

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR-4277-F-03]

RIN 2502-AH37

Disposition of HUD-Acquired Single Family Property; Officer Next Door Sales Program

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

ACTION: Final rule.

SUMMARY: This final rule on the Officer Next Door Sales program (OND Sales program) follows publication of an interim rule published on July 2, 1999. The interim rule, which solicited public comment, became effective August 2, 1999. The OND Sales program makes HUD-acquired single family homes available, with certain restrictions, to law enforcement officers for purchase at a discount from list prices. This final rule addresses the comments received on the interim rule and expands eligibility for the OND Sales program to include campus police officers employed by private colleges and universities. HUD believes the inclusion of these law enforcement officers will further the goal of the OND Sales program to promote safe neighborhoods. **DATES:** *Effective Date:* November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Single Family Asset Management Division, Office of Insured Single Family Housing, Room 9286, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000; telephone (202) 708-1672 (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. The July 2, 1999 Interim Rule

On July 2, 1999 (64 FR 36210), HUD published for public comment interim regulations on the Officer Next Door Sales program (OND Sales program). HUD developed this program to further its goal of promoting safe neighborhoods. Beginning in 1997, until publication of the July 2, 1999 interim rule, the OND Sales program had been operating as a temporary program under HUD's authority to make single family properties available under 24 CFR part 291 (entitled "Disposition of HUD-Acquired Single Family Property"). The

July 2, 1999 interim rule announced HUD's intent to establish the OND Sales program as a permanent part of HUD's single family property disposition program and issued for effect regulations covering the terms and conditions of the program. The interim rule became effective August 2, 1999.

Under the OND Sales program, law enforcement officers may purchase HUD-acquired single family homes, with certain restrictions, at a discount (currently 50%) from list prices. The home must be located in a HUD-designated revitalization zone, and the law enforcement officer must agree to own and live in the home as his or her sole residence for a set period of time (currently 3 years). The law enforcement officer must also agree to execute a second mortgage and note on the home. The amount of the second mortgage is the difference between the list price of the home and the discounted selling price, and this amount is reduced, according to a schedule established by HUD, periodically over the period of time in which the law enforcement officer is required to own and live in the home. At the end of this period of time, the amount of the second mortgage is zero. So long as he or she fulfills the obligations under the program, the law enforcement officer is not required to make any monthly payments, nor does any interest accrue on the second mortgage.

Governmental entities and private nonprofit organizations may also purchase homes through the OND Sales program, if they intend to resell these homes directly to law enforcement officers under the terms and conditions of the OND Sales program. A complete description of the OND Sales program is presented in the preamble to the July 2, 1999 interim rule.

II. This Final Rule

This final rule adopts the July 2, 1999 interim regulations, and takes into consideration the public comments received on the interim rule. The public comment period for the interim rule closed on August 31, 1999. HUD received 2 comments, both from nonprofit public interest housing and community development organizations. HUD appreciates the suggestions offered by the commenters and carefully considered these suggestions. For the reasons discussed in section III of this preamble, however, HUD has chosen not to implement their suggestions.

This final rule makes one change to the July 2, 1999 interim rule. Specifically, the final rule expands eligibility for the OND Sales program to include campus police officers

employed by private colleges and universities. The July 2, 1999 interim rule defines "law enforcement officers" as persons who are: (1) employed full-time by a Federal, State, county, or municipal government; and (2) sworn to uphold, and make arrests for violations of, Federal, State, county, or municipal law. (See § 291.530 of the July 2, 1999 interim rule.) Under this definition, police officers employed by State or local colleges and universities are eligible to participate in the OND Sales program. Private campus police officers, however, are excluded under the eligibility requirements established by the interim rule.

Upon reconsideration, HUD believes that this limitation on eligibility, based solely on the governmental status of the police officer's employer, is too restrictive. Private campus police officers have the same qualifications and responsibilities as police officers who are employed by public colleges or universities. They are police academy graduates, and are sworn to uphold, and make arrests for violations of, Federal, State, county, or municipal law. The presence of these police officers would be as beneficial to communities as that of their public sector counterparts. However, because these police officers are employed by private entities and not government institutions, they would be denied participation in OND Sales program under the July 2, 1999 interim rule. HUD has, therefore, revised the July 2, 1999 interim rule to allow private campus police officers to participate in the program.

III. Discussion of the Public Comments Received on the July 2, 1999 Interim Rule

This section of the preamble presents a summary of the issues raised by the public commenters and HUD's responses to their comments. For the reasons discussed below, HUD has decided not to revise the interim rule in response to public comment.

Comment—Current disposition procedure negatively impacts community development efforts and may harm the Federal Housing Administration (FHA) insurance funds. Currently, under the OND Sales program, HUD offers both law enforcement officers and nonprofit organizations the opportunity to purchase eligible HUD properties at a discount. The current disposition procedure for these properties is as follows:

(1) Eligible properties are listed on a special nonprofit/OND Sales program list.

(2) Nonprofits and law enforcement officers have 5 days to indicate an interest in a property.

(3) A winner is selected from among those indicating an interest through a random computerized lottery.

(4) The winner has the right to either purchase or not purchase the property. If the winner chooses not to purchase the property, the property is then relisted on a public list.

The commenters wrote that this procedure is unfair to serious bidders and counterproductive for communities requiring significant revitalization because it encourages casual bidding. According to the commenters, casual bidding is encouraged because bid winners are chosen through a random computerized lottery, so law enforcement officers feel the need to play the odds and bid on multiple properties. Additionally, the system does not require a deposit so law enforcement officers need not be selective about which properties they submit bids on.

The commenters wrote that, in some communities, law enforcement officers have been expressing interest in properties, winning the right to purchase those properties, but then failing to purchase them. When this happens, nonprofit organizations lose the opportunity to purchase these properties from the private list because the properties are automatically relisted on the public list. While nonprofit organizations can bid off the public list, the competition is much greater.

The commenters also wrote that, while it may seem that the FHA insurance funds are better protected because properties sold off the public list are sold at a higher price, in many cases this benefit is only short-term. According to the commenters, properties sold from the public list are often purchased by private investors whose primary interest in the property is as an investment. The commenters wrote that these investors may only patch, paint, and either try to quickly resell the properties to unsophisticated purchasers or rent them. The commenters wrote that, as a consequence, these properties often show up on the HUD inventory list again and again. The commenters wrote that nonprofit organizations, on the other hand, are mission oriented and more apt to invest significant funds to substantially renovate these homes in the manner they truly need to stabilize and revitalize the community.

The commenters suggested two possible solutions to these perceived problems. First, the commenters suggested that the computer lottery

should simply rank all nonprofit and law enforcement officers in order in which they are selected. The first person selected would be given the option to purchase the property. If this person declines, then the second person on the list would be given the option and so on. This system would not delay the process and could be completed within a reasonable time (such as 14-days) if strict deadlines are enforced.

The commenters also recommended that HUD structure the OND Sales program so that it promotes only serious participants. For example, the program could allow law enforcement officers to participate in only one lottery at a time. Alternatively, limits should be placed on the number of times a law enforcement officer may express interest in a property and then choose not to purchase that property.

HUD Response. HUD appreciates the recommendations submitted by the commenters. The comments, however, relate almost exclusively to the lottery procedure currently used by HUD to determine winning bids under the OND Sales program. The July 2, 1999 interim rule did not establish specific disposition procedures for the program. Rather, the interim rule focused on the eligibility requirements for participation in the OND Sales program, and the requirements applicable to eligible law enforcement officers who are selected to purchase a home through the program.

HUD's single family property disposition regulations at 24 CFR part 291 provide HUD with the necessary flexibility to use a variety of innovative, efficient, and cost-effective methods for making properties available for sale (see § 291.90). In developing the OND Sales program, HUD wished to retain this flexibility, and elected not to establish a specific sales method for the program. HUD currently uses a lottery system to make properties available to law enforcement officers under the OND Sales program. However, HUD may, in its discretion, either on a case-by-case basis or as a regular course of business, elect to use another disposition method for the program (for example, a competitive bid process).

The suggestions made by the commenters relate to a matter not covered by the OND Sales program regulations, and are, therefore, outside the scope of this rulemaking. Accordingly, HUD has not adopted the changes recommended by the commenters in this final rule. Again, HUD prefers not to establish precise property disposition procedures for the OND Sales program. HUD, however, will consider these comments in the development of any future revisions to

the lottery system, or in the adoption of an alternative disposition method for OND Sales program.

IV. For More Information About the OND Sales Program

Law enforcement officers, governmental entities, private nonprofit organizations, and other interested persons can receive more information about the OND Sales program by calling (800) 217-6970 or by visiting HUD's Web site at <http://www.hud.gov>.

V. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

As discussed above, this final rule makes a single change to the July 2, 1999 interim rule. Specifically, the final rule amends the July 2, 1999 interim rule to permit private campus police officers to participate in the OND Sales program. HUD finds that good cause exists to publish this amendment for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The reasons for HUD's determination are as follows.

As noted above, campus police officers employed by State and local colleges or universities are currently eligible to participate in the OND Sales program. Private campus police officers, however, are ineligible under the July 2, 1999 interim rule. Upon reconsideration, HUD believes that this limitation on eligibility, based solely on the governmental status of the police officer's employer, is too restrictive. Police officers employed by private colleges and universities have the same qualifications and responsibilities as their public sector counterparts.

Delaying the effectiveness of this amendment to solicit prior public comment would only prolong the denial of eligibility to private campus police officers, simply because they are employed by private institutions. In addition, a delay in the effectiveness of this amendment would deny to residents the benefits of having these police officers reside in their communities. By expanding eligibility, HUD anticipates that the number of properties on which bids are placed by law enforcement officers will increase,

therefore furthering the goal of the OND Sales program to promote safe neighborhoods.

VI. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose any Federal mandates on any State, local, or, tribal governments, or on the private sector, within the meaning of the UMRA.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the interim rule stage, in accordance with the HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That FONSI remains applicable to this final rule and is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C.

605(b)), has reviewed and approved this final rule and in so doing certifies that it would not have a significant economic impact on a substantial number of small entities.

This final rule promotes safe neighborhoods by enabling law enforcement officers to purchase HUD-acquired single family homes at a significant discount. The final rule places restrictions on the use of a home purchased through the Officer Next Door Sales program that affects the individual purchasing the home. The final rule, however, does not place restrictions on any small entities involved in any transactions related to the Officer Next Door Sales program.

Federalism Impact

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 final 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 the Executive Order.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning,

Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

For the reasons discussed in the preamble, HUD adopts the amendments made in the interim rule amending 24 CFR part 291, which was published at 64 FR 36210 on July 2, 1999, with the following change:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

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

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

2. Revise § 291.530(a) to read as follows:

§ 291.530 Who qualifies as a law enforcement officer?

* * * * *

(a) Employed full-time by:

(1) A Federal, state, county or municipal government; or

(2) A public or private college or university; and

* * * * *

Dated: October 2, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

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