

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 290

[Doc. No. FR-4941-P-01; 2005-0015]

RIN 2502-A124

Disposition of Multifamily Housing Projects by HUD; Purchaser's Compliance With State and Local Housing Laws and Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations governing the disposition of multifamily projects that are HUD-owned or secured by a HUD-held mortgage which are being foreclosed to implement statutory amendments made by the Consolidated Appropriations Act, 2004. The proposed rule would require a potential purchaser of such a project to certify that all other properties owned by the purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes. A potential purchaser of a multifamily project, from a state or local government that previously had acquired the property from HUD would also be required to submit evidence of substantial compliance with applicable state or local housing requirements. The proposed rule would also expand the scope of the participation and compliance requirements for HUD's Federal Housing Administration programs to include purchasers of multifamily housing projects from state or local governments, in cases where the property had previously been acquired by the state or local government from HUD.

DATES: *Comment Due Date:* October 4, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this 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. Electronic comments may be submitted through either:

- The Federal eRulemaking Portal: at <http://www.regulations.gov>; or
- The HUD electronic Web site at: <http://www.epa.gov/feddocket>. Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, 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, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

FOR FURTHER INFORMATION CONTACT:

Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410-8000; telephone (202) 708-3730 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 203 of the Housing and Community Development Amendments Act of 1978 (12 U.S.C. 1701z-11) (1978 HCD Act) authorizes the Secretary of HUD to manage or dispose of multifamily housing projects that are owned by the Secretary or that are subject to a mortgage held by the Secretary. Pursuant to section 203(i) of the 1978 HCD Act, state and local governments have a right of first refusal to purchase a HUD-owned multifamily project. The purpose of the multifamily housing project disposition program is to dispose of properties in a way that preserves the availability of affordable housing, strengthens neighborhoods and communities, supports fair housing strategies, and protects the financial interests of the federal government.

HUD's regulations for the multifamily housing project disposition program are located at 24 CFR part 290, subpart A. These regulations supplement the requirements of section 203 of the 1978 HCD Act for the management and disposition of multifamily housing projects. In addition, a potential purchaser of a multifamily project that is HUD-owned or secured by a HUD-held mortgage is subject to the participation and compliance requirements contained in subpart H of 24 CFR part 200. These regulations establish uniform standards for the

approval, disapproval, or withholding of action on principals in projects based upon their past performance as well as other aspects of their records. Among other requirements, a potential purchaser of such a multifamily project must submit a previous participation certification attesting to its past performance and other relevant facts (for example, that the potential purchaser is not a HUD employee or a Member of Congress).

Section 219 of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199, approved January 23, 2004) (FY 2004 Appropriations Act), mandated several changes to the requirements applicable to purchasers of HUD-owned multifamily housing projects. In enacting section 219, the Congress required HUD to institute a policy "to prevent the sale of HUD properties, from HUD, or from state and local governments, to people with demonstrated patterns of severe housing code violations" (see S. Rep. 108-143, at 62 (2004)). Specifically, section 219 requires the Secretary of HUD to issue a proposed rule to ensure that a potential purchaser of a multifamily project that is HUD-owned or secured by a HUD-held mortgage is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes with regard to other properties owned by the purchaser. Further, under the proposed rule any state or local government that exercises its right of first refusal to acquire the project must ensure that any person or entity that subsequently acquires the project from the state or local government is subject to the same standards that would otherwise apply if the person or entity had purchased the project directly from HUD.

II. This Proposed Rule

This proposed rule would amend HUD's regulations to implement section 219 of the Consolidated Appropriations Act, 2004. The specific regulatory amendments that would be made by the proposed rule are as follows:

A. Proposed Changes to FHA Participation and Compliance Requirements (24 CFR Part 200, Subpart H)

The proposed rule would expand the scope of the regulations in 24 CFR part 200, subpart H to include a potential purchaser of a multifamily project from a state or local government that previously had acquired the project by exercising its right of first refusal under section 203(i) of the 1978 HCD Act. As noted above, potential purchasers of

multifamily projects directly from HUD are already subject to these requirements. Currently, however, the regulations do not apply to purchasers of multifamily projects from state and local governments declining to exercise their right of first refusal. The proposed regulatory change would comply with section 219 of the Consolidated Appropriations Act, 2004 by ensuring that any person or entity that subsequently acquires multifamily projects from the state or local government is subject to the same standards that would otherwise apply if the person or entity had purchased the project directly from HUD.

The proposed rule would amend § 200.213, which lists the activities subject to the participation and compliance requirements, to include purchases of multifamily housing projects from state or local governments that previously had acquired the property from HUD. The proposed rule would also revise § 200.217, which establishes the timing of submission of the previous participation certification. Proposed purchasers of a project from a state, city, or municipality that previously had acquired the project, and which declined to exercise its right of first refusal under section 203 of the 1978 HCD Act, would be required to submit the required certification prior to the proposed acquisition.

B. Proposed Changes to Requirements Regarding the Disposition of HUD-Owned Multifamily Projects (24 CFR Part 290, Subpart A)

As noted above, section 219 of the Consolidated Appropriations Act, 2004 requires that potential purchasers of a multifamily project from HUD be in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes with regard to other properties owned by the purchaser. The proposed rule would amend the regulations at 24 CFR part 290, subpart A to implement this requirement.

HUD proposes to add a new § 290.16, which would require that a potential purchaser of a multifamily project must certify, on a form prescribed by HUD, that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes. For purposes of new § 290.16, the term "potential purchaser" would be defined to mean any purchaser of a multifamily project that is HUD-owned or secured by a HUD-held mortgage that is being

foreclosed, with the exception of a state agency or unit of local government (including public housing agencies) in the locality in which the project is located. This certification must be submitted concurrently with the previous participation certificate required under 24 CFR part 200, subpart H.

The certification must identify by name and location all properties owned by the potential purchaser that are located in the same city or town as the project being purchased. The certification must also state whether to the best of the potential purchaser's knowledge and belief, each such property is currently and materially in violation of any applicable state or local requirements. If there are material violations, the certification must specify the nature of each material violation and state whether, notwithstanding the material violations, the properties are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes. HUD may verify the accuracy of the certification by requiring supporting documentation from the potential purchaser.

As noted above, the certification would only apply to other properties owned by the potential purchaser that are in the same city or town as the project being purchased. It would be overly burdensome to require a potential purchaser to identify all properties on a nationwide basis, and excessive HUD staff time would be required to review and verify compliance with such a broad certification requirement. Most purchasers of HUD multifamily projects (competitive or noncompetitive) are local purchasers. In those cases where the potential purchaser is a nationwide developer, most of these purchasers have conducted, or are currently conducting, business with HUD and submission of the required previous participation certification would provide HUD with the opportunity to assess the developer's qualifications to purchase the project.

HUD will notify a potential purchaser of any preliminary determination that the potential purchaser is not in substantial compliance. Within 10 business days after receipt of notice of the date of such a preliminary determination, the potential purchaser may appeal the preliminary determination to the Deputy Assistant Secretary for Multifamily Housing or the Deputy Assistant Secretary's designee, and request an informal HUD conference. If the potential purchaser

does not appeal HUD's preliminary determination within 10 business days, the preliminary determination shall become final. If HUD makes a final determination that the potential purchaser is not in substantial compliance, HUD may elect not to sell the project to the potential purchaser, such as by terminating any sales contract.

As noted above in this preamble, the Senate Report accompanying enactment of section 219 of the Consolidated Appropriations Act, 2004 specifies that the focus of the statutory certification requirement is on the sale of properties "to people with demonstrated patterns of severe housing code violations," and not on governmental or other entities (emphasis added). Accordingly, under the proposed rule, state and local governments purchasing a multifamily project would not be subject to the certification requirement. HUD agrees with the Senate Report language and does not believe it would be appropriate, or consistent with prior HUD practice, to evaluate the experience or worthiness of another governmental agency's ability to purchase and operate a HUD-owned project. State and local governmental entities that purchase HUD-owned projects are presumed to operate and maintain the projects in a responsible and conscientious manner.

HUD will require, as a condition of the sale, that a person or entity that seeks to purchase the project from the state or local government to certify, or otherwise verify, prior to the sale that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes.

III. Findings and Certifications

Information Collection Requirements

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

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 290.16	800	1	.10	80

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 responses to be submitted electronically.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the interim rule, however. Comments must refer to the proposal by name and docket number (FR-4941) and be sent to both:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6947, and Kathleen McDermott, Reports Liaison Officer, Office of Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410-8000.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review").

OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which 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) 708-3055 (this is not a toll-free 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 (42 U.S.C. 4332(2)(C)). That finding 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, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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. The proposed rule would revise HUD's regulations governing the disposition of multifamily projects by HUD to implement statutory amendments made by the Consolidated Appropriations Act, 2004. As discussed above in this preamble, these changes concern compliance by purchasers of multifamily housing projects from HUD with applicable state and local housing requirements, and the applicability of HUD requirements to persons or entities

seeking to purchase multifamily projects from state or local governments that previously had acquired the property from HUD. To the extent that the rule would impose any burdens on small entities participating in HUD's multifamily project disposition program, it would be as a result of statutory mandate. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or 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 rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for HUD's Multifamily Property Disposition program is 14.199.

List of Subjects**24 CFR Part 200**

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 290

Low and moderate income housing, Mortgage insurance.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 200 and 290 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Add § 200.213(e) to read as follows:

§ 200.213 Applicability of procedure.

* * * * *

(e) Projects purchased from a state, city, or municipality that had previously acquired the project by exercising its right of first refusal for the purchase of a multifamily housing project under section 203 of the Housing and Community Amendments Act of 1978 (12 U.S.C. 1701z–11).

3. Add § 200.217(a)(15) to read as follows:

§ 200.217 Filing of previous participation certificate on prescribed form.

(a) * * *

(15) Purchase of a project acquired from a state, city, or municipality that had previously acquired the project by exercising its right of first refusal for the purchase of a multifamily housing project under section 203 of the Housing and Community Amendments Act of 1978 (12 U.S.C. 1701z–11)—Prior to the proposed acquisition.

* * * * *

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

4. 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, 1715z–11a; 42 U.S.C. 3535(d), 3535(i).

5. Add § 290.16 to read as follows:

§ 290.16 Purchaser compliance with state and local housing laws and requirements.

(a) *Definition of “potential purchaser”.* For purposes of this section, the term “potential purchaser” means any purchaser of a multifamily project that is HUD-owned or secured by a HUD-held mortgage that is being foreclosed pursuant to this part and 24 CFR part 27, with the exception of a state agency or unit of local government (including public housing agencies) in the locality in which the project is located.

(b) *Certification of substantial compliance with state and local laws and requirements.* (1) A potential purchaser of a multifamily project pursuant to this part shall certify, on a form prescribed by HUD, that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with any applicable state or local government housing statutes, regulations, ordinances, and codes.

(2) The certification must identify by name and location all properties owned by the potential purchaser and located in the same city or town as the project being purchased. The certification must also state whether, to the best of the potential purchaser's knowledge and belief, each such property is currently and materially in violation of any applicable state or local government requirement. If there are material violations, the certification must specify the nature of each material violation and state whether, notwithstanding the material violations, the properties are in substantial compliance with applicable state or local government statutes, regulations, ordinances, and codes.

(3) This certification shall be submitted concurrently with the previous participation certificate required under § 200.217 of this chapter.

(4) HUD may verify the accuracy of the certification by requiring supporting documentation from the potential purchaser.

(c) *HUD determinations.* (1) HUD will notify the potential purchaser of its preliminary determination that the potential purchaser is not in substantial compliance.

(2) Within 10 business days after receipt of notice of the date of HUD's preliminary determination, the potential purchaser may appeal the preliminary determination to the Deputy Assistant Secretary for Multifamily Housing or the Deputy Assistant Secretary's designee, and request an informal HUD conference. If the potential purchaser does not appeal HUD's preliminary determination within 10 business days, the preliminary determination shall become final.

(3) If HUD determines that the potential purchaser is not in substantial compliance, HUD may elect not to sell the project to the potential purchaser, such as by terminating any sales contract.

(d) *State and local government purchasers.* State and local governments purchasing a multifamily project pursuant to this part are not subject to the certification requirements described in paragraph (b) of this section. However, HUD will require, as a condition of the sale, that a person or entity subsequently seeking to purchase the project from the state or local government certify, or otherwise verify, prior to the sale that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes.

Dated: July 8, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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