaction method, the sales price of an asset property to an eligible buyer may not exceed the lesser of: (1) The as-rehabilitated appraised value of the asset property; or (2) the HUD-established percentage of the “net development cost” (the sum of the acquisition costs of the asset property to the purchaser plus any closing costs, holding costs, or rehabilitation costs

required under § 291.635). The proposed rule provides that HUD

initially establishes this percentage at 115 percent. Table Three below

illustrates the transaction method in operation:

TABLE THREE—SALES BY PURCHASER—TRANSACTION METHOD

Property	115 percent of net development cost	As-rehabilitated appraised property value	Maximum resale price allowed
A	95,000.00	120,000.00	95,000.00
B	150,000.00	135,000.00	135,000.00
C	75,000.00	100,000.00	75,000.00
D	85,000.00	100,000.00	85,000.00
E	95,000.00	85,000.00	85,000.00
	500,000.00	540,000.00	475,000.00

Estimated Gross Profit/Loss: $\{1 - [\$475,000 / ((100\% / 115\%) * \$500,000)]\} = 9\%$.

In order to address possible concerns regarding the recovery of losses where the total net development costs exceed the fair market value of the asset properties in the purchaser's inventory, the proposed rule would permit purchasers to calculate allowable sales price on a portfolio-wide basis. Under this portfolio method, the cumulative sales prices of asset properties sold to eligible buyers during the purchaser's portfolio reporting period may not exceed the lesser of: (1) The total as-rehabilitated appraised value of the asset properties; or (2) the HUD-established allowable of total net development cost for those properties (which, as discussed above, HUD initially proposes to establish at 115 percent). The portfolio reporting period is a 12-month period covered by the Sale Agreement, generally commencing on the date of the Sale Agreement's execution or the anniversary thereof.

The portfolio option would permit purchasers to more readily recoup net development costs by selling asset properties at fair market value.

Use of the portfolio method is optional. During each portfolio reporting period, a purchaser may elect either the portfolio method or the transaction method; however, the purchaser may not use both methods concurrently and may not change methods during a portfolio reporting period.

A purchaser electing the portfolio option must deposit into an escrow account the difference between the actual sales price and 115 percent of the net development cost for each transaction. The purchaser must remit principal on each mortgage used to finance purchase of a property when cumulative actual sales are more than 115 percent of the total net development costs of the properties sold during the

portfolio reporting period. The amount of principal remittance would be calculated by subtracting 115 percent of total net development costs from actual cumulative sales for the portfolio reporting period, and prorating the result as a percentage of actual sales. The purchaser must remit a payment to the homebuyer's mortgage account for credit to the unpaid principal balance of the loan for the property. If the prorated reduction is less than \$500, the purchaser may elect to make a cash payment directly to the eligible buyer. The balance in the escrow account after principal reductions on mortgages, if any, would be allocable to the purchaser. Distributions from the escrow account must be made by the purchaser no later than 90 days after its fiscal year end.

Table Four below illustrates the portfolio method in operation:

TABLE FOUR—SALES BY PURCHASER—PORTFOLIO METHOD

Property	115 percent of total net development cost	Total as-rehabilitated appraised value of properties	Maximum resale price allowed *	Escrow account deposit required **	Principal reduction required by purchaser
A	95,000.00	120,000.00	120,000.00	25,000.00	8,888.89
B	150,000.00	135,000.00	135,000.00	0.00	10,000.00
C	75,000.00	100,000.00	100,000.00	25,000.00	7,407.41
D	85,000.00	100,000.00	100,000.00	15,000.00	7,407.41
E	95,000.00	85,000.00	85,000.00	0.00	6,296.30
	500,000.00	540,000.00	540,000.00	65,000.00	40,000.00

Escrow Account Balance Distributed to Purchasers of Rehabilitated Properties: $\$540,000 - \$500,000 = \$40,000$.

Escrow Account Balance Distributed to Purchaser: $\$65,000 - \$40,000 = \$25,000$.

Estimated Gross Profit/Loss: $\{1 - [\$500,000 / ((100\% / 115\%) * \$500,000)]\} = 15\%$.

* Actual resale price may be less than maximum resale price.

** The difference between actual sales price and 115% of net development cost for each transaction must be deposited in an escrow account.

A principal reduction on applicable mortgages is required when cumulative actual sales are more than 115% of total net development costs of property sales for the program during the purchaser's fiscal year. The balance in the escrow account after required principal reductions on mortgages is allocable to the purchaser.

To better reflect market conditions, HUD may periodically propose to adjust the allowable percentage of net development cost and/or the portfolio reporting period. Such proposed adjustments shall be announced through publication of a notice in the **Federal**

Register that will provide the public with the opportunity to comment for a period of at least 30 days. After the comments have been considered, HUD will publish a final notice announcing the adjustment and its effective date.

12. Owner-Occupancy Term for Eligible Buyers. An eligible buyer who purchases an asset property at below its appraised value would be required to own, and live in as his/her sole residence, the asset property for 36 months commencing upon the date of

closing on the purchase of the home. The owner-occupancy requirement is consistent with the statutory goal of promoting homeownership, and is being required in consideration of the discounted sales price to the eligible buyer. An eligible buyer who pays the full appraised market value for an asset property would therefore not be subject to the owner-occupancy requirements.

HUD may, at its sole discretion, allow interruptions to the 36-month owner-occupancy term if it determines that the interruption is necessary to prevent hardship, but only if the eligible buyer submits a written and signed request to HUD containing the reasons why the interruption is necessary, the date of the intended interruption, and a certification from the eligible buyer affirming that the buyer will resume occupancy of the home upon the conclusion of the interruption and complete the remainder of the 36-month owner-occupancy term.

The written request for approval of an interruption to the owner-occupancy term must be submitted to HUD at least 30 calendar days before the anticipated interruption. Military service members protected by the Servicemembers Civil Relief Act need not submit their written request to HUD 30 days in advance of an anticipated interruption, but should submit their written request as soon as practicable upon learning of a potential

interruption, in order to ensure timely processing and approval of the request.

To ensure compliance with owner occupancy requirements, the sale of asset properties to eligible buyers shall be secured with a subordinate mortgage in the amount of the difference between the appraised value of the Asset Property and the sales price. The term of the subordinate mortgage is equal to the owner-occupancy term (36 months). The amount of the subordinate mortgage will be reduced by $\frac{1}{36}$ th on the last day of each month of occupancy following the occupancy start date. At the end of the 36th month of occupancy, the amount of the subordinate mortgage will be zero. If the eligible buyer sells the asset property or stops living in the home as his/her sole residence prior to the expiration of the owner-occupancy term, he/she will owe HUD the amount due on the second mortgage as of the date the property is either sold or vacated.

13. *Reporting Requirements and Compliance Reviews.* Section 291.665 of the proposed rule contains reporting requirements that purchasers under the program must fulfill. In addition to financial reports, purchasers that sell asset properties to eligible buyers must obtain and retain a certification that the buyer, in fact, meets the requirements of this regulation for eligible buyers. Proposed § 291.683 would provide for annual HUD compliance reviews. The

section would require all purchasers and their partners and agents to cooperate with HUD's requests for information.

14. *Sanctions for Failure To Comply.* Section 291.675 of the proposed rule contains sanctions that HUD may take against purchasers or eligible buyers that commit an act of default as defined in the section, along with administrative appeal procedures. In addition to the listed sanctions, HUD has the right to take any other enforcement action permitted by law, including, but not limited to, suspension, debarment, and actions under the Program Fraud Civil Remedies Act.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, 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 currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
Agreement Process:					
Initial Application	3	1	3	80	240
Modification of Sale Agreement	6	1	6	10	60
Reporting:					
Monthly Report	15	12	180	3	540
Repair Report	15	25	375	3	1,125
Financial Statements	15	1	15	3	45
Performance Assessment:					
AUP Compliance Review	15	1	15	3	45
Maintenance Reports	3	12	36	1	36
Total	72	2,091

Total estimated burden hours: 2,091.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information

technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-4988) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building,

Washington, DC 20503, Fax: (202) 395-6947; and
Reports Liaison Officer, Office of the
Assistant Secretary for Housing—
Federal Housing Commissioner,
Department of Housing and Urban
Development, 451 Seventh Street,
SW., Room 9116, Washington, DC
20410.

*Executive Order 12866, Regulatory
Planning and Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this proposed rule is a “significant regulatory action,” as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As noted above in this preamble, the proposed rule would codify a statutorily established program to make HUD-held single family homes and mortgage assets available for sale to units of general local government and nonprofit entities. The goal of the program is to help revitalize certain distressed areas, with primary focus on the expansion of homeownership opportunities. Participation in the program is voluntary and, therefore, the proposed regulatory amendments would not impose any mandatory burdens on units of general local governments and nonprofit organizations. Rather, to the extent that the rule would impose any burden, it would be as a result of the jurisdiction or nonprofit organization making a determination that its participation in the program makes

administrative and economic sense and aligns with its operational goals.

HUD has taken several steps to minimize burdens associated with voluntary participation in the program. For example, the proposed rule provides for financing assistance to homebuyers through the provision of FHA mortgage insurance, which will facilitate the sale of homes acquired under the program. Further, to the extent possible, the language of the proposed rule closely tracks the statutory program requirements. Where HUD has been compelled by statute or deemed it advisable to elaborate upon the statutory language, it has built upon the best practices observed in administration of the dozen ACA agreements that are successfully being implemented throughout the country.

These agreements have been entered into on a case-by-case basis under statutory authority. The participants reflect a broad geographic diversity (participants are located in the Northeast, Midwest, Southwest, and West) and size distribution (including large and small units of general local government and nonprofit community organizations). Accordingly, the best practices that would be codified by the proposed rule are reflective of market realities throughout the country and address the potential administrative issues that might be faced by a cross section of participants. For example, in response to situations where a preferred purchaser may be unable to recoup losses as a result of the acquisition and rehabilitation costs exceeding the fair market value of properties, the proposed rule permits program participants to calculate allowable sales prices on a portfolio-wide basis. Allowing differing calculations of sales price accommodates operational differences between program participants, including differences based on the size of the entities participating in the program. (For a more detailed discussion of sales price calculation under the proposed rule, please see Section II.11 of this preamble.)

Another example of the regulatory amendments conforming to best practices is the proposed discount structure for preferred purchasers. The proposed rule provides for discounts to preferred purchasers based on the appraised value of the asset. As discussed in detail in Section II.8 of this preamble, the discount structure HUD proposes to codify is largely based on the discounts currently being provided to program participants. The discounts are therefore based on data accumulated in administration of the current sale agreements, are familiar to program

participants, and reflect the economic realities faced by preferred purchasers. Further, as noted, the discounts are based on the appraised value of properties in the locality, regardless of size, and therefore accommodate both large and small jurisdictions proportionate to local conditions.

For the above reasons, the undersigned has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

A Finding of No Significant Impact (FONSI) 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 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) 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 proposed rule does not impose any federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.311.

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.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

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

Authority: 12 U.S.C. 1701 *et seq.*, 1710(h); Pub. L. 106–554; 42 U.S.C. 1441, 1441a, and 3535(d).

2. Add a new subpart G to read as follows:

Subpart G—Sale of Single Family Assets in Revitalization Areas

Sec.	
291.600	Purpose.
291.605	Definitions.
291.610	Revitalization Areas.
291.615	Purchaser categories.
291.620	Application requirements.
291.625	HUD review and approval of application.
291.630	Sale Agreement requirements for Purchasers.
291.635	Asset Property condition requirements.
291.640	Discount classes for Preferred Purchasers.
291.645	Appraisal and pricing of Asset Properties that are real properties.
291.650	Conveyance of Eligible Assets.
291.655	HUD financing and assistance to Preferred Purchasers and their Partnerships.
291.660	Resale of assets to Eligible Buyers.
291.665	Reporting and disclosures.
291.670	Conflicts of interest.
291.675	Sanctions for failure to comply.
291.681	Termination for convenience of the government.
291.683	Audits and reviews.

§ 291.600 Purpose.

This subpart provides the regulations that govern a program under which sales of categories of eligible single family assets are carried out in a manner that promotes revitalization through the expansion of homeownership opportunities.

§ 291.605 Definitions.

Asset Control Area (ACA) means an area established by a Preferred Purchaser pursuant to § 291.615(b)(2).

Asset Property means:

(1) With respect to an eligible asset that is real property, such real property; and

(2) With respect to an eligible asset that is a mortgage, the property that is subject to the mortgage.

Eligible Asset means:

(1) In the case of real property, any property that:

(i) Is designed as a dwelling for occupancy by 1-to-4 families;

(ii) Is located in a Revitalization Area;

(iii) Was previously subject to a mortgage insured under the provisions of the National Housing Act (12 U.S.C. 1701 *et seq.*); and

(iv) Is owned by HUD pursuant to the payment of insurance benefits under the National Housing Act.

(2) In the case of mortgages, any mortgage that:

(i) Is an interest in a property that meets the requirements of paragraphs (1)(i) and (1)(ii) of this definition;

(ii) Was previously insured under Title II of the National Housing Act (12 U.S.C. 1707 *et seq.*) except for mortgages insured under or made pursuant to sections 235, 247, or 255 of the National Housing Act (12 U.S.C. 1715z, 1715z–12, or 1715z–20, respectively); and

(iii) Is held by HUD pursuant to the payment of insurance benefits.

(3) Notwithstanding paragraphs (1) and (2) of this definition, the term “Eligible Asset” does not include any real property (including real property securing a mortgage under paragraph (2) of this definition) where HUD has determined that it is economically or otherwise infeasible to rehabilitate the property or that the best use of the property is as open space, including as park land.

Eligible Buyer means a family (which can include a single person) that meets the following eligibility requirements to purchase properties made available under this subpart by the Preferred Purchaser or Non-Preferred Purchaser:

(1) Has an annual income of no more than 115 percent of area median income and agrees to reside in the property as the owner for three years from the date of closing of the sale; or

(2) Is or has a resident member who is a “teacher,” “police officer,” or “firefighter/emergency medical technician,” as defined under the Good Neighbor Next Door Sales Program codified in subpart F of this part.

Homeownership Plan means a plan, incorporated into the Sale Agreement, to which a Preferred Purchaser must agree under this subpart. A Homeownership Plan has as its primary purpose the expansion of homeownership in, and the revitalization of, the ACA in which the eligible asset is located, and must meet the requirements of this subpart and section 204 of the National Housing Act (12 U.S.C. 1710(h)).

Indian tribe means any Indian or Alaska Native tribe, band, nation, or other organized group or community of Indians or Alaska Natives recognized as eligible for the services provided to Indians or Alaska Natives by the Secretary of the Interior because of its status as such an entity, or that was an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

Net Development Cost means the sum of the acquisition costs of an Asset Property to the Purchaser, plus any rehabilitation costs required under § 291.635, closing, or holding costs.

Non-Preferred Purchaser means any Purchaser that is not a Preferred Purchaser, but which meets the requirements of § 291.615(c).

Partnership means, for the purpose of this subpart, joint participation under this subpart by two or more Preferred Purchasers; for example, by a nonprofit organization and a Unit of General Local Government.

Preferred Purchaser means a Unit of General Local Government, state, or Indian tribe having jurisdiction with respect to the area in which are located the Eligible Assets to be sold, or a nonprofit organization which:

(1) In the case of a nonprofit organization, is currently included on the nonprofit organization roster under 24 CFR 200.194 and has tax-exempt status as an organization under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c);

(2) Establishes an ACA; and

(3) Has the capacity to perform the duties required in § 291.615(b).

Purchaser means either a Preferred or Non-Preferred Purchaser, as defined in this section, but does not include Eligible Buyer(s), as defined in this section.

Revitalization Area means a geographic area designated by HUD under § 291.610.

Sale Agreement means a contract between HUD and a Preferred or Non-

Preferred Purchaser that contains the information required under § 291.630.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this subpart.

Unit of General Local Government means any city, town, township, county, parish, village, or other general purpose political subdivision of a state, and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the jurisdiction with regard to the provisions of this subpart.

§ 291.610 Revitalization Areas.

(a) HUD shall designate areas as Revitalization Areas within which an ACA may be defined, in accordance with the terms and conditions provided in this subpart. Prior to designating an area as a Revitalization Area, HUD shall consult with affected Units of General Local Government, states, Indian tribes, and interested nonprofit organizations.

(b) The chief executive officer of a county or the government of appropriate jurisdiction may request that HUD designate as a Revitalization Area any or all portions within a jurisdiction that meet the criteria under paragraph (c) of this section. Such requests shall be submitted in a manner and form prescribed by HUD. Within 60 calendar days of receiving such a request, HUD will notify the requestor of its decision.

(c) HUD shall, in its discretion, designate as a Revitalization Area an area that meets at least one of the following requirements:

(1) *Very low-income area.* The median household income for the area is less than 60 percent of the median household income for:

(i) The metropolitan area in which the proposed Revitalization Area is located; or

(ii) The state in which the proposed area is located (if the proposed Revitalization Area is not located within a metropolitan area);

(2) *Disproportionately high concentration of Eligible Assets.* A high rate of default or foreclosure for single family mortgages insured under the National Housing Act has resulted, or may result in the area:

(i) Having a disproportionately high concentration of Eligible Assets, in comparison with the concentration in surrounding areas; or

(ii) Being detrimentally impacted by Eligible Assets in the vicinity of the area.

(3) *Low homeownership rate.* The rate for homeownership of single family homes in the proposed Revitalization Area, as measured by the proportion of owner-occupied housing units to occupied housing units, is substantially below the rate for homeownership in:

(i) The metropolitan area in which the Proposed Revitalization Area is located; or

(ii) The state in which the proposed area is located (if the Proposed Revitalization Area is not located within a metropolitan area);

(d)(1) HUD will review Revitalization Areas annually, and remove the designation of "Revitalization Area" from any geographical area that no longer meets the definition of a Revitalization Area. This removal will occur at the earliest opportunity, such as upon the expiration of the term of the then-current Sale Agreement.

(2) The removal of the designation of a Revitalization Area shall not modify the terms of a Sale Agreement in effect at the time such designation is removed. A geographic area designated as a Revitalization Area shall continue to be considered as such for purposes of the agreement until the expiration of the Sale Agreement.

§ 291.615 Purchaser categories.

(a) *Eligibility.* HUD may sell assets to Purchasers in accordance with the procedures provided in this subpart, so long as the Purchasers and any officers, directors, or principals participating with them are not debarred, suspended, subject to a limited denial of participation, or otherwise disqualified from participating in HUD programs.

(b) *Preferred Purchasers.* HUD shall sell Eligible Assets at a discount to Preferred Purchasers (including Partnerships thereof). A Preferred Purchaser must:

(1) Have the capacity to carry out the purchase of the category or categories of Eligible Assets stated in the Sale Agreement;

(2) Establish an ACA consisting of all or part of a Revitalization Area;

(3) Purchase all Eligible Assets in the category or categories identified in the Sale Agreement, up to the maximum number specified in the Sale Agreement or until the term of the Sale Agreement expires, whichever occurs first;

(4) Agree to specific performance goals as stated in the Sale Agreement under § 291.

(c) *Non-Preferred Purchasers.* Non-Preferred Purchasers are not eligible for

discounts. Non-Preferred Purchasers must:

(1) Enter into a binding agreement in which the Purchaser agrees to meet specific performance goals established by HUD for homeownership of the asset properties for the Eligible Assets purchased by the Purchaser, except that HUD may, by including a provision in the Sale Agreement, provide for a lower rate of homeownership in sales involving exceptional circumstances. The Purchaser must also agree to rehabilitate each Asset Property purchased to comply with local building code standards; and

(2) Have the capacity to carry out the purchase of Eligible Assets under this subpart, as stated in the binding agreement under paragraph (c)(1) of this section.

(d) *Partnerships.* Preferred Purchasers, such as a Unit of General Local Government and a nonprofit organization, may form a Partnership to purchase Eligible Assets under this subpart. In such cases, each Preferred Purchaser must comply with all application requirements in § 291.620 and each shall be fully obligated under the Sale Agreement and Homeownership Plan.

§ 291.620 Application requirements.

(a) *Units of General Local Government.* Every Unit of General Local Government or Tribal Government that applies to participate under this subpart must submit to the appropriate Home Ownership Center (HOC) having jurisdiction over the assets to be sold:

(1) An official resolution of the Unit of General Local or Tribal Government, signed and dated by persons with actual authority as required by state, tribal, or local law, adopting the completed Sale Agreement and agreeing to perform all duties and obligations under the Sale Agreement and to not take actions that would interfere with its implementation; and

(2) The Name and Address Identifier (NAID) issued by HUD, if available, and Federal Employer Identification Number (EIN) for the applicant and any participating entities.

(b) *Nonprofit organizations.* Every nonprofit Purchaser that applies to participate under this subpart must be on the nonprofit roster under 24 CFR 200.194 and must submit:

(1) The Federal Employer Identification Number (EIN) for the applicant and any participating entities that will be involved in the applicant's program under this subpart and the Social Security Numbers (SSNs) of the principal staff of the applicant and its participating entities;

(2) A letter of endorsement from a Unit of General Local Government with jurisdiction over the entire proposed ACA signed by an authorizing official stating that the official has reviewed the Sale Agreement of the nonprofit organization and supports the nonprofit organization's role in carrying out the activities described in the Sale Agreement;

(3) An official resolution of the nonprofit organization, signed and dated by persons with actual authority as required by state, tribal, or local law and the organization's governing documents, adopting the completed Sale Agreement and agreeing to perform all duties and obligations under the Sale Agreement; and

(4) Evidence of tax-exempt status granted by the Internal Revenue Service under the tax-exempt organization provisions of section 501 of the Internal Revenue Code (26 U.S.C. 501 *et seq.*).

(c) *Application requirements applicable to both Units of General Local Government and nonprofit organizations.* In addition to the applicable application requirements identified in paragraphs (a) and (b) of this section, a Unit of General Local Government and nonprofit organization must also submit as part of its application:

(1) The Homeownership Plan to be incorporated into the Sale Agreement. The Homeownership Plan must contain, at a minimum, a map and description of the geographical boundaries of the ACA, a statement of the categories of assets to be sold, and a statement of the homeownership and neighborhood revitalization goals to be achieved by the plan.

(2) A certification that neither the Preferred Purchaser nor its officers, directors, or principals are suspended, debarred, subject to a limited denial of participation, or otherwise prohibited from participating in a federal program, subject to applicable penalties for false statements and perjury.

(d) *Non-Preferred Purchasers.* Every Non-Preferred Purchaser that applies under this subpart must submit required information to the appropriate HOC having jurisdiction over the assets to be sold. The information to be submitted is as follows:

(1) The Non-Preferred Purchaser's taxpayer identification number, which may be an SSN or an EIN;

(2) A statement indicating how the Non-Preferred Purchaser is organized (e.g., as a corporation, sole proprietorship, limited partnership, etc.);

(3) The Non-Preferred Purchaser's Data Universal Numbering System (DUNS) number;

(4) Articles of incorporation, by-laws, partnership agreements, or such other organizational and governing documents;

(5) A certificate of good standing from the jurisdiction in which the Non-Preferred Purchaser is incorporated or organized;

(6) A copy of the Non-Preferred Purchaser's valid business license and any professional licenses issued to the entity;

(7) A letter of endorsement from the Unit of General Local Government stating that it has reviewed the Non-Preferred Purchaser's proposed binding agreement under § 291.615(c) and supports the Non-Preferred Purchaser's role in carrying out the activities described in these documents, along with an organizational resolution from the entity evidencing: Authority to enter into the binding agreement, and that the entity has taken whatever steps are necessary to officially adopt, execute, and endorse these items;

(8) A listing of the names and addresses of members of the Board of Directors, chief officers (or other governing body), and principal staff of the Non-Preferred Purchaser;

(9) A certification that neither the Preferred Purchaser nor its officers, directors, or principals are suspended, debarred, subject to a limited denial of participation, or otherwise prohibited from participating in a federal program. Such certification is subject to applicable penalties for false statements and perjury; and

(10) A certification of the completeness and accuracy of all information contained in all documents under this section. Such certification is subject to applicable penalties for false claims, false statements, and perjury.

(e) *Preferred and Non-Preferred Purchasers.* In addition to the applicable application submission requirements described in paragraphs (a) through (d) of this section, all Purchasers must include the following information in their application submissions to the appropriate HOC:

(1) A description of the Purchaser's staff and organization, including:

(i) A list of all principal staff of the Purchaser, its officers, directors, and principals, including their position titles, and the resumes or biographies documenting each staff person's relevant housing development experience;

(ii) A description of contracts and partnership agreements into which the Purchaser has entered or plans to enter

for the purpose of conducting activities under this subpart;

(iii) A statement identifying any participating entities that will assist with or be involved in a Purchaser's program under this subpart, including, but not limited to, down payment assistance providers, housing counseling agencies, contracting firms, marketing or sales agents, and entities offering special financing arrangements for buyers; and

(iv) A certification that the Purchaser's relationship with partners, contractors, and participating entities does not create any conflict-of-interest issues as provided in § 291.670;

(2) A statement of financial condition demonstrating the capacity of the Purchaser to carry out the proposed program under this subpart, including:

(i) A capitalization plan showing the amount of capitalization and the sources of available funds;

(ii) Liabilities, including all debts, liens, and judgments;

(iii) The Purchaser's current and last two year-end audited financial statements, if available; and

(iv) The Purchaser's current and last two year-end profit and loss statements and balance sheets, if available.

(3) Valid resolutions delegating signature authority as necessary to provide for the execution of any sales contracts or other documents on behalf of the Purchaser. These resolutions must be signed and dated by the appropriate persons under applicable state, tribal, or local law; and

(4) A certification, on official letterhead of the Purchaser, of the completeness and accuracy of all information contained in the application, subject to applicable penalties for false claims, false statements, and perjury.

§ 291.625 HUD review and approval of application.

(a) *Initial stage processing.* Each application will be reviewed by HUD. If the application is complete, the application will be reviewed under the procedures established by this subpart. If the application is incomplete, HUD will inform the applicant in writing and provide an opportunity to submit any missing material within 30 days of the date of the written communication informing the applicant of the incompleteness.

(b) *Review of application.* (1) Each application will be reviewed on a first-come, first-served basis by the date and time of HUD's receipt of the application, if the application complies with the requirements of this subpart, except that if HUD receives an application from a

Preferred Purchaser and from a Non-Preferred Purchaser for the same geographic area on the same date, HUD will consider the application from the Preferred Purchaser to be the prior received application. The decision regarding when an application was received is solely within HUD's discretion.

(2) HUD's threshold criteria will include, at a minimum, the following:

(i) If the application submitted is incomplete and HUD notifies the applicant in writing as provided in paragraph (a) of this section, the application will be considered submitted on the date and time that HUD receives the materials necessary to complete the application. All members of a Partnership must each submit all required application materials. HUD's decision as to whether or not an application is complete is solely within HUD's discretion;

(ii) Status as a Preferred Purchaser or Partnership if the applicant or applicants is seeking the preference and discounts available to Preferred Purchasers;

(iii) No employee, officer, or agent of the applicant has engaged in activities that involve a real or apparent conflict of interest under § 291.670;

(iv) Eligibility of the personnel to participate in HUD programs;

(v) A methodology to provide homeownership opportunities to underserved populations, including persons with disabilities; and

(vi) Demonstrated legal, administrative, and financial capacity to successfully fulfill the requirements of the Sale Agreement and, in the case of a Preferred Purchaser, the requirements of the Homeownership Plan.

(c) *Application approval.* (1) HUD will enter into a Sale Agreement (which, for a Preferred Purchaser, must incorporate the Homeownership Plan) with each applicant or with each member of a Partnership as provided in § 291.630, once HUD approves, in its discretion, the first complete application it receives that meets the threshold requirements under paragraph (b) of this section. If no applications meet the threshold requirements or HUD approves no application, HUD will not enter into a Sale Agreement.

(2) If an approved ACA includes less than the total Revitalization Area, or if the category of Eligible Assets to be sold includes less than all HUD-held assets in an ACA or Revitalization Area, or if an approved application from a Non-Preferred Purchaser includes fewer than all the assets in a Revitalization Area, the remaining assets (i.e., those not covered in the application) in a

Revitalization Area may be sold as provided elsewhere in this part.

§ 291.630 Sale Agreement requirements for Purchasers.

Every Purchaser, and each member of a Partnership that applies to participate under this subpart, as a condition of participation, enters into a Sale Agreement, which must contain:

(a) In the case of Preferred Purchasers:

(1) The goals of the Homeownership Plan for the Eligible Assets purchased and for the ACA subject to the Homeownership Plan;

(2) The Revitalization Areas (or portions thereof) and ACAs in which the Homeownership Plan is operating or will operate, including geographic descriptions and maps;

(3) The specific use or disposition of the Eligible Assets under the Homeownership Plan;

(4) Any activities to be conducted and services to be provided under the Homeownership Plan; and

(5) Goals for the acquisition, management, and resale of the respective HUD-owned assets already in HUD's inventory or to be acquired during the time frame of the Sale Agreement.

(b) In the case of both Preferred and Non-Preferred Purchasers:

(1) A home buyer selection process that includes the requirements for Eligible Buyers and methods to fairly and equitably provide opportunities for Eligible Buyers, in accordance with the Fair Housing Act (42 U.S.C. 3601 *et seq.*), and nondiscrimination requirements of 24 CFR 5.105;

(2) A description of the housing counseling opportunities that will be available to Eligible Buyers;

(3) A description of the Purchaser's accounting systems that will clearly enable the Purchaser to ensure that funds associated with activities under this subpart are not commingled with other funds for programs administered by the Purchaser;

(4) An operating plan that includes:

(i) The acquisition schedule that describes an agreed timeline for concluding individual asset sales to the Purchaser; and

(ii) The rehabilitation standard for the asset properties, which must comply with local building code standards under § 291.635;

(5) A certification from the Purchaser that it will comply with the performance goals contained in the Sale Agreement; and

(6) A certification that the Purchaser, its officers, directors, and principals are not subject to suspension, debarment, limited denial of participation, and are

not otherwise prohibited from participating in a federal program, subject to applicable penalties for false statements and perjury.

§ 291.635 Asset Property condition requirements.

All Asset Properties purchased under this subpart must meet, or be rehabilitated to meet, local building code standards.

§ 291.640 Discount classes for Preferred Purchasers.

(a) *Three discount classes.* Eligible Assets will be priced according to one of three discounts, based on the relationship of the appraised value to the dollar cost of the eligible repairs, as follows:

(b) *Fifty percent discount.* Eligible Assets with an appraised value of \$50,000 or greater shall receive a discount of 50 percent of the appraised value of the property.

(c) *\$24,900 discount.* Eligible Assets with an appraised value of greater than \$25,000, but less than \$50,000, shall receive a discount of \$24,900 from the appraised value of the property.

(d) *Maximum Discount.* Eligible Assets with an appraised value of \$25,000 or less will have a purchase price of \$100.

§ 291.645 Appraisal and pricing of Asset Properties that are real properties.

(a) *Appraisal of Asset Properties.* HUD will order an appraisal by an appraiser on the Federal Housing Administration (FHA) appraiser roster under 24 CFR part 200, subpart G, for each Asset Property in the ACA to be sold. The property will be appraised based on the market value of the property in "as-is" physical condition. If the property was appraised by an appraiser from the FHA appraiser roster within the previous calendar year, the property need not be reappraised, unless the Purchaser requests a reappraisal or disputes the appraised value under paragraph (b) of this section.

(b) *Resolving disputes about appraised value.* If the Purchaser disputes the initial appraisal, it may request a second appraisal from HUD. In such cases, the second appraisal will be used to determine the current appraised value. The Purchaser may request an individual new appraisal if the request is made prior to sale and the Purchaser demonstrates, in HUD's sole discretion, a reasonable likelihood that a second appraisal would indicate a value that differs by 20 percent or more, higher or lower, from the original appraisal. HUD will retain services of one of the appraisers on the FHA appraiser roster to review the original appraisal and

perform a new appraisal. Additional costs for any new appraisals will be borne by the Purchaser, unless the new appraisal indicates a value that differs by 20 percent or more, higher or lower, from the original appraisal.

(c) *Pricing Eligible Assets.* If there is one appraisal, the price to the Purchaser will be calculated by applying the appropriate discount under § 291.640 to the appraised value. If HUD approves additional appraisals under paragraph (b) of this section and such appraisals result in a change in value, the price will be calculated by applying the appropriate discount under § 291.640 to the final approved appraised value.

§ 291.650 Conveyance of Eligible Assets.

(a) *Eligible Assets initially available in the ACA or Revitalization Area.* Prior to entering into the Sale Agreement, HUD will identify all the categories of Eligible Assets along with the Eligible Assets available in those categories within the proposed ACA (in the case of a Preferred Purchaser) or Revitalization Area (in the case of a Non-Preferred Purchaser) and provide this information in a "designation notice" to the Purchaser. The Purchaser or Partnership, after reviewing the designation notice, will present an acquisition schedule to HUD for review. HUD will review the acquisition schedule along with the Purchaser or Partnership's capacity and the units to determine whether to approve the acquisition schedule as is, or to approve it with modifications.

(b) *Assets acquired during the life of the Sale Agreement.* (1) As HUD acquires and makes available new Eligible Assets in the ACA during the life of the Sale Agreement, HUD will provide official notification of availability of these assets to the Preferred Purchaser or Partnership.

(2) As HUD acquires and makes available new Eligible Assets in the Revitalization Area during the life of the Sale Agreement, HUD will provide official notification of availability of the assets to the Non-Preferred Purchaser.

(3) Within 5 days after receiving the official notification from HUD, the Preferred Purchaser or Partnership shall complete and submit a report to HUD stating the repairs required for each Asset Property in the ACA to meet the property condition standards in § 291.635.

(4) HUD will apply the appropriate level of discount pursuant to § 291.640 and, within 15 days of the date of initial notification from HUD, notify the Preferred Purchaser or Partnership of the sale price and provide the Preferred

Purchaser with a copy of the appraisal report.

(c) *Closing of sales.* Sales will be closed according to the terms of the Sale Agreement under this section and specific closing procedures specified by HUD.

(d) *Subordinate lien.* HUD shall secure the sale of Asset Properties (including HUD-financed sales under § 291.655) with a subordinate mortgage in the amount of the difference between the appraised value of the Asset Property and the sales price. HUD shall release the subordination upon compliance of the provisions of the Sale Agreement and sale of the Asset Property to an Eligible Buyer pursuant to § 291.660.

§ 291.655 HUD financing and assistance to Preferred Purchasers and their Partnerships.

(a) HUD may offer 100 percent financing to Units of General Local Government, states, Indian tribes, and nonprofit organizations on the purchase of Eligible Assets for up to 180 days from the date of closing, subject to the availability of appropriations. Such financing will be interest-free for the first 89 days from the date of closing, and at market rate commencing with the 90th day until the end of the loan or the 180th day from the date of closing, whichever occurs first.

(b) *Payment date.* When using the methods in paragraph (a) of this section, the Purchaser must pay the full amount for the asset and any accrued interest on the earlier of two dates:

- (1) The date after the resale of the asset to the ultimate buyer; or
- (2) The expiration date of the loan.

(c) *\$5,000 threshold.* Notwithstanding paragraphs (a) and (b) of this section, the Purchaser must pay the full amount at closing for Eligible Assets sold for less than \$5,000.

(d) *Delinquent loans.* In the case of delinquent HUD-financed loans under this section, HUD has the right to take legal action to recover the property or enforce the borrower's payment obligations.

(e) *Non-Preferred Purchasers.* HUD will not offer financing to Non-Preferred Purchasers.

§ 291.660 Resale of assets to Eligible Buyers.

(a) *General.* Resale of Asset Properties by Purchasers to Eligible Buyers as defined in § 291.605 must take place in accordance with the goals and timetables submitted to HUD as part of the Homeownership Plan and the Sale Agreement. Resale of mortgages under this subpart must promote homeownership opportunities.

(b) *Sales price—(1) Two methods for determining sales price.* The Purchaser may elect to establish the sales price of Asset Properties to Eligible Buyers using either an individual transaction method or a portfolio-wide method.

(2) *Transaction method for determining sales price.* Under the transaction method, the sales price of an Asset Property to an Eligible Buyer may not exceed the lesser of:

- (i) The as-rehabilitated appraised value of the Asset Property; or
- (ii) The HUD-established percentage of the Net Development Cost (see paragraph (b)(4) of this section).

(3) *Portfolio method for determining sales price.* Under the portfolio method, the cumulative sales prices of Asset Properties sold to Eligible Buyers during the Purchaser's "portfolio reporting period" (see paragraph (b)(4) of this section) may not exceed the lesser of:

- (i) The total as-rehabilitated appraised value of the asset properties; or
- (ii) The HUD-established percentage of the total Net Development Cost for those properties (see paragraph (b)(4) of this section).

(4) *HUD-established percentage of Net Development Cost and portfolio reporting period.* (i) Initially, HUD establishes the allowable percentage of Net Development Cost under paragraphs (b)(2) and (b)(3) of this section at 115 percent. The portfolio reporting period described in paragraph (b)(3) of this section is a 12-month period covered by the Sale Agreement, generally commencing on the date of the Sale Agreement's execution or anniversary thereof.

(ii) To better reflect market conditions, HUD may periodically propose to adjust the allowable percentage of Net Development Cost and/or the portfolio reporting period. Such proposed adjustments shall be announced through publication of a notice in the **Federal Register** that will provide the public with the opportunity to comment for a period of at least 30 days. After the comments have been considered, HUD will publish a final notice announcing the adjustment and its effective date.

(5) *Sale method election.* Use of the portfolio method is optional. During each portfolio reporting period, a Purchaser may elect either the portfolio method or the transaction method; however, the Purchaser may not use both methods concurrently and may not change methods during a portfolio reporting period.

(c) *Escrow and principal reduction requirements for Purchasers using portfolio method.*

(1) A Purchaser electing the portfolio option must deposit into an escrow account the difference between the actual sales price and the HUD-established percentage of the Net Development Cost for each transaction.

(2) The purchaser must reduce the principal on each mortgage when cumulative actual sales are more than 115 percent of the total Net Development Costs of the properties sold during the portfolio reporting period. The amount of principal reduction is calculated by subtracting the HUD-established percentage of total Net Development Costs from actual cumulative sales for the portfolio reporting period, and prorating the result as a percentage of actual sales. The balance in the escrow account after principal reductions on mortgages, if any, is allocable to the Purchaser. Distributions from the escrow account must be made by the Purchaser no later than 90 days after its fiscal year end.

(d) *Owner-occupancy term.* (1) An Eligible Buyer who purchases an Asset Property at below its as-rehabilitated appraised value must comply with the owner-occupancy requirements described in this paragraph. An Eligible Buyer who purchases an Asset Property for the as-rehabilitated appraised value is not subject to the owner-occupancy requirements.

(2) The owner-occupancy term is the number of months that an Eligible Buyer must agree to own, and live in as his/her sole residence, an Asset Property purchased under this part. The owner-occupancy term is 36 months commencing on the date of closing.

(3) HUD may, at its sole discretion, allow interruptions to the 36-month owner-occupancy term if it determines that the interruption is necessary to prevent hardship, but only if the Eligible Buyer submits a written and signed request to HUD containing the following information:

(i) The reason(s) why the interruption is necessary;

(ii) The dates of the intended interruption; and

(iii) A certification from the Eligible Buyer that the Eligible Buyer is not abandoning the Asset Property as his/her permanent residence and will resume occupancy of the home upon the conclusion of the interruption and complete the remainder of the 36-month owner-occupancy term.

(4) The written request for approval of an interruption to the owner-occupancy term must be submitted to HUD at least 30 calendar days before the anticipated interruption. Military service members protected by the Servicemembers Civil Relief Act need not submit their written

request to HUD 30 days in advance of an anticipated interruption, but should submit their written request as soon as practicable upon learning of a potential interruption, in order to ensure timely processing and approval of the request.

(e) *Subordinate mortgage.* (1) For purposes of ensuring compliance with owner occupancy requirements, HUD shall secure the sale of Asset Properties (including HUD-financed sales under § 291.655) to Eligible Buyers with a subordinate mortgage in the amount of the difference between the appraised value of the Asset Property and the sales price.

(2) The term of the subordinate mortgage is equal to the owner-occupancy term (36 months). The amount of the subordinate mortgage will be reduced by $\frac{1}{36}$ th on the last day of each month of occupancy following the occupancy start date. At the end of the 36th month of occupancy, the amount of the subordinate mortgage will be zero.

(3) If the Eligible Buyer sells his/her home or stops living in the home as his/her sole residence prior to the expiration of the owner-occupancy term, he/she will owe HUD the amount due on the second mortgage as of the date the property is either sold or vacated.

§ 291.665 Reporting and disclosures.

(a) *Reporting to HUD.* Purchasers must complete a repair report with the initial cost estimate for each Asset Property repaired, along with the actual expenditures for repair and supporting documentation for those expenditures. Purchasers must retain this report for the term of the Sale Agreement plus 24 months, and make such reports available for inspection by HUD.

(b) *Disclosure to Eligible Buyer on resale.* Upon the resale of each Asset Property, the Purchaser must provide to the Eligible Buyer a disclosure notice containing an itemized list of all rehabilitation work that the Purchaser has performed or contracted out to be performed on each Asset Property being sold. At closing, the Purchaser must also provide the Eligible Buyer with a one-year homeowner's warranty, covering and warranting the rehabilitation work for one year.

(c) *Obligation to ensure eligibility.* The Eligible Buyer must certify to the Purchaser that he or she is eligible under this subpart. The Eligible Buyer must certify that he or she has an annual income of no more than 115 percent of area median income and agrees to reside in the property as the owner for 3 years from the date of closing of the sale; or that he or she has a resident member who is a teacher, police officer,

firefighter, or emergency medical technician. The Purchaser must retain this certification as long as the Purchaser participates in the program under this subpart and provide it to HUD upon request.

(d) *Financial statements.* Purchasers must submit annual audited financial statements to HUD or HUD's designee. All Preferred Purchasers shall comply with the Single Audit Act Amendments of 1996 and, as applicable, OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(e) *Other reports.* Purchasers under this subpart must comply with any other annual, quarterly, and monthly reporting requirements as HUD may establish from time to time.

§ 291.670 Conflicts of interest.

(a) No employee, officer, or agent of a Preferred Purchaser under this subpart shall engage in activities that would involve a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial or other interest in any contractor, firm, or other persons or entities selected to rehabilitate, sell, purchase, act as a real estate agent, or otherwise participate in the acquisition, financing, rehabilitation, management, marketing, and sale of Eligible Assets under this subpart. This section does not apply when the Preferred Purchaser itself engages in any of these activities. Preferred Purchasers that receive discounts in the purchase price of assets under this subpart (as well as other federal assistance, such as financing) must comply with the conflict-of-interest provisions of this paragraph and 24 CFR parts 84 and 85, as applicable.

(b) The officers, agents, and employees of Preferred Purchasers under this subpart shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to sub-agreements, absent an exception for unsolicited items of nominal value granted by HUD.

(c) A Preferred Purchaser may not sell an Asset Property to an Eligible Buyer with whom the Purchaser has a business or close familial relationship, unless HUD provides a specific exception. HUD may provide such an exception under the following conditions:

(1) The Preferred Purchaser has disclosed the nature of the conflict to HUD, accompanied by an assurance that there was a public disclosure of the

conflict and a description of how the disclosure was made;

(2) The Preferred Purchaser's attorney has provided a signed opinion that the conflict for which the exception is sought would not violate state, tribal, or local law;

(3) The Preferred Purchaser makes a written showing that the conflict will not result in any influence on the discount, amount of rehabilitation, or price of an asset to the Eligible Buyer; and

(4) The proposed buyer meets the definition of Eligible Buyer in § 291.605 of this subpart.

§ 291.675 Sanctions for failure to comply.

(a) HUD may impose sanctions against a Purchaser or Eligible Buyer who commits an act of default as defined herein. An act of default is:

(1) A material violation of this subpart;

(2) A material violation of the Sale Agreement or the Homeownership Plan; or

(3) Any act of fraud or any false statements committed by a party during its participation in the activities described in this subpart.

(b) Sanctions may include:

(1) Termination of the Purchasers' rights under the Sale Agreement, including, without limitation, HUD's

obligation to sell any asset properties to Purchaser; and

(2) Termination of approval of a Preferred Purchaser or Non-Preferred Purchaser to participate under this subpart.

(c) HUD has the right to take any other enforcement action permitted by law, including, but not limited to, suspension, debarment, and actions under the Program Fraud Civil Remedies Act.

(d)(1) HUD shall provide a program participant with written notice of its intent to pursue a sanction under paragraph (b) of this section. The notice will include the reasons for the proposed sanction.

(2) The program participant will have 20 days from the date of the notice to submit a written response appealing the proposed sanction and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

(3) Within 30 days of receiving the written response or, if the program participant has requested a conference, within 30 days after completion of the conference, a HUD official designated by the Secretary will review the appeal and provide the program participant with a written final decision either affirming, modifying, or cancelling the

proposed sanction. HUD may extend this time by providing the program participant with notice. The HUD official designated by the Secretary to review the appeal will not be someone involved in the original decision or someone who reports to a person involved in that initial decision. In all such cases, the decision on such appeal is a final agency action.

§ 291.681 Termination for convenience of the government.

In addition to termination under § 291.675, the Sale Agreement may be terminated at any time for the convenience of the government.

§ 291.683 Audits and reviews.

HUD will conduct compliance reviews of each Purchaser under this subpart on an annual basis or such other time as HUD determines. Purchasers and their partners and agents shall comply with all requests for information regarding their activities under this subpart.

Dated: November 6, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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