

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 section do not apply to any mortgage that is current under the terms of the mortgage at the time HUD offers it for sale, if the mortgage secures an unsubsidized project that does not receive any of the forms of project-based assistance enumerated in paragraphs (4)(i) to (4)(iv) of the “subsidized project” definition in §290.3.

(c) *Applicability to mortgages securing unsubsidized projects receiving project-based assistance (partially-assisted projects) or securing subsidized projects.*

(1) The nondiscrimination requirement in paragraph (a) of this section applies to the project owner upon the sale of a mortgage without FHA mortgage insurance if, at the time HUD offers it for sale, the mortgage secures:

(i) An unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the “subsidized project” definition in §290.5; or

(ii) A subsidized project, as defined in §290.3.

(2) This requirement shall continue in effect until the mortgage debt is satisfied.

(d) *Covenant requirement for all delinquent mortgages sold without FHA mortgage insurance.* This paragraph (d) applies to the sale of any mortgage that is delinquent at the time HUD offers it for sale without FHA mortgage insurance, without regard to the subsidy status of the project. The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant running with the land as part of any loan restructuring or final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall set forth the nondiscrimination requirement in paragraph (a) of this section. The covenant shall continue in effect until a date

that is the same as the maturity date of the mortgage sold by HUD.

[61 FR 11685, Mar. 21, 1996; 61 FR 19188, May 1, 1996, as amended at 61 FR 32265, June 21, 1996]

## PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

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AUTHORITY: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

SOURCE: 56 FR 46956, Sept. 16, 1991, unless otherwise noted.

### Subpart A—General Provisions

SOURCE: 64 FR 6479, Feb. 9, 1999, unless otherwise noted.

**§291.1 Purpose and general requirements.**

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or acquired by HUD under section 312 of the Housing Act of 1964. HUD will issue detailed policies and procedures that must be followed in specific areas.

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

(b) *Nondiscrimination policy.* The requirements set forth in 24 CFR parts 5 and 110 apply to the administration of any activity under this part. In addition, in accordance with 24 CFR 9.155(a), HUD must ensure that its policies and practices in conducting the single family property disposition program do not discriminate on the basis of disability.

**§291.5 Definitions.**

(a) The term *Secretary* is defined in 24 CFR part 5.

(b) Other terms used in this part are defined as follows:

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

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

*Eligible properties* means HUD-acquired properties designated by HUD for property disposition or other housing programs.

*HUD* means the Department of Housing and Urban Development or its contractor, as appropriate.

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

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

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

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

(1) Have a voluntary board;

(2)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(ii) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles;

(3) Practice nondiscrimination in the provision of assistance in accordance with the authorities described in §291.435(a); and

(4) Have nonprofit status as demonstrated by approval under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or demonstrate that an application for such status is currently pending approval.

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

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

**§ 291.10 General policy regarding rental of acquired property.**

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

**Subpart B—Disposition by Sale**

SOURCE: 64 FR 6480, Feb. 9, 1999, unless otherwise noted.

**§ 291.90 Sales methods.**

HUD will prescribe the terms and conditions for all methods of sale. HUD may, in its discretion, on a case-by-case basis or as a regular course of business, choose from among the following methods of sale:

(a) *Future REO acquisition method.* The Future Real Estate-Owned (REO) acquisition method consists of a property acquisition agreement (or agreements) between HUD and a transferor (or transferors), which shall provide for the right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. HUD will select such transferor(s) through a competitive process, in accordance with all applicable laws and regulations, including the requirements in § 291.200. The transferor(s) shall have the right and obligation to manage and dispose of the properties upon such terms and conditions as are approved by the Secretary;

(b) *Competitive sales of individual properties.* This method consists of competitive sales of individual properties to individual buyers, the procedures for which are described in § 291.205;

(c) *Direct sales methods.* There are three types of direct sales methods:

(1) Direct sales of properties without insured mortgages to governmental entities and private nonprofit organizations, the procedures for which are described in § 291.210(a);

(2) Direct sales to displaced persons, sales of razed lots, or auctions, the procedures for which are described in § 291.210(b);

(3) Direct sales to other individuals or entities that do not meet any of the categories specified in paragraphs (a)

through (d) of this section, under the circumstances and procedures described in § 291.210(c);

(d) *Bulk sales,* the procedures for which are described in § 291.210(d); or

(e) *Other sales methods.* HUD may select any other methods of sale, as determined by the Secretary.

**§ 291.100 General policy.**

For all sales, except as otherwise specifically indicated, those sales conducted in accordance with §§ 291.90(a) and 291.200 or with subpart D of this part, the following general policies apply:

(a) *Qualified purchaser.* (1) Anyone, including a purchaser from a transferor of a property pursuant to §§ 291.90(a) and 291.200, regardless of race, color, religion, sex, national origin, familial status, age, or disability may offer to buy a HUD-owned property, except that:

(i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and

(ii) No nonoccupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased "subject to") of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property.

(2) Neither HUD nor any transferor pursuant to §§ 291.90(a) or 291.200 will offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property.

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

(i) The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to HUD to be offered the right of first refusal; or

(ii) State or local law requires that tenants be offered the right of first refusal.

(b) *List price.* The list price, or "asking price," assigned to the property is based upon an appraisal conducted by an independent real estate appraiser

using nationally recognized industry standards for the appraisal of residential property.

(c) *Insurance.* Properties may be sold under the following programs:

(1) *Insured.* A property that meets the Minimum Property Standards (MPS), as determined by the Secretary, for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1, which is available at the Department of Housing and Urban Development, HUD Customer Service Center, 451 7th Street, SW, Room B-100, Washington, DC 20410; by calling (202) 708-3151; or via the Internet at www.hud.gov) will be offered for sale in "as-is" condition with FHA mortgage insurance available. Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a.

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

(3) *Uninsured.* A property that fails to qualify under either paragraph (c)(1) or (c)(2) of this section will be offered for sale either in "as-is" condition without mortgage insurance available, or in "as-is" condition under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).

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

(2) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed 5 years. Mortgagors must meet FHA mortgage credit standards.

(3) *Purchase money mortgage (PMM).* For purposes of this section, the term "purchase money mortgage," or *PMM* means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

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

(f) [Reserved]

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

(h) *Listings.* Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

(1) *Open listings.* Except as provided in paragraph (h)(2) of this section, properties are sold on an open listing basis with participating real estate brokers.

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

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

### Subpart C—Sales Procedures

SOURCE: 64 FR 6481, Feb. 9, 1999, unless otherwise noted.

#### § 291.200 Future REO acquisition method.

(a) Under this method of property disposition, HUD will enter into a property acquisition agreement (or agreements) with a transferor (or transferors), which shall provide for the

right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. The transferor(s) will be selected through a competitive process, conducted in accordance with applicable laws. HUD will negotiate the specific terms of the property acquisition agreement(s) with the selected transferor(s). The properties will be available on an "as-is" basis only, without repairs or warranties.

(b) *Eligible entities.* An individual, partnership, corporation, or other legal entity will not be eligible to participate in this process if at the time of the sale, that individual or entity is debarred, suspended, or otherwise precluded from doing business with HUD under 24 CFR part 24.

**§ 291.205 Competitive sales of individual properties.**

When HUD conducts competitive sales of individual properties to individual buyers, it will sell the properties on an "as-is" basis, without repairs or warranties, and it will follow the sales procedures provided in this section.

(a) *General.* (1) Properties that are sold on an individual competitive bid basis are sold through local real estate brokers, except as provided in § 291.100(h).

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

(b) *Net offer.* (1) The net offer is calculated by subtracting from the bid price the dollar amounts for the financing and loan closing costs and the broker's sales commission, as described in paragraph (b)(2) of this section.

(2) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the total amount for broker's sales commission exceed 6 percent of the

purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties.

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

(d) *Bid period.* (1) HUD will establish a bid period for properties available for sale. Generally, the bid period will be 10 days, but may be lengthened or shortened by HUD. After properties are initially advertised, bids may be submitted by all potential purchasers. However, in the case of properties offered with insured mortgages, HUD may give priority to owner-occupant purchasers for a period of up to 30-days, as described in paragraph (a)(2) of this section.

(2) HUD may treat all bids received during a specified period of time during the bid period to have been received simultaneously. HUD may also choose to review bids on a daily basis, with all bids submitted during each day considered to have been received simultaneously. HUD may use either (or both) of these methods during the bid period, as described in the bid materials accompanying a particular sale.

(3) Offers received on a property before the bid period begins will be returned. Offers received after the bid period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the bid period (see paragraph (f) of this section).

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

(f) *Extended listing period.* Properties not sold during the bid period will remain available for an extended listing period. All bids received on each day of

the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled daily bid opening. Properties that fail to sell within 45 days after being offered for competitive bidding will be reanalyzed and made available for sale. If a property's price or terms are changed, it may be subject to another competitive bid period as described in paragraph (d) of this section.

(g) *Bid requirements.* (1) All successful bids submitted, whether during the bid period or the extended listing period, must be in a form prescribed by HUD, and must be submitted in accordance with procedures established by HUD. If the purchase is to be an insured sale, a local HUD office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid. All bids not indicating that the purchaser will occupy the property will be considered as offers from investor purchasers.

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

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

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

total or partial forfeiture for failure to close a sale.

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

(j) *Identical bids.* In the case of identical bids submitted by an owner-occupant purchaser and an investor purchaser, HUD will select the bid submitted by the owner-occupant purchaser. If identical bids are submitted by two or more owner-occupant purchasers, or by two or more investor purchasers, award will be determined by drawing lots.

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

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

(2) Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Information regarding losing bids will also be made available either through electronic posting or by contacting the local HUD office. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract, signed by both the submitting real estate broker and the prospective purchaser, and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(l) *Counteroffers.* If all bids received on a property are unacceptable, a local HUD office may notify all bidders or their brokers that HUD will accept an offer equalling a predetermined net acceptable price. Bidders must submit an

acceptable offer before the established bid cut-off period, to be determined by the local HUD office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the bid period, will be accepted, thus terminating the counteroffer negotiations.

**§ 291.210 Direct sales procedures.**

When HUD conducts the sales listed in § 291.90(c), it will sell the properties on an “as-is” basis, without repairs or warranties, and it will follow the applicable sales procedures provided in this section.

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

(2)(i) Purchasers under paragraph (a)(1) of this section must designate geographical areas of interest by ZIP code. Upon request, before those properties without insured mortgages are publicly listed, HUD will assure that governmental entities and nonprofit organizations are notified in writing when eligible properties become available in the areas designated by them. HUD will coordinate the dissemination of the information to ensure that if more than one purchaser designates a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. A property in this section will be sold to the first eligible purchaser submitting an acceptable contract. All bids received on the same business day will be considered to have been received simultaneously. In the case of identical bids submitted on the same business day, award will be determined by drawing lots.

(ii) Purchasers under paragraph (a)(1) of this section must notify HUD of preliminary interest in specific properties

within 5 days of the notification of available properties (if notification is by mail, the 5 days will begin to run 5 days after mailing). HUD will provide a consideration and inspection period for these purchasers. The consideration and inspection period will usually be for ten days from the date of notification of interest, but may be lengthened or shortened by HUD, as appropriate. Those properties in which purchasers express an interest will be held off the market for the duration of the consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser’s financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the consideration and inspection period, properties in which no governmental entity or nonprofit organization has expressed a specific intent to purchase will be offered for sale under the competitive bid process. Properties in which a governmental entity or nonprofit organization expressed an intent to purchase, during the consideration and inspection period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to 10 days, as determined by HUD, following expiration of the consideration and inspection period, and no other governmental entity or nonprofit organization has expressed an interest, then the property will be offered for sale under the competitive bid process.

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

(b) *Direct sales to displaced persons; razed lots; auctions.* HUD may seek to dispose of individual properties to individual buyers through methods such as direct sales to displaced persons, sales of razed lots, or auctions. These sales will be upon such terms and conditions as the Secretary may prescribe.

(c) *Direct sales to individuals or entities.* HUD may also seek to dispose of properties through direct sales to other individuals or entities that do not meet any of the categories specified in this section, if the Assistant Secretary for Housing-Federal Housing Commissioner (or his or her designee) finds in writing that such sales would further the goals of the National Housing Act (12 U.S.C. 1701 *et seq.*) and would be in the best interests of the Secretary. These sales will be upon such terms and conditions as the Secretary may prescribe.

(d) *Bulk sales.* HUD may seek to dispose of properties through bulk sales. Such sales will be upon such terms and conditions as the Secretary may prescribe.

#### Subpart D—Sale of HUD-Held Single Family Mortgage Loans

SOURCE: 62 FR 3769, Jan. 24, 1997, unless otherwise noted.

##### § 291.301 Definitions.

For purposes of this subpart, the following definitions apply:

*Bid package* means the documents prepared for bidders in a mortgage loan sale, and includes the following: An Executive Summary containing information on FHA single family mortgage loan sales and background on HUD programs; a description of post-sale servicing requirements; due diligence information and reports; mortgage loan information; a copy of the Loan Sale Agreement and its exhibits; bidding and closing information; and such other information and requirements as the Secretary may determine necessary.

*Payment plan agreement*, for purposes of § 291.307(c)(2), means an agreement between the purchaser and the mortgagor for payments after the 36-month period of statutorily authorized forbearance relief has expired.

*Single family mortgage loan* means a mortgage loan on a single family property assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996) (12 U.S.C. 1715u), a mortgage loan on a single family property insured by HUD under section 221 of

the National Housing Act (12 U.S.C. 1715l), a mortgage loan on a single family property issued in connection with the settlement of the *Ferrell* litigation, a purchase money mortgage loan issued by HUD on a single family property sold from HUD's inventory that was not connected with the settlement of the *Ferrell* litigation, or any other single family mortgage loan owned by HUD and representing an asset to HUD's Title II mortgage insurance funds.

*Single family property* means a residence with one to four dwelling units.

##### § 291.302 Purpose and general policy.

This subpart sets forth HUD's policy and procedures for the sale of HUD-held single family mortgage loans. In general, HUD will sell both performing and nonperforming HUD-held single family mortgage loans. HUD will sell all mortgage loans without recourse and without FHA insurance. HUD will package pools of single family mortgage loans for sale to the general public on a competitive basis; however, HUD may sell mortgage loans to government-sponsored enterprises (GSEs) on a negotiated basis. Nothing in this subpart shall be construed to prevent HUD from packaging single family mortgage loans with other types of HUD assets for sale. The Secretary retains full discretion to offer any qualifying pool of mortgage loans for sale and to withhold or withdraw any offered pool of mortgage loans from sale. However, when HUD offers a qualifying mortgage loan for sale, the procedures set out in this subpart and in the bid package will govern the sale of HUD-held single family mortgage loans.

##### § 291.303 Eligible bidders.

HUD will provide information on the eligibility of bidders in the bid package, a notice in the FEDERAL REGISTER, or other means, at the Secretary's full discretion. However, an individual, partnership, corporation, or other legal entity will not be eligible to bid for any loan pool, either as an individual or a participant, if at the time of the sale, that individual or entity is debarred or suspended from doing business with HUD under 24 CFR part 24.

**§ 291.304 Bidding process.**

(a) *Submission of bids.* All bids must be submitted to HUD in accordance with instructions in the bid package for a particular sale.

(b) *Effect of bid.* By submitting a bid, the bidder is making an offer to purchase single family mortgage loans as presented in the bid package. Submission of a bid constitutes acceptance of the terms and conditions set forth in the bid package. Along with the bid, the bidder must submit an executed copy of the Loan Sale Agreement, which is included in the bid package.

(c) *Earnest money deposits.* The bidder must submit to HUD, along with its bid, an earnest money deposit in an amount to be determined by HUD. The earnest money deposit is nonrefundable to the winning bidder and will be credited toward the purchase price.

(d) *Termination of offering.* HUD reserves the right to terminate an offering in whole or in part at any time before the bid date.

(e) *Withdrawal of loans.* HUD reserves the right, in its sole discretion and for any reason whatsoever, to withdraw loan assets from a pool prior to the bid date. Any earnest money deposits relating to withdrawn loan assets will be retained by HUD and credited toward the total purchase price of the remaining loan assets in the pool, in accordance with the Loan Sale Agreement. After the bid date, HUD can withdraw mortgage loans in accordance with the Loan Sale Agreement.

(f) *Rejection of bids.* (1) HUD may, in its sole discretion, reject any bid under the following circumstances:

(i) If the bid does not conform with the instructions in the bid package; or

(ii) If, in HUD's sole discretion, it determines that such action would be in the best interests of the U.S. Government.

(2) HUD can also issue a conditional rejection that will become an acceptance upon fulfillment of HUD's requests.

(g) *Withdrawal of bids.* A bidder may withdraw a previously submitted bid in accordance with the instructions in the bid package for a particular sale.

(h) *Bids by brokers or agents.* Any bid by a broker or agent for a principal must be in the name of the principal

and signed by the broker/agent as the attorney-in-fact for the principal. All such bid documents must be executed so as to bind the principal by the broker/agent as the attorney-in-fact. A power of attorney satisfactory to HUD as to form and content must be submitted with each bid.

**§ 291.305 Selection of bids and execution of Loan Sale Agreement.**

HUD will evaluate bids, select successful bids, and notify the successful bidder in a manner set forth in the bid package. HUD will complete the execution of the Loan Sale Agreement when it accepts the successful bid.

**§ 291.306 Closing requirements.**

(a) *Closing date payment.* On the closing date, the purchaser must pay to HUD the closing date payment, consisting of the balance of the amount due on the bid price, as adjusted in accordance with the Loan Sale Agreement.

(b) *Closing documents.* HUD will execute and deliver to the purchaser a bill of sale transferring title to the mortgage loans sold in the sale. The purchaser must deliver to HUD the documents required at closing, in addition to the closing date payment.

**§ 291.307 Servicing requirements.**

(a) *Use of HUD-approved servicing mortgagees.* All mortgage loans must be serviced by HUD-approved servicing mortgagees for the remaining life of the mortgage loans. A purchaser that is not a HUD-approved servicing mortgagee must retain a HUD-approved servicing mortgagee to service the mortgage loans.

(b) *Continuation of mortgagor rights.* The purchaser may take all lawful steps to collect the amounts due under the mortgage loans. These steps may include foreclosure, but only after the servicer has provided all required forms of relief for the mortgagor in accordance with paragraph (c) of this section. The purchaser and its servicer, and any subsequent transferee of or servicer for the mortgage loan, will be fully bound by the terms of the Loan Sale Agreement, including those terms that provide the mortgagor with any

rights regarding forbearance, assistance, or reinstatement of the mortgage loan.

(c) *Purchaser's protection of mortgagor's rights*—(1) *Assigned mortgage loans during forbearance period.* This paragraph (c)(1) explains how a purchaser (or a servicer of a purchased mortgage loan) must service a mortgage loan that was assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996), for which not more than 36 months has expired since the mortgage loan assignment was accepted by the Secretary. Such a purchaser must service these mortgage loans in essentially the same manner as HUD was required to service the loans while HUD held them. Specific servicing requirements will be set forth in the Loan Sale Agreement for each sale.

(2) *Assigned mortgage loans after the initial 36-month forbearance period.* This paragraph (c)(2) explains how a purchaser (or a servicer of a purchased mortgage loan) must service a mortgage loan that was assigned to HUD under section 230(b) of the National Housing Act (as that subsection existed prior to January 26, 1996), for which more than 36 months has expired since the mortgage loan assignment was accepted by the Secretary.

(i) Such purchaser may require the mortgagor to pay at least the full monthly payment due under the mortgage loan. A purchaser may also require a mortgagor to pay increased monthly mortgage loan payments under a renewed payment plan agreement to reduce the amount in arrears if the mortgagor's available income (as calculated according to the Loan Sale Agreement) can support the increased payments. A purchaser must renew payment plan agreements at least through and including the expiration of the original term of the mortgage loan, so long as the mortgagor complies with the prior payment plan agreement.

(ii) If the mortgagor defaults under a payment plan agreement established by the purchaser, the mortgagor shall have the right to reinstate the most recent payment plan agreement if the mortgagor makes a lump sum payment

in an amount necessary to cure the default. If the mortgagor defaults under the most recent payment plan agreement and does not reinstate, the purchaser may terminate the payment plan agreement and take such action as may be permitted under the terms of the mortgage.

(iii) The purchaser's right to demand payment of a reinstatement amount from the mortgagor may be limited by the terms of the Loan Sale Agreement.

(3) *Section 221 Mortgages.* This paragraph (c)(3) explains how a purchaser (or a servicer of a purchased mortgage) must service a mortgage assigned to HUD under section 221(g)(4) of the National Housing Act.

(i) *Current section 221(g)(4) mortgage loans.* Section 221(g)(4) mortgage loans that are current as of the closing date are not subject to the servicing requirements set forth in paragraphs (c)(1) and (c)(2) of this section.

(ii) *Defaulted section 221(g)(4) mortgage loans.* With respect to any section 221(g)(4) mortgage loan as to which a payment default has occurred, and as to which HUD, as of the closing date, was providing or had agreed to provide forbearance relief, the purchaser must continue to provide forbearance relief and must service such mortgage loans as set forth in paragraphs (c)(1) and (c)(2) of this section.

(d) *Section 235 mortgage loans*—(1) *Assistance payments contract.* If, prior to the mortgage loan sale, the assistance payments contract has not been previously terminated under 24 CFR 235.375(a), the contract will terminate as to each mortgage loan upon the sale of the mortgage loan. The purchasing mortgagee will therefore not receive any assistance payments on behalf of the mortgagor for any Section 235 mortgage loan sold.

(2) *Reduction in interest rates.* For a Section 235 mortgage loan that was accompanied by an assistance payments contract that was still in effect on the date of the sale, the Secretary will reduce the interest rate on the mortgage loan to a rate to be determined by the Secretary.

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

#### § 291.400 Purpose and scope.

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

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

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

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

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

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

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

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

[61 FR 55714, Oct 28, 1996]

#### § 291.405 Definitions.

For purposes of this subpart E:

*Applicant* means a State, metropolitan city, urban county, governmental

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

*Homeless* means:

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

(i) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(ii) Have a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing, but excluding prisons or other detention facilities); or

(iii) Are at imminent risk of homelessness because they face immediate eviction and have been unable to identify a subsequent residence, which would result in emergency shelter placement (except that persons facing eviction on the basis of criminal conduct such as drug trafficking and violations of handgun prohibitions shall not be considered homeless for purposes of this definition); or

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

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

[64 FR 6482, Feb. 9, 1999]

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

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

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

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

(3) A property will not be leased to a lessee for a period longer than five years. At the end of the five-year period, if the lessee has not exercised the option to purchase, HUD will notify the lessee to vacate the property and, if necessary, will take appropriate action under the eviction laws of the jurisdiction in which the property is located. All property returned to HUD must be vacant, and will be placed on the market for sale to the general public.

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

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

(2) A lessee may charge rent, including utilities, to an occupant at a rate appropriate to the financial means of the occupant. Unless HUD approves after consideration of such factors as

the cost of operating housing in the area and the amount of the lessee's contributions to the program, such rent may not exceed the highest of:

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

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

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

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

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

(e) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the lower of the fair market value established at the time of the initiation of the lease or at the time of the sale, less a discount determined appropriate by the Secretary but not less than 10 percent, provided lessees agree to use the properties either to house low-income tenants for a period of not less than 10 years or to resell the properties to low-income buyers. If the lessee does not agree to such conditions, the lessee must purchase the properties at the higher of the fair market value at the time of the initiation of the lease or at the time of the sale, less 10 percent.

Any repairs to or rehabilitation of a property done by a lessee during the lease term will not be reflected in the purchase price.

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

[61 FR 55715, Oct. 28, 1996]

**§ 291.430 Elimination of lead-based paint hazards.**

(a) *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraphs (c) and (d) of this section) apply to the lease or sale of property constructed prior to 1978 under this subpart. This section establishes procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to properties that may be occupied by children under seven years of age. This section is promulgated under 24 CFR 35.25(b)(4) and supersedes, with respect to this program, the requirements prescribed in subpart C of 24 CFR part 35.

(b) *Definitions.* The following definitions apply to this section:

*Applicable surfaces* means all intact and non-intact painted interior and exterior surfaces of a residential structure.

*Defective paint surfaces* means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

*Lead-based paint* means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm<sup>2</sup>.

(c) *Inspection and treatment of defective paint surfaces.* HUD will inspect the property for defective paint surfaces before offering the property for sale or lease. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed by HUD before the sale or lease of the property.

(d) *Testing and treatment of applicable surfaces.* (1) If the lessee or purchaser knows or has reason to expect that the property will be occupied by homeless families with children under the age of seven years, the lessee or purchaser

must cause the unit to be tested for lead-based paint on all applicable surfaces before initial occupancy. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm<sup>2</sup> or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint is identified, the lessee or purchaser must cause all applicable surfaces to be treated. Treatment must consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). If the lessee or purchaser certifies to HUD that the property will not be occupied by homeless families with children under the age of seven years, no testing or treatment will be required.

(2) If a lessee or purchaser has reason to believe that a property contains lead-based paint on applicable surfaces, it may, at its option, dispense with the testing procedure and proceed directly to treatment.

(3) The lessee or purchaser may not allow the property to be occupied by children under seven years of age until proof of testing or treatment, if necessary, has been submitted to and reviewed by HUD.

(e) Where testing of leased property reveals the presence of lead-based paint requiring treatment and the lessee concludes that the cost of treatment would be beyond its means, the lessee may cancel the lease.

**§ 291.435 Applicability of other Federal requirements.**

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

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

(i) As applicable, lessees and purchasers must also comply with the Americans With Disabilities Act (42

U.S.C. 12131) and implementing regulations in 28 CFR parts 35 and 36.

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

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

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

(4) The lessee or purchaser must adopt procedures to make available information on the existence and locations of facilities and services that are

accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(b) *Conflicts of interest.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the lessee or purchaser of property under this subpart, or who is in a position to participate in a decisionmaking process or gain inside information with regard to the lease or purchase of the property, may obtain a personal or financial interest or benefit from the lease or purchase of the property, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

[61 FR 55715, Oct. 28, 1996]

**§ 291.440 Recordkeeping requirements.**

Each lessee must establish and maintain sufficient records to enable the Secretary to determine whether the requirements of this subpart have been met. This includes, where available, racial, ethnic, gender, and disability status data on the applicants for, and beneficiaries of, this homeless initiative.

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

[61 FR 55716, Oct. 28, 1996]