

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 290**

[Docket No. FR-4310-F-02]

RIN 2502-AH12

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

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

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to establish generally applicable requirements to govern the use of up-front grants and loans in the disposition of HUD-owned multifamily properties by defining the projects, sales, and purchasers eligible for up-front grants and loans, and setting both a maximum per-unit and overall cap for up-front grant amounts.

**DATES:** Effective Date: January 26, 2000.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:****I. Statutory Background and Legislative Changes Since the Proposed Rule**

As discussed in the preamble of the proposed rule, HUD's statutory authority to manage and dispose of HUD-held multifamily housing projects is contained in section 207(k) and (l) of the National Housing Act, in section 203 of the Housing and Community Development Amendments of 1978 (HCDA 1978) and in section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, (approved September 26, 1996, Pub. L. 104-204), (FY 1997 Appropriations Act). The Department's authority and discretion in matters relating to the disposition of multifamily housing projects was expanded by section 204 to permit HUD to manage and dispose of multifamily properties owned by the Secretary, "on such terms and conditions as the Secretary may determine". Section 213 of the Departments of Veterans Affairs and Housing and Urban Development,

and Independent Agencies Appropriations Act, 1998 (approved October 27, 1997, Pub. L. 105-65) (FY 1998 Appropriations Act) added to the flexible authority under section 204 that the General Insurance Fund (GIF) could be used to provide grants and loans for the necessary costs of rehabilitation or demolition, but limited this use of the GIF to FYs 1997 and 1998. Section 206 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, (approved October 21, 1998, Pub. L. 105-276), (FY 1999 Appropriations Act) and section 537 of the Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000, (approved October 20, 1999, Pub. L. 106-74), (FY 2000 Appropriations Act) extend this authority for FY 1999 and FY 2000, respectively.

Section 537 of the FY 2000 Appropriations Act also adds "construction on the properties (which shall be eligible whether vacant or occupied)" as an eligible activity for a grant or loan provided from the General Insurance Fund. Before this amendment, Section 8 project-based assistance was the only permissible source of up-front grant funding for total rebuilding. As explained in the preamble of the proposed rule, the availability of up-front grants for any eligible activity is dependent upon the funding made available. If Section 8 project-based assistance is not available, or if the authorization to use the General Insurance Fund is not extended beyond FY 2000, up-front grants and loans will not be available as an option in the disposition of multifamily projects.

**II. Public Comment on the Proposed Rule**

On July 15, 1999 at 64 FR 38284, HUD published a proposed rule to establish generally applicable requirements to govern the use of up-front grants and loans in the disposition of HUD-owned multifamily properties. Four public comments were received on the proposed rule. The comments are summarized below, organized according to the sections of the proposed rule and, as appropriate, to subject areas within individual sections.

**Section 290.27(a)**

*Comment:* The preservation of low-income housing should be given as much consideration as cost effectiveness.

*HUD response:* The goals of cost-effectiveness and preservation of low-income housing are not in conflict, but

are complimentary to each other. HUD has a finite amount of resources at its disposal, and the goal of providing low-income housing is best served by using those resources in the most efficient manner. Sales with project-based Section 8 and/or up-front grants are not the only way to preserve affordable housing. Even though a project may not be eligible for an up-front grant, its potential cash flow may be sufficient to allow HUD to sell it with requirements that it be repaired and maintained as affordable housing, without project-based Section 8 or an up-front grant.

*Comment:* It is not clear if the up-front grant is made available in lieu of project-based rental assistance. The rule should be clarified. If that is the intent of the rule, there should be an exception where the revitalization of the project is sufficiently crucial to the future of the surrounding community to warrant an investment of both up-front grants and project-based assistance.

*HUD response:* Up-front grants are not made in lieu of project-based rental assistance. Both an up-front grant and project-based assistance may be provided in combination. The rule is clarified to make this point explicit. Up-front grants can also be provided in sales where the project is sold with repair and affordability provisions and tenant based assistance, such as Rental Housing Vouchers, for eligible tenants. The Department prefers the latter option as it provides the residents with choice, which they do not have if project-based Section 8 assistance is used, and assures that the project is repaired and maintained as affordable housing.

**Section 290.27(b)**

*Comment:* Project eligibility criteria should allow HUD to provide up-front grants to projects HUD finds to be essential to the revitalization of its community, even where all of the criteria are not strictly met.

*HUD response:* HUD agrees that this would be an appropriate factor to consider in determining the eligibility of a project for an up-front grant. Section 290.27(b)(1) is revised to provide that a HUD finding that a project is essential, as affordable housing, to the revitalization of its community as an alternative to the requirement that 50% of the units in the project must be occupied by very low-income residents at the time a disposition plan is approved.

*Comment:* Flexibility should be provided in the manner in which the percentage of very low-income tenants is determined. For example, if information is available on only 70% of

tenants, the 50% requirement should apply only as to them.

*HUD response:* HUD disagrees with this comment. When HUD owns a project, HUD will have information on all of the tenants. However, this final rule provides additional flexibility by adopting the procedure, discussed immediately above, of finding a project to be essential to the revitalization of its community as an alternative to the 50% low-income tenant requirement.

*Comment:* The vacancy rate should be 6% rather than 4% because markets can change dramatically over just a few years. Further, the vacancy rate for "tight housing markets" under the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) is 6%, and the same rate should apply in this rule. In addition, the standard is too vague to permit implementation because the relevant market is undefined, and data sources permitting evaluation of "habitable, affordable housing" are not readily available. Overall rental vacancy rates under Census data are generally not useful since they are an inaccurate indicator of housing submarkets where properties are located. The grant is limited to situations where local governments have already determined the need, by virtue of the locality to match HUD's up-front grant.

*HUD response:* HUD disagrees. The vacancy rate used in this rule is taken from the definition of *sufficient habitable, affordable, rental housing* currently at 24 CFR 290.3, which deals specifically with the disposition of multifamily housing properties and which was subject to public review and comment before being adopted.

#### Section 290.27(c)

*Comment:* Up-front grants should also be available in a negotiated sale to an existing tenant group with a viable ownership plan or to tenant-endorsed, non-profit purchasers committed to long-term affordability. To avoid more complicated transactions involving more parties and greater transaction costs, HUD should retain flexibility to offer a nonprofit purchaser an up-front grant or loan in connection with a non-competitive purchase. The proposed rule erodes the preference in sec. 203(c)(2)(D) and § 290.13 for the non-competitive sale of HUD-owned properties to nonprofit organizations. Also, resident council purchasers or nonprofit corporations that have received the endorsement of more than 51% of the occupied households in the project should be eligible to receive up-front grants in negotiated sales without the requirement of a competitive selection process.

*HUD response:* To the extent possible, the Department seeks to obtain the best purchasers for projects which HUD decides need an up-front grant. In the past, most up-front grants were awarded on a negotiated basis; however, this did not, in all cases, result in the strongest purchasers being obtained. Based on this experience, HUD has determined that the best way to sell these projects with up-front grants is to let potential parties know of the availability of projects, and allow them to compete for their purchase. Tenant-endorsed and non-profit purchasers committed to long-term affordability should be able to prove their track history and provide management and development plans which will rank highly in such competitions.

HUD wants to find the best possible purchaser while at the same time considering the interests of tenants and non-profit parties. The issue of non-competitive sales has always been a difficult one, especially when more than one party is interested in purchasing a property. The Department seeks to establish a process under which it would be evident to everyone that a purchaser was, in fact, the best purchaser, but such a result would not be likely unless HUD seeks proposals from more than a single purchaser. If the Department does not invite competition of some sort, it will never know if a better owner could have been attracted. HUD is willing to spend the time and the effort necessary for competitions to obtain the best purchasers.

The Department is also seeking viable alternatives to shorten the selection process by considering a sales process which would pre-qualify potential non-profit purchasers. Such pre-qualified purchasers might be able to partner up with tenant groups, and limited equity partners, to take ownership of projects.

#### Section 290.27(d)

*Comment:* The rule should contain an exception to the limit on the amount of the up-front grant in cases where the property anchors a struggling neighborhood that would suffer if the project were not maintained as affordable housing.

*HUD response:* The Department is concerned that exceptions would soon become the rule and, therefore, intends to hold fast to the spending limits established in the rule.

### III. Changes in the Final Rule

Consistent with the discussion in sections I. and II. of this preamble, above, and as discussed in this section, below, this final rule makes the

following changes to the July 15, 1999 proposed rule:

To clarify the applicability of the flexible authority conferred under section 204 of the FY 1997 Appropriations Act, § 290.1 is revised to state that HUD may follow any other method of disposition, as determined by the Secretary, and the U.S. Code citation (12 U.S.C. 1715z-11a) is added to the authority line for part 290.

Section 290.27(a) is revised to clarify that both an up-front grant and project-based assistance may be provided in combination, as long as the result would be more cost-efficient than the use of the maximum permissible project-based assistance alone.

Section 290.27(b)(1) is revised to include a HUD finding that a project is essential, as affordable housing, to the revitalization of its community as an alternative to the requirement that 50% of the units in the project must be occupied by very low-income residents at the time a disposition plan is approved.

Section 290.27(c)(1) is revised to clarify that in a negotiated sale with an up-front grant or loan to a governmental entity, the governmental entity must take title to the project.

Section 290.27(d) is revised to clarify that demolition and environmental hazard remediation are included in the eligible total development costs.

### IV. Findings and Certifications

#### Paperwork Reduction Act Statement

The information collection requirements under 24 CFR part 290 for the disposition of multifamily housing projects have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0204. This rule does not contain additional information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

#### Environmental Impact

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for

public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

#### *Regulatory Planning and Review*

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These requirements address only one aspect (up-front grants) of the requirements governing the management and disposition of HUD-owned multifamily housing projects, and should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell. In the proposed rule, HUD specifically solicited comment to elicit issues of importance to small entities. No comments were received on this issue.

#### *Executive Order 13132, Federalism*

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

#### *Catalog of Federal Domestic Assistance*

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

#### **List of Subjects in 24 CFR Part 290**

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

Accordingly, for the reasons stated in the preamble, part 290 of title 24 of the

Code of Federal Regulations is amended as follows:

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

1. The part heading for 290 is revised as set forth above.

2. The authority citation for 24 CFR part 290 is revised 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) and 3535(i).

3. Section 290.1 is revised to read as follows:

##### **§ 290.1 Applicability.**

The requirements of this part supplement the requirements of 12 U.S.C. 1701z-11 for the management and disposition of multifamily housing projects and the sale of HUD-held multifamily mortgages. The goals and objectives of this part are the same as the goals and objectives of 12 U.S.C. 1701z-11, which shall be referred to in this part as "the Statute." With respect to the disposition of multifamily projects under subpart A, HUD may follow any other method of disposition, as determined by the Secretary.

4. A new section 290.27 is added to subpart A to read as follows:

##### **§ 290.27 Up-front grants and loans.**

(a) *General.* HUD may provide up-front grants and loans for rehabilitation, demolition, rebuilding and other related development costs as part of the disposition of a multifamily housing project that is HUD-owned, upon making a determination that such a grant or loan, plus any additional 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 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.

Dated: December 17, 1999.

**William Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 99-33360 Filed 12-23-99; 8:45 am]

**BILLING CODE 4210-29-P**