

## § 290.30

project-based assistance made available, would be more cost-effective than the use of the maximum permissible project-based rental assistance alone.

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

(1) Has more than 50% of the units in the project occupied by very low-income residents at the time a disposition plan is approved by HUD, or that HUD determines is essential, as affordable housing, to the revitalization of its community;

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

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

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

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

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

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

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assembled for purposes of purchasing the project and which have a governmental entity as a partner or other participant are considered profit motivated purchasers and not governmental entities, whether or not there is a non-profit, public, corporate or individual general partner.

(d) *Up-front grant or loan amount.* The maximum that HUD will fund per project in an up-front grant or loan is 50 percent of total development cost (TDC), or \$40,000 per affordable, finished unit, whichever amount is less. TDC covers demolition, environmental hazard remediation, construction materials, artisan services, professional services, developers services, and overhead, relocation and operating losses that are incurred to plan, perform and complete repairs or rebuilding.

[64 FR 72412, Dec. 27, 1999]

### Subpart B—Sale of HUD-Held Multifamily Mortgages

#### § 290.30 General.

(a) Except as otherwise provided in § 290.31(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis. HUD retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. However, when a qualifying mortgage is offered for sale, the procedures set out in this subpart will govern the sale.

(b) References in subpart B of this part to mortgages securing subsidized projects include HUD-held purchase money mortgages on subsidized projects.

[61 FR 11685, Mar. 21, 1996, as amended at 61 FR 32265, June 21, 1996]

#### § 290.31 Sale of current mortgages securing subsidized projects.

HUD will sell current mortgages securing subsidized projects, as follows:

(a) *Current mortgages with FHA mortgage insurance* will be sold either:

(1) On a competitive basis to FHA-approved mortgagees; or

(2) On a negotiated basis, to State or local governments, or to a group of investors that includes an agency of a State or local government if, in addition to meeting the requirements of

the Statute, the sales price is the best price that HUD can obtain from an agency of a State or local government while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(b) *Current mortgages without FHA mortgage insurance* will be sold if HUD can offer protections equivalent to those listed for an insured sale in paragraph (a) of this section.

**§ 290.33 Sale of delinquent mortgages securing subsidized projects.**

Delinquent mortgages securing subsidized projects will be sold only if, as part of the sales transaction:

(a) The mortgages are restructured; and

(b) Either FHA mortgage insurance or equivalent protections are provided.

**§ 290.35 Sale of HUD-held mortgages securing unsubsidized projects.**

HUD's policy for selling HUD-held mortgages securing unsubsidized projects is as follows:

(a) *Current mortgages* may be sold with or without FHA mortgage insurance.

(b) *Delinquent mortgages* may be sold without FHA mortgage insurance. However, delinquent mortgages will not be sold if:

(1) HUD believes that foreclosure is unavoidable; and

(2) The project securing the mortgage is occupied by very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage.

**§ 290.37 Requirements for continuing Federal rental subsidy contracts.**

For any mortgage that, at the time HUD offers the mortgage for sale without FHA mortgage insurance, is delinquent and secures a subsidized project or unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the "subsidized project" definition in § 290.3:

(a) The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant run-

ning with the land as part of any loan restructuring or of a final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall continue in effect until the last federal project-based rental assistance contract expires by its own terms. The covenant shall provide that, except where otherwise approved by HUD, a project purchaser shall agree to assume the obligations of any outstanding:

(1) Project-based federal rental subsidy contract; and

(2) Tenant-based Section 8 housing assistance payments contract with a public housing agency and the related lease.

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

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

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

[61 FR 11685, Mar. 21, 1996, as amended at 61 FR 32265, June 21, 1996]

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

(a) *Nondiscrimination requirement.* For any mortgage described in paragraphs (c) or (d) of this section that HUD sells without FHA mortgage insurance, the project owner shall not unreasonably refuse to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is a certificate or voucher holder under 24 CFR part 982.

(b) *Inapplicability to current mortgages securing unsubsidized projects that receive no project based-assistance.* The nondiscrimination requirements of this