

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of Assistant Secretary for
Housing—Federal Housing
Commissioner**

24 CFR Parts 290 and 886

[Docket No. R-95-1753; FR-3715-I-01]

RIN 2502-AG30

**Disposition of Multifamily Projects and
HUD-Held Multifamily Mortgages**

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

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's multifamily property disposition regulations to incorporate statutory amendments affecting the management and disposition of HUD-owned properties and properties with delinquent HUD-held mortgages, and the sale of HUD-held multifamily mortgages.

DATES: Effective date: March 2, 1995.
Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, Room 6164, 451 7th Street SW, Washington, DC 20410. Telephone (202) 708-3555; TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this interim rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control number 2502-0204 (expiration date: 9/30/96).

I. Introduction

On August 17, 1993 (58 FR 43708), the Department published a final rule amending its requirements for the

management and disposition of HUD-owned multifamily housing projects. The regulation, at 24 CFR part 290, implemented HUD's statutory authority, contained in section 207(k) and (l) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to handle and dispose of such real property.

Section 203 was amended by section 181 of the Housing and Community Development Act of 1987 (1987 Act), section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (1988 Act), and section 579 of the National Affordable Housing Act of 1990 (NAHA). The final rule published on August 17, 1993 implemented the NAHA amendments.

Generally, the statutory amendments specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and very low-income housing, and included certain projects with HUD-held mortgages within the scope of section 203. The Department has been carrying out its multifamily property disposition program and its servicing of delinquent HUD-held multifamily mortgages on a project-by-project basis in conformity with the requirements of section 203, as amended.

In the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102-233, approved April 11, 1994), section 203 was completely revised. This interim rule, in turn, completely revises 24 CFR part 290 to reflect the new statutory amendments.

Before turning to a discussion of specific details of the implementation of the revised section 203 in this interim rule, a general comment on the overall format of this interim rule is in order. HUD is attempting to implement this complex legislation in a manner that is more accessible and "user friendly" than the typical government regulation, with the goal of providing clear guidance within a legally binding context. The structure of the statute has been reorganized in the regulation to correspond more with the flow of the disposition process as it actually happens, from general, guiding principles, through notification requirements, plan development, and the various actions the Department will take to facilitate the disposition process. The section headings in this interim rule are posed in the form of questions, to invite a broader spectrum of users for the interim rule and to permit all of its users to scan it and identify more

quickly their areas of concern. Certain portions of the interim rule, which present an extended series of requirements or alternatives, have been summarized with the use of tables that appear within the permanent text of the interim rule itself. These tables, covering the subjects of rents, notification requirements, methods of disposition, and actions to facilitate disposition, provide a shorthand overview of major portions of the interim rule that will permit users to comprehend the interim rule and the disposition process more easily. The tables are cross referenced to the sections of interim rule text that provide a fuller explication of the requirements. HUD specifically invites comments on whether the public finds such innovations to be helpful, and welcomes suggestions for additional innovations.

A discussion of the revisions to the multifamily property disposition program, organized section-by-section according to the amended section 203, follows.

II. Implementation of Amended Section 203

Section 203(a)—Goals

The goals of the interim rule, which provide the general guidelines within which HUD makes its determinations for the management or disposition of multifamily housing projects, are listed in section 203(a). They closely resemble the goals previously listed at 24 CFR 290.5, but include three new factors. Protecting the financial interests of the Federal Government, adhering to fair housing requirements, and disposing of projects in a manner consistent with local housing market conditions are now explicitly listed among the goals which are set forth in § 290.3 of this regulation.

Section 203(b)—Definitions

Several of the nine definitions included in this section are combined and otherwise modified in the interim rule at § 290.5. The Department believes that its modifications provide additional precision and simplify the structure of the interim rule. For example, the interim rule defines the term multifamily housing project as a subset, with references to specific statutory authorities, of *multifamily project*, which is defined in very broad terms to cover most non-single family projects insured or subject to a loan under one of HUD's statutory authorities, including such properties as hospitals, intermediate care facilities, and nursing homes. The actions the Department may take to facilitate disposition (i.e., the

assistance to be provided or the restrictions to be imposed) depend upon the type of multifamily housing project involved, and the statute provides definitions of *subsidized project*, *formerly subsidized project*, and *unsubsidized project*, for this purpose. The interim rule cuts back on the number of cross references necessary to determine what actions may be taken by combining the definitions for *subsidized* and *formerly subsidized* into a single definition of *subsidized project*.

Subsidized project includes projects both before foreclosure and after HUD assumes ownership of the project, when the mortgage which governs the project has been extinguished. *Subsidized projects* and *unsubsidized projects* are the subsets within the category of *multifamily housing projects*.

Although section 203(b)(8) lists *market area* among the definitions, its meaning is left to the determination of the Department. The Department has determined that this is a term best defined on a case-by-case basis at the local level, particularly when the new goal of disposing of projects in a manner consistent with local housing market conditions is taken into consideration. The interim rule provides for the market area for a project to be defined by the local HUD Office, which would have the best grasp of local conditions, in terms of the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants.

The statute also permits HUD to define the term *useful life*, used to determine how long certain requirements will apply to a project. The Department has determined to define *useful life* as 20 years, the period adopted in the August 17, 1993 final rule for maintaining a project as rental or cooperative housing, but it may be more or less, as determined by the Department.

Section 203(c)—Disposition of Property

Section 203(c)(1) lists "negotiated, competitive bid, or other basis" as methods of disposition. The interim rule at § 290.30 lists the basic methods of disposition as: (1) Foreclosure sales, (2) sale of HUD-owned projects, and (3) transfer for use under other HUD programs.

Method (3) is taken from section 203(f), entitled "Discretionary Assistance," where "transfer for use under other HUD programs" is listed as an action the Department may take to facilitate disposition. However, in the Department's analysis, a transfer is actually a method of disposition, rather than a form of assistance or restriction

such as the other actions given in section 203(f).

The transfer option permits the Department, "notwithstanding the provisions of subsection (e)" (which lists the basic actions and the alternatives to the basic actions to facilitate disposition), to transfer a multifamily housing project for use as public housing or supportive housing, subject to any terms, conditions, and limitations determined to be appropriate by the Department. The disposition is complete upon the transfer.

Section 203(c) also lists the qualities of an eligible purchaser (incorporated in the interim rule at § 290.32); and requirements for an initial disposition plan and initial sales price (§ 290.34 of the interim rule). Section 203(c)(2)(D) requires the Department to obtain timely and appropriate input into disposition plans from the community and tenants. This requirement is stated in § 290.34, and is also laid out in more detail at § 290.26 in subpart C of the interim rule where the notification requirements are gathered. HUD views the requirement for community and tenant input into the disposition plan as a process similar to providing public notice and an opportunity for comment in rulemaking. Just as a proposed rule is published for comment, followed by consideration of the comments before a final rule is issued, HUD will make an initial disposition plan available to the community and tenants, consider the comments it receives, and then issue its final disposition plan.

A requirement for a pre-foreclosure notification is included in section 203(c)(3), which appears in subpart C of the interim rule as § 290.22.

Section 203(d)—Management and Maintenance of Properties

This subsection of the statute is the only one that explicitly addresses management and maintenance of HUD-owned projects, or projects where HUD is the mortgagee in possession (MIP). These provisions, which provide management standards and permit HUD to contract or require an owner to contract for management services, are basically identical to those in § 290.51 of the August 17, 1993 final rule, and are incorporated in this interim rule at §§ 290.10 (standards) and 290.12 (contracting), under subpart B, titled, "Management Provisions." Also included in subpart B are provisions for determining occupancy (§ 290.14) and rental rates (§ 290.16) while a project is managed by HUD. These provisions are based largely on the August 17, 1993 final rule and, in general, provide that the requirements of the project's

mortgage insurance program before HUD assumed management will continue to apply.

Actions to Facilitate Disposition

Section 203(e)—Required Assistance; Section 203(f)—Discretionary Assistance; Section 203(g)—Protection for Very Low-Income Tenants; Section 203(j)—Displacement of Tenants and Relocation Assistance

Sections 203 (e), (f), (g), and (j) are discussed together because of their close interrelationship. The actions the Department may take to facilitate disposition are the common subject matter of these sections. The regulation organizes the statutorily permitted actions into four categories: "required," "basic," "alternatives to basic," and "additional." The table which immediately precedes subpart E provides an overview of these assistance and restrictions provisions.

Section 203(e) is divided into three sections, each delineating actions that the statute requires HUD to take separately, or in combination with each other or with actions under section 203(f). These actions are the assistance that may be provided or the restrictions (mainly to preserve affordability) that may be imposed. The basic actions are established by section 203(e)(1), which identifies the units in subsidized projects and unsubsidized projects that are to receive project-based Section 8 assistance or that are to be subject to use or rent restrictions. The alternatives to these basic actions appear in: (1) Section 203(e)(1)(C), which permits project-based Section 8 assistance and/or use and rent restrictions in unsubsidized projects to be substituted for the "basic" project-based Section 8 assistance in subsidized projects; (2) section 203(e)(2), which permits tenant-based Section 8 assistance to be provided to tenants instead of the project-based Section 8 assistance required under (e)(1); and (3) section 203(e)(3), which provides that the additional actions listed in section 203(f) may be used as long as, first, affordability use and rent restrictions are imposed on units that otherwise would have received the basic project-based Section 8 assistance under (e)(1), and second, very low-income tenants in units that otherwise would have received project-based Section 8 assistance under (e)(1) receive tenant-based Section 8 assistance.

Section 203(f) then lists the additional actions that may be used in subsidized and unsubsidized projects. Included by this interim rule in the category of additional actions are provisions taken from the August 17, 1993 final rule.

These provisions, entitled "determination not to preserve," are included to provide criteria under which the Department will take the action of a determination not to preserve a project, or a part of a project, as affordable rental or cooperative housing, resulting primarily in demolition.

In addition to these basic, alternative, and additional categories of actions is the category of required actions. Section 203(g) provides for required assistance for very-low income tenants, and 203(j) provides for required displacement assistance. The displacement assistance requirements in this interim rule are based upon the requirements of the August 17, 1993 final rule. An action from the August 17, 1993 final rule is also included as required, the nondiscrimination against Section 8 certificate holders and voucher holders provisions of section 183(c) of the Housing and Community Development Act of 1987.

The interim rule organizes this complex system of actions to facilitate a disposition according to the type of project involved in a disposition—separate subparts address which actions are applicable to all multifamily housing projects, or to subsidized projects, or to unsubsidized projects, as follows. Subpart E contains the required actions applicable to all multifamily housing projects under sections 203 (g) and (j), as well as the nondiscrimination requirements of section 183(c) of the Housing and Community Development Act of 1987. Subpart F contains the basic and alternative actions applicable to subsidized projects under section 203(e), with a reference to the additional section 203(f) actions listed in subpart H. Subpart G contains the same information for unsubsidized projects as subpart F does for subsidized projects. Subpart H lists the additional actions under 203(f) that are applicable to all multifamily housing projects. All of the actions to facilitate disposition are set out in abbreviated form in a table that precedes subpart E, to permit users of this interim rule to follow more easily the options for assistance and restrictions that would apply to a particular project.

Section 203(h)—Contract Requirements

This section states the contract requirements applicable to project-based Section 8 assistance provided in accordance with a disposition. These requirements are implemented by revising the appropriate Section 8 regulations at 24 CFR 886.310 and 886.311.

Section 203(i)—Right of First Refusal for Local and State Government Agencies

This right of first refusal provision is included among the notification requirements in subpart C as § 290.24.

III. Sale of HUD-Held Multifamily Mortgages

On September 22, 1994 (59 FR 48726), the Department published a final rule that amended 24 CFR part 290 to set forth the basic policies and procedures that govern the disposition of HUD-held multifamily project mortgages. This final rule implemented a proposed rule published on April 13, 1994 (59 FR 17500) and also incorporated amendments made by the MHPDRA. The provisions of the mortgage sale final rule are included in this interim rule as subpart I, with only slight modifications to conform to the new format of this interim rule.

IV. Other Amendments in This Interim Rule

Section 101(d) of the MHPDRA amended the definition of *owner* under the United States Housing Act of 1937 to include "an Agency of the Federal Government." The purpose and effect of this amendment is to permit HUD to collect Section 8 rental payments when it owns or manages a project. The conforming change to the definition of *owner* is made in 24 CFR 886.302.

The definition of *eligible project or project* in 24 CFR 886.302 is also amended to include a multifamily housing project under 24 CFR part 290.

Section 886.319 is amended to conform to § 886.120 and state explicitly that HUD may contract for the administration of its Section 8 contract functions.

V. Other Matters

Any assistance made available to a purchaser under this interim rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, e.g., a **Federal Register** Notice published April 9, 1991 (56 FR 14436) entitled "Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance").

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the

National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12866

This interim rule has been reviewed and approved by the Office of Management and Budget in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim 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 revisions to the policies governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, Federalism, that this interim rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the interim rule would impose terms and conditions on States that acquire projects under this interim rule, that is clearly the intent of the authorizing legislation, and therefore no further review is necessary or appropriate.

Executive Order 12606, the Family

HUD has determined that this interim rule will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

Justification for Interim Rulemaking

This publication of this interim rule for effect upon issuance is required by MHPDRA section 101(f).

Regulatory Agenda

This interim rule was listed as item number 1802 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

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

List of Subjects**24 CFR Part 290**

Low and moderate-income housing, Mortgage insurance.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 290 of chapter II and part 886 of chapter VIII of title 24 of the Code of Federal Regulations, are amended as follows:

1. Part 290 is revised to read as follows:

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES**Subpart A—General Provisions**

Sec.

- 290.1 What subjects does this regulation cover?
 290.3 What are the goals of this regulation?
 290.5 What definitions apply in this regulation?
 290.7 May any of the provisions of this regulation be waived?

Subpart B—Management and Maintenance Provisions

- 290.10 What maintenance and management standards apply to multifamily housing projects?
 290.12 How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?
 290.14 What occupancy requirements apply under this regulation?
 290.16 How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

Subpart C—Notification Requirements

- 290.20 How will HUD provide the notifications that are required under this regulation?
 290.22 What notification must be given before foreclosure?

- 290.24 Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?
 290.26 What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

Subpart D—Disposition Procedures

- 290.30 What are the different methods that may be used for the disposition of a multifamily housing project?
 290.32 What qualities does HUD look for in a purchaser?
 290.34 What kind of disposition plan will HUD prepare before selling a project?

Subpart E—All Multifamily Housing Projects—Required Actions

- 290.40 Are there any required actions that must be taken in the disposition of all multifamily housing projects?
 290.42 What actions must be taken concerning tenants who are displaced by the disposition of a multifamily housing project?
 290.44 What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?
 290.46 What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

Subpart F—Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

- 290.54 What are the basic actions that may be taken in the disposition of a subsidized project?
 290.56 What alternatives to the basic actions are available in the disposition of subsidized projects?

Subpart G—Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

- 290.64 What are the basic actions that may be taken in the disposition of an unsubsidized project?
 290.66 What alternatives to the basic actions are available in the disposition of an unsubsidized projects?

Subpart H—All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

- 290.70 What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?
 290.72 May HUD reduce the sales price for a project?
 290.74 May HUD require additional use and rent restrictions?
 290.76 May HUD provide short-term loans to facilitate the sale of a project?
 290.78 Under what conditions may HUD provide up-front grants?
 290.80 What additional tenant-based assistance may HUD offer?
 290.82 How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?

- 290.84 What disposition assistance may be available to rebuild a multifamily housing project?
 290.86 What emergency assistance funds may be provided to tenants?
 290.88 Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

Subpart I—Sale of HUD-Held Multifamily Mortgages

- 290.100 What is the purpose of this subpart?
 290.102 What affect does this subpart have on the applicability of Civil Rights requirements?
 290.104 What tenant protections will apply in the sale of HUD-held subsidized mortgages?
 290.106 How will HUD sell current subsidized mortgages?
 290.108 How will HUD sell delinquent subsidized mortgages?
 290.110 What is HUD's policy for selling HUD-held unsubsidized mortgages?

Authority: 12 U.S.C. 1701z-11, 1701z-12, 1713, 1715b, 1715z-1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions**§ 290.1 What subjects does this regulation cover?**

(a) Except as provided in paragraph (b) of this section, this part applies to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or had a mortgage insured under the National Housing Act, or which were subject to a loan or a capital advance under Section 202 of the Housing Act of 1959. Subpart I of this part applies to the sale of HUD-held multifamily mortgages.

(b) This part does not apply to multifamily projects being foreclosed by HUD for which the decision to foreclose has been made before the effective date of this part, nor to HUD-owned projects where the initial disposition program has been approved before the effective date of this part. For such projects, the procedures in the regulations at 24 CFR part 290 in effect immediately prior to the effective date of this regulation apply, unless HUD determines, on a case-by-case basis, to apply the new regulations.

(c) This part applies to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or insured under the National Housing Act, or which were subject to a loan under section 202 of the Housing Act of 1959. It also applies to the sale of certain loans and mortgages, and to the management of certain multifamily properties.

§ 290.3 What are the goals of this regulation?

(a) The goals of this part are to provide for the management and

disposition of HUD-owned multifamily projects, and multifamily projects subject to HUD-held mortgages, in a manner that:

(1) Is consistent with the National Housing Act, section 203 of the Housing and Community Development Amendments of 1978, and other relevant statutes;

(2) Will protect the financial interests of the Federal Government; and

(3) Will, in the least costly fashion among reasonable available alternatives, address the goals of:

(i) Preserving certain housing so that it can remain available to and affordable by low-income persons;

(ii) Preserving and revitalizing residential neighborhoods;

(iii) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(iv) Minimizing the involuntary displacement of tenants;

(v) Maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;

(vi) Minimizing the need to demolish multifamily housing projects;

(vii) Adhering to fair housing requirements; and

(viii) Disposing of such projects in a manner consistent with local housing market conditions.

(b) The goals of this part, with respect to HUD-held mortgages, are to sell such mortgages in a manner that:

(1) Reduces losses to the FHA fund;

(2) Decreases HUD's inventory of project mortgages;

(3) Improves the servicing of these mortgages; and

(4) Improves the rental services provided by properties securing HUD-insured and HUD-held mortgages.

(c) *Competing goals.* In determining the manner in which a project is to be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the purposes of this part.

§ 290.5 What definitions apply in this regulation?

The following definitions apply to this part:

Affordable means, with respect to a unit of a multifamily housing project:

(1) For a unit occupied by a very-low income family, the unit rent does not exceed 30 percent of 50 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(2) For a unit occupied by a low-income family other than a very low-

income family, the unit rent does not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(3) The unit, or the family residing in the unit, is receiving assistance under Section 8 of the United States Housing Act of 1937.

Cooperative means a nonprofit, limited equity, or consumer cooperative as defined under 24 CFR part 213. It may include mutual housing associations.

Department means the United States Department of Housing and Urban Development, or HUD.

HUD-owned project means a multifamily project that has been acquired by HUD.

Low-income family means a low-income family as defined at 24 CFR part 813.

Market area means the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants, as determined by HUD, taking into consideration the knowledge of the HUD office with jurisdiction over the project of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas.

Multifamily housing project means a multifamily project that is or was insured under sections 207, 213, 220, 221(d)(3), 221(d)(4), 223(f), 231, 236, or 608 of the National Housing Act (12 U.S.C. 1701 *et seq.*); or is or was subject to a loan under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); or was a Real Estate Owned (REO) multifamily project transferred by the Government National Mortgage Association to the Department. Multifamily housing project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act (12 U.S.C. 1715k); or mobile home parks under section 207(m) of that Act (12 U.S.C. 1713); or vacant land; or property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere ("HOPE") program.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act or is or was subject to a loan under section 202 of the Housing Act of 1959, or a hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan

under, these authorities. Multifamily project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act, which are classified as single family homes.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself. Stockholders or trustees do not share in profits or losses. Profits are used to accomplish the charitable, humanitarian, or educational purposes of the corporation.

Preexisting tenant means a family that resides in a unit in a multifamily housing project immediately before the project is acquired under this part by a purchaser other than the Department.

Project-based assistance means assistance that is attached to a structure.

Subsidized mortgage means a mortgage, including a purchase money mortgage, on a subsidized project.

Subsidized project means a multifamily housing project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD, pursuant to this regulation, was receiving any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l) (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note) (excluding payments of tenant-based Section 8 assistance) (hereinafter, project-based Section 8 assistance).

Sufficient habitable, affordable, rental housing is available means that the HUD office with jurisdiction determines that there is an adequate supply of habitable, affordable housing for low-

and very low-income families available in the market area. Submarkets, consisting of portions of units of general local government, may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (e.g., the housing market is balanced), as well as those in which there is an excess supply of rental housing (e.g., the housing market is soft). Rental markets that do not have an adequate supply (e.g., tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination of whether sufficient habitable, affordable, rental housing is available using established market analysis techniques, and will consider information that demonstrates:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(4) A significant number, or proportion, of the households holding Section 8 certificates or rental vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

Tenant-based assistance means rental assistance that is not attached to a structure.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State.

Unsubsidized mortgage means any HUD-held multifamily mortgage that is not a subsidized mortgage.

Unsubsidized project means a multifamily housing project that is not a subsidized project.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655).

Useful life means, generally, twenty years, but it may be more or less, as determined by the Department.

Very low-income family means a very low-income family as defined at 24 CFR part 813.

§ 290.7 May any of the provisions of this regulation be waived?

The Assistant Secretary for Housing may waive any provision of this part, subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a **Federal Register** notice informing the public of all waivers granted under this section in accordance with the HUD Reform Act of 1989 and HUD policies regarding publication of waivers.

Subpart B—Management and Maintenance Provisions

§ 290.10 What maintenance and management standards apply to multifamily housing projects?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

- (1) That is HUD-owned;
- (2) For which HUD is mortgagee-in-possession; or
- (3) That is subject to a mortgage held by HUD.

(b) *Maintenance and management standards.* With respect to projects within the scope of this section, HUD or the owner, as appropriate, shall:

- (1) To the greatest extent possible, maintain all occupied projects in a decent, safe, and sanitary condition, and in compliance with any standards established by the Department and under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing;
- (2) Maintain full occupancy;
- (3) Maintain projects for purposes of providing rental or cooperative housing; and

(4) Manage projects in accordance with the requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR parts 100 et al, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation

Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 that prohibit discrimination against disabled individuals in Federally-assisted activities, and 24 CFR part 9, which prohibit discrimination against disabled individuals in Federally-conducted activities; Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR part 1, which prohibit discrimination based on race, color, or national origin in programs receiving Federal financial assistance; the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146, which prohibit discrimination based on age in programs receiving Federal financial assistance; and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

§ 290.12 How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

- (1) That is HUD-owned;
- (2) For which HUD is mortgagee-in-possession; or
- (3) That is subject to a mortgage held by HUD.

(b) *Contracting for management services.* (1) With respect to projects within the scope of this section, HUD may, or may require the owner to, contract for management services for the project with for-profit and nonprofit entities and public agencies, including public housing agencies, on a negotiated, competitive bid, or other basis, at a price determined by HUD to be reasonable, with a manager determined by HUD to be capable of:

(i) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in a decent, safe, and sanitary condition, and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing, and any such standards established by HUD;

(ii) Responding to the needs of tenants and working cooperatively with tenant organizations;

(iii) Providing adequate organizational, staff, and financial resources to the project; and

(iv) Meeting such other requirements as HUD may determine to be necessary or appropriate.

(2) HUD will conduct outreach efforts to minority-owned and female-owned businesses to become managers of the HUD-owned projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises), Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138 (National Women's Business Enterprise Policy).

§ 290.14 What occupancy requirements apply under this regulation?

(a) *Multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession.* Occupancy in a multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily

housing projects who are eligible for assistance in accordance with the displacement and relocation provisions at § 290.42.

(b) *Evictions.* Eviction from a HUD-owned multifamily housing project is governed by 24 CFR part 247, subpart B.

(c) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.42 to tenants required to vacate the premises.

PROJECT RENTS WHILE HUD IS MIP OR OWNER

Unit rents	<i>Unit rents</i> set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program while HUD is mortgagee-in-possession (MIP), or in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project (§ 290.16(a)).
Rents payable by tenants ...	<ol style="list-style-type: none"> 1. <i>Tenant rent.</i> Rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project (§ 290.16(b)(1)). 2. <i>Rent when tenant does not certify income.</i> If a tenant does not certify income, the tenant must pay the unit rent (§ 290.16(b)(1)). 3. <i>Utility allowance.</i> For a tenant whose rent is based on a percentage of adjusted income, HUD will use a utility allowance to reduce the rent (§ 290.16(b)(2)). 4. <i>Project viability.</i> HUD may adjust the rent to promote project viability (§ 290.16(b)(3)). 5. <i>Tenants with rental vouchers or certificates.</i> Tenant pays rent in accordance with policies and procedures governing such assistance (§ 290.16(b)(4)).

§ 290.16 How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

Because of the subsidies involved in making multifamily housing projects affordable, the setting of rents involves two steps: first, establishing the rent on a unit that will be paid to the owner, and second, determining the rent that the tenant pays (with the difference made up by a subsidy), using a number of procedures to obtain income verification and notify tenants of changes in rent. These procedures are explained below.

(a) *Setting unit rents.* Except as modified by this section, for a property where HUD is mortgagee-in-possession (MIP), HUD will set unit rents in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program; or for a property owned by HUD, rents will be set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project.

(b) *Setting rents payable by tenants—*
 (1) *Tenant rent.* The rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the

project, as affected by any of the factors in paragraphs (b)(2) through (b)(4) of this section. However, if a tenant does not certify income as required by this section, the tenant must pay the unit rent as determined under the rent setting requirements in paragraph (a) of this section.

(2) *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD will deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(3) *Rent adjustments for project viability.* For a HUD-owned project, HUD may adjust the rent provided for in paragraphs (b)(1) or (b)(2) of this section if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(4) *Tenants who are rental voucher or rental certificate holders.* Tenants assisted with rental vouchers or certificates certify their income to the public housing agency (PHA) administering the assistance, and pay rent pursuant to the policies and procedures governing such assistance.

(c) *Income verification and rent notification procedures.*

(1) *Income certification by tenants—*
 (i) *In subsidized projects.* (A) For families residing in subsidized projects, when HUD becomes MIP or owner, HUD will request an income certification from each family as soon as practicable after HUD initially assumes management, unless the family's income has been examined by the owner or by HUD not more than four months before HUD's assumption of management.

(B) For each family applying for admission to subsidized projects, HUD will request an income certification to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the

family's subsidized rent, in accordance with part 813 of this title.

(ii) *In unsubsidized projects.* (A) For tenants in occupancy when HUD becomes mortgagee-in-possession or owner of an unsubsidized project, HUD may request an income certification from families who are not paying a subsidized rent.

(B) For families applying for admission to such projects, HUD will request sufficient information for income verification to determine the family's ability to pay the unit rent.

(2) *Notice of increases in the amount of rent payable.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or a project where HUD is mortgagee-in-possession, HUD will provide tenants 30 days notice of the proposed changes and an

opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(3) *Disclosure and verification of Social Security numbers.* Any

certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this title.

(4) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this title. (Approved by Office of Management and Budget under control number 2502-0204.)

PRE-DISPOSITION NOTIFICATION REQUIREMENTS

Pre-foreclosure (§ 290.22) ..	<ol style="list-style-type: none"> 1. <i>Timing.</i> Not later than 60 days before foreclosure on any mortgage. 2. <i>Recipients.</i> <ol style="list-style-type: none"> (i) Tenants of the project, and (ii) The unit of general local government in which the project is located. 3. <i>Contents.</i> <ol style="list-style-type: none"> (i) General terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose; and, (ii) Whether temporary or permanent relocation is anticipated, and, if so, available displacement and relocation assistance.
Right of first refusal (§ 290.24).	<ol style="list-style-type: none"> 1. <i>Timing.</i> Not later than 30 days after HUD acquires title to a multifamily housing project. 2. <i>Recipients.</i> <ol style="list-style-type: none"> (i) The appropriate unit of general local government; (ii) Public housing agencies in the project's market area; (iii) The State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located. 3. <i>Contents.</i> <ol style="list-style-type: none"> (i) Description of the project; (ii) Invitation to recipients to make bona fide offers to purchase the project; (iii) Offer of right of first refusal for period of up to 90 days; (iv) Method by which the recipient may respond to HUD.
Notice to tenants and the community (§ 290.26).	<ol style="list-style-type: none"> 1. <i>Timing.</i> Not later than 60 days after HUD acquires title to a multifamily housing project. 2. <i>Recipients.</i> <ol style="list-style-type: none"> (i) To the tenants of the project; (ii) To the unit of general local government in which the project is located; and (iii) To the community in which the project is located. 3. <i>Contents.</i> <ol style="list-style-type: none"> (i) Description of the project; (ii) Proposed general terms and conditions concerning the sale, future use, and operation of the project; (iii) Invitation for tenants and their organizations, units of general local government, and other public or nonprofit entities to submit comments on the disposition plan, and/or proposals for disposition which will be considered by HUD in making its property disposition determination.

Subpart C—Notification Requirements

§ 290.20 How will HUD provide the notifications that are required under this regulation?

(a) *In general.* HUD may combine two or more of the notifications required by this subpart, as appropriate, to simplify the disposition process.

(b) *Methods of notification— (1) To tenants.* The notices required to be made to tenants under this subpart will be delivered to each unit in the project, or sent to each unit by first class mail.

Where HUD is mortgagee-in-possession or owner of a project, the notice will also be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(2) *To the unit of general local government.* The notice required to be made to a unit of general local government under this section will be sent to the chief executive officer of the unit of general local government by first class mail. For purposes of receiving or sending any notices or information under this subpart, the unit of general

local government is its chief executive officer, or the person designated by the chief executive officer to receive or send the notice or information.

(3) *To the community or any other party.* HUD will consult with tenants and their organizations, officials of units of general local government, and other entities as HUD determines to be appropriate, to identify community recipients of any notification required by this subpart. Any notice required to be made to any party other than a tenant

or a unit of general local government will be sent by first class mail.

§ 290.22 What notification must be given before foreclosure?

(a) *Timing and recipients of notice.* Not later than 60 days before foreclosing on any mortgage held by the Department on any multifamily housing project, HUD will provide notice of the proposed foreclosure sale to the tenants of the project and to the unit of general local government in which the project is located.

(b) *Contents of notice.* The notice will describe the general terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose on a purchaser other than HUD through the foreclosure. The notice will also state whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of displacement and relocation assistance available under § 290.42.

§ 290.24 Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?

(a) *Timing and recipients of notice.* Not later than 30 days after HUD acquires title to a multifamily housing project, HUD will provide notice of the right of first refusal to the appropriate unit of general local government, as well as public housing agencies in the project's market area, and the State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and contain an invitation to recipients to make bona fide offers to purchase the project. The notice will state:

(1) That for a period specified in the notice, not to exceed 90 days from the time the notification is made, HUD will not sell or offer to sell the project other than to a recipient of the notice, unless the recipients notify HUD sooner that they will not make an offer to purchase the project;

(2) That if a recipient expresses interest within the specified period in acquiring the project, HUD will consult with the interested parties in the preparation of the disposition plan and the terms and conditions of the sale of the project. HUD will accept a bona fide offer to purchase the project if the offer complies with the terms and conditions

of the disposition plan for the project, or is otherwise acceptable to HUD;

(3) The method by which the recipient may respond to HUD with an expression of interest or a bona fide offer, or by which the recipient may notify HUD that an offer will not be made.

§ 290.26 What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

(a) *Timing and recipients of notice.* Not later than 30 days after HUD acquires title to a multifamily housing project, HUD will provide notice of HUD's acquisition and proposed disposition of the project to the tenants of the project, to the unit of general local government, and to the community in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and the general terms and conditions concerning the sale, future use, and operation of the project as proposed by HUD. The notice will, as appropriate, state:

(1) HUD has acquired the project.
 (2) During HUD's ownership, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition.
 (3) HUD is developing a final disposition plan for the project.

(4) HUD normally seeks to sell HUD-owned projects as rapidly as possible.

(5) HUD's interest in learning of tenant, community, and local government plans and capacity for the acquisition of the project for use as rental or cooperative housing.

(6) HUD's final determination of the terms and conditions to be imposed on the disposition of the project will not be made until after HUD considers the comments received from tenants, the community, and the unit of general local government within the specified comment period.

(7) A brief description of a proposed manner of disposition of the project.

(8) A description of the pending notice of the right of first refusal to purchase the project made under § 290.24.

(9) That alternative uses of units in the project may be part of the project's disposition, and that:

(i) Some of the units in the project may be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or community space, office space for tenant or housing-related service providers or security programs, or small business uses, if

such uses benefit the tenants of the project;

(ii) Some of the units in the project may be used in any manner, if the Department and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals;

(iii) Such alternative uses of units may only take place if:

(A) Tenant-based Section 8 rental assistance is made available to each eligible family residing in the project that is displaced as a result of such actions; and

(B) The Department determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

(10) That any very low-income family who is a preexisting tenant of the project who upon disposition of the project would be required to pay rent in an amount in excess of 30 percent of the adjusted income of the family:

(i) For a period of 2 years beginning upon the date of the acquisition of the project under the disposition, the rent for the unit occupied by the family may not be increased above the rent charged immediately before the acquisition; and

(ii) The family shall be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

(11) Whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of relocation assistance available under § 290.42.

(12) That tenants and their organizations, units of general local government, and other public or nonprofit entities are invited to submit comments on the disposition plan, and/or proposals (e.g., expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident initiative), which will be considered by HUD in making its property disposition determination.

(13) That comments must be submitted to HUD within 30 days of receipt of the notice.

(14) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office.

METHODS OF DISPOSITION

Foreclosure sales. (§ 290.30(a)).	HUD may dispose of a project at a foreclosure sale: 1. In accordance with the Multifamily Mortgage Foreclosure Act, or 2. In accordance with other Federal or State foreclosure law.
Sale of HUD-owned projects. (§ 290.30(b)).	HUD may sell a HUD-owned project using any of the following procedures: 1. Competitive bid; 2. Auction; 3. Request for proposals; 4. Negotiated sale, as permitted under § 290.30(b)(1) and (2); or 5. Any other method, on such terms as HUD considers appropriate.
Transfer for use under other HUD programs. (§ 290.30(c)).	HUD, under an agreement, may transfer a multifamily housing project: 1. To a public housing agency (PHA) for use of the project as public housing; or 2. To an entity eligible to own or operate 202 or 811 supportive housing.

Subpart D—Disposition Procedures**§ 290.30 What are the different methods that may be used for the disposition of a multifamily housing project?**

HUD may use any of the following methods, as appropriate, for the disposition of a multifamily housing project:

(a) *Foreclosure sales.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure law, on such terms as HUD considers appropriate to further the purpose stated in § 290.3.

(b) *Sale of HUD-owned projects.* HUD may dispose of a HUD-owned multifamily project by competitive bid, auction, request for proposals, or other method, on such terms as HUD considers appropriate to further the purpose stated in § 290.3. When HUD conducts a negotiated sale involving the disposition of a project to a person or entity without a public offering, the following provisions apply:

(1) HUD may negotiate the sale of any project to an agency of the Federal, State, or local government.

(2) When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD, and/or a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a subsidized project to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (e.g., nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low- to moderate-income rental housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- and moderate-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(c) *Transfer for use under other HUD programs.*—(1) *In general.* Subject only to the requirements of an agreement under paragraph (c)(2) of this section, HUD may transfer a multifamily housing project:

(i) To a public housing agency (PHA) for use of the project as public housing; or

(ii) To an entity eligible to own or operate housing assisted under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act for use as supportive housing under either of those sections.

(2) *Transfer agreement.* An agreement providing for the transfer of a project as described in paragraph (c)(1) of this section must:

(i) Contain such terms, conditions, and limitations as HUD determines to be appropriate, including requirements to ensure use of the project as public housing, supportive housing under section 202 of the Housing Act of 1959, or supportive housing under section 811 of the Cranston-Gonzalez National Affordable Housing Act, as applicable; and

(ii) Ensure that no tenant of the project will be displaced as a result of the transfer.

§ 290.32 What qualities does HUD look for in a purchaser?

(a) *Foreclosure sales.* HUD will dispose of a multifamily housing project through a foreclosure sale only to a purchaser that the Department determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department.

(b) *HUD-owned multifamily housing projects.* Sales of HUD-owned multifamily housing projects may be made only to a purchaser determined by the Department to be capable of:

(1) Satisfying the conditions of the disposition plan developed under § 290.34 for the project;

(2) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department;

(3) Responding to the needs of the tenants and working cooperatively with tenant organizations;

(4) Providing adequate organizational, staff, and financial resources to the project; and

(5) Meeting such other requirements as HUD determine to be appropriate for the particular project.

§ 290.34 What kind of disposition plan will HUD prepare before selling a project?

(a) *In general.* Before disposing of a HUD-owned multifamily housing

project, HUD will develop an initial and a final disposition plan for the project that specifies the minimum terms and conditions for the disposition of the project, the sales price that is acceptable to HUD, and the assistance that HUD plans to make available to a prospective purchaser.

(b) *Market-wide plans.* In developing the disposition plan under this section for a HUD-owned multifamily housing project located in a market area in which at least 1 other HUD-owned multifamily housing project is located, HUD may coordinate the disposition of HUD-owned multifamily housing projects located within the same market area to the extent and in such a manner as the Department determines appropriate to carry out the goals under § 290.3.

(c) *Sales price.* The sales price in the disposition plan will be reasonably

related to the intended use of the project after the sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under Section 8 of the United States Housing Act of 1937, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that HUD considers appropriate.

(d) *Community and tenant input.* In developing the initial and final disposition plans, HUD will consider any timely input from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project, including the comments received in response to the notice required by § 290.26. To obtain this

input, HUD may provide technical assistance, directly or indirectly, and may use amounts available for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or this part, for the provision of such technical assistance. Recipients of technical assistance funding under the provisions referred to in this subparagraph may provide technical assistance to the extent of such funding, notwithstanding the source of the funding.

(e) *Environmental requirements.* HUD will perform, and include in the final disposition plan, the environmental reviews required by 24 CFR part 50.

TABLE OF ACTIONS TO FACILITATE DISPOSITION

All Multifamily Housing Projects [Subpart E].	<p><i>Required Actions</i></p> <ol style="list-style-type: none"> 1. Displacement requirements (§ 290.42). 2. Very-low income preexisting tenant—2 year rent freeze if rent after disposition more than 30 percent of adjusted income (§ 290.44). 3. Nondiscrimination against Section 8 certificate holders and voucher holders (§ 290.46).
Subsidized Projects [Subpart F].	<p><i>Basic Actions</i></p> <ol style="list-style-type: none"> 1. Provide project-based Section 8 assistance to at least all units that, before acquisition or foreclosure, received: Rent Supp, RAP, Sec. 23, project-based Section 8 (§ 290.54(a)). 2. Vacancy in any assisted unit must be filled by a family that is eligible for the assistance (§ 290.54(b)). 3. Rent and use restrictions on BMIR, 236, or 202 subsidized project units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 (§ 290.54(c)). <p><i>Alternatives to Basic Actions</i></p> <ol style="list-style-type: none"> 1. Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects (§ 290.56(a)). 2. Substitution of tenant-based Section 8 assistance to low-income families instead of Project-based assistance to units (§ 290.56(b)). 3. Use of the additional assistance and restrictions permitted in subpart H (§ 290.56(c)). <p>Unsubsidized Projects [Subpart G]</p>
All Multifamily Housing Projects [Subpart H].	<p><i>Basic Actions</i></p> <ol style="list-style-type: none"> 1. Provide project-based Section 8 assistance for all units that, before acquisition or foreclosure, received assistance under: <ol style="list-style-type: none"> (i) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983); (ii) The property disposition program under section 8(b) of such Act; (iii) The project-based certificate program under section 8 of such Act; (iv) The moderate rehabilitation program under section 8(e)(2) of such Act; (v) Section 23 of such Act (as in effect before January 1, 1975); (vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or (vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965 (§ 290.64(a)). 2. Provide tenant-based Section 8 assistance to preexisting tenants of LMSA-assisted units (§ 290.64(b)). <p><i>Alternatives to Basic Actions</i></p> <ol style="list-style-type: none"> 1. Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units (§ 290.66(a)). 2. Use of the additional assistance and restrictions permitted in subpart H (§ 290.66(b)). <p><i>Additional Actions</i></p> <ol style="list-style-type: none"> 1. Discounted sales price (§ 290.72). 2. Additional use and rent restrictions (§ 290.74). 3. Short-term loans (§ 290.76). 4. Up-front grants (§ 290.78). 5. Additional tenant-based assistance (§ 290.80). 6. Alternative uses (§ 290.82) 6. Rebuilding (§ 290.84). 7. Emergency assistance funds (§ 290.86). 8. Determination not to preserve (§ 290.88).

Subpart E—All Multifamily Housing Projects—Required Actions

§ 290.40 Are there any required actions that must be taken in the disposition of all multifamily housing projects?

Yes, the requirements regarding tenants who are displaced (explained in § 290.42), unassisted very low-income tenants (explained in § 290.44), and nondiscrimination against Section 8 certificate holders and voucher holders (explained in § 290.46), apply in the disposition of all multifamily housing projects.

§ 290.42 What actions must be taken concerning tenants who are displaced by the disposition of a multifamily housing project?

(a) *Scope of section.* This section applies to all HUD-owned multifamily housing projects and all multifamily housing projects subject to HUD-held mortgages. When HUD is not the mortgagee-in-possession or owner, the owner of the project shall comply with this section, if HUD has authorized the demolition of, repairs to, or conversion of the use of the multifamily housing project.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) from a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily project, but is not subject to paragraph (d) of this section (e.g., occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily project or as a direct result of the foreclosure of a HUD-held mortgage on a multifamily housing project or sale of a HUD-owned project without federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided at least 60 days before displacement, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling,

referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable (and where appropriate, accessible), decent, safe, and sanitary dwelling unit in a HUD-owned multifamily project, in a public housing project, or in another HUD subsidized multifamily housing project; or

(ii) Assistance under the Section 8 Certificate program (see § 882.209(a)(4)(ii)(B) of this title) or the Housing Voucher program (see § 887.155(c) of this title), if the assistance is available; and

(5) Such other federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels—(1) General.* Whenever assistance under 24 CFR part 886, subpart C (or other federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily property by a third party, any resulting displacement is subject to paragraph (d) of this section. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of “initiation of negotiations”.* Under the URA, for purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term “initiation of negotiations” means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term “displaced person” means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes, but is not limited to:

(A) A person that moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date of the transfer of title to the purchaser.

(B) Any person that HUD determines was displaced as a direct result of

acquisition, rehabilitation or demolition for an assisted project.

(C) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the transfer of title to the purchaser, if the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, sanitary, and where appropriate, accessible dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or that is affordable, as defined in this part.

(D) A tenant-occupant of a dwelling unit who is required to relocate temporarily for the project, but does not return to the building/complex, if either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex for the project, if either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (d)(3)(i) of this section, a person does not qualify as a “displaced person” if:

(A) The person is excluded under 49 CFR 24.2(g)(2).

(B) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(C) The person moves into the property after transfer of title to the purchaser.

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who

must relocate temporarily (e.g., to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

§ 290.44 What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?

HUD will require that for a period of 2 years, beginning upon the date of disposition of a multifamily housing project, the rent for any unit occupied by a very low-income family, that is a preexisting tenant and that would be required to pay a rent that is more than 30 percent of the adjusted income (as defined in part 813) of the family, may not be increased above the rent charged immediately before the acquisition. Such a family will also be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

§ 290.46 What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

Subpart F—Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

§ 290.54 What are the basic actions that may be taken in the disposition of a subsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of a subsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in § 290.56, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance to assist at least all of a subsidized project's units that were covered, before acquisition or foreclosure, by the rent subsidies (Rent Supp, RAP, Sec. 23, project-based Section 8) included in the definition of a subsidized project.

(b) *Assisted units—tenant eligibility restrictions.* The contract for project-based Section 8 assistance in accordance with paragraph (a) of this section, will provide that when a vacancy occurs in any unit that requires such assistance, but which was occupied by a family ineligible for such assistance, the owner will lease the available unit to a family that is eligible for the assistance.

(c) *Unassisted units—use and rent restrictions.* HUD will require use or rent restrictions on BMIR, 236, or 202

subsidized projects to ensure that units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 rent subsidies remain available and affordable for the remaining useful life of the project.

§ 290.56 What alternatives to the basic actions are available in the disposition of subsidized projects?

In the disposition of a subsidized project, HUD may take the following alternative actions instead of the basic actions listed in § 290.54:

(a) *Unit substitution: Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects.* Instead of providing project-based Section 8 assistance as required by § 290.54(a), HUD may, in unsubsidized projects located in the same market area, provide project-based Section 8 assistance to units to be occupied by very low-income persons, or impose use and rent restrictions to assure that units remain available to and affordable by very low-income families for the remaining useful life of the project. When this unit substitution procedure is used, the total number of unsubsidized project units provided with assistance and/or placed under use and rent restrictions must be at least equal to the number of subsidized projects units that would have received project-based Section 8 in the absence of unit substitution. In addition, HUD will make tenant-based Section 8 assistance available to low-income families residing in the subsidized project's units that would have received project-based Section 8 assistance if this unit substitution alternative had not been used.

(b) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as required under § 290.54(a), HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units that would have been eligible for the project-based Section 8 assistance under § 290.54. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance in not more than 10 percent of the aggregate number of subsidized project units disposed of by HUD in any fiscal year, and only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable

housing for very low-income families and other low-income families using tenant-based assistance. The number of units eligible for this form of substitution within the 10 percent limit will be estimated at the beginning of each fiscal year, taking into consideration the aggregate number of subsidized project units disposed of by HUD in the immediately preceding fiscal year and the disposition activity planned for the current fiscal year.

(c) *Additional actions under subpart H.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of a subsidized project as required under § 290.54(a), HUD may make use of the additional actions to facilitate the disposition of multifamily housing projects permitted in subpart H of this part.

Subpart G—Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

§ 290.64 What are the basic actions that may be taken in the disposition of an unsubsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of an unsubsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in § 290.66, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance for all of an unsubsidized project's units that were covered, before acquisition or foreclosure, by an assistance contract under:

(1) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (the 1937 Act) (as in effect before October 1, 1983);

(2) The property disposition program under section 8(b) of the 1937 Act;

(3) The project-based certificate program under section 8 of the 1937 Act;

(4) The moderate rehabilitation program under section 8(e)(2) of the 1937 Act;

(5) Section 23 of the 1937 Act (as in effect before January 1, 1975);

(6) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(7) Section 8 of the 1937 Act, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965.

(b) *LMSA-assisted units—provision of tenant-based section 8 assistance.* HUD

will provide tenant-based Section 8 assistance for families that are preexisting tenants of unsubsidized projects in units that, immediately before foreclosure or acquisition of the project by HUD, were covered by an assistance contract under the loan management set-aside program under section 8(b) of the United States Housing Act of 1937.

§ 290.66 What alternatives to the basic actions are available in the disposition of unsubsidized projects?

In disposing of an unsubsidized project, HUD may take the following alternative actions instead of the basic actions listed in § 290.64:

(a) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as required under § 290.64, HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units eligible for the project-based Section 8 assistance under § 290.64. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

(b) *Additional actions under subpart H.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of an unsubsidized project as required under § 290.64, HUD may make use of the additional assistance and restrictions for the disposition of multifamily housing projects permitted in subpart H of this part.

Subpart H—All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

§ 290.70 What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?

The additional actions to facilitate disposition available under this subpart are intended to replace, supplement or make more cost effective the Section 8 assistance that would otherwise be required, and are to be provided in a manner consistent with the goals of § 290.3 and unless otherwise noted:

(a) On terms that will ensure that at least the units in the project otherwise

required to receive project-based Section 8 assistance in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project) are available to and affordable by low-income persons for the remaining useful life of the project, with use or rent restrictions as HUD may prescribe; and

(b) With tenant-based Section 8 assistance to any very low-income families who would have received project-based assistance under Section 8 in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project), but because of action taken under subpart H of this part, did not receive such assistance, and are left residing in units of the project with rents that exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937 for very low-income families.

§ 290.72 May HUD reduce the sales price for a project?

HUD may reduce the selling price of a project. The sales price for a project will be reasonably related to the intended use of the property as affordable housing for very low-income tenants after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of project-based Section 8 assistance being made available by HUD in the disposition of the project, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Department considers appropriate.

§ 290.74 May HUD require additional use and rent restrictions?

Consistent with the guidelines in § 290.70, HUD may require units in a project to be subject to use or rent restrictions to provide that the units will be available to and affordable by low- and very low-income persons for the remaining useful life of the project.

§ 290.76 May HUD provide short-term loans to facilitate the sale of a project?

HUD may provide short-term loans to facilitate the sale of a HUD-owned multifamily housing project if:

(a) Authority for such loans is provided in advance in an appropriation Act;

(b) The loan has a term of not more than 5 years;

(c) HUD determines, based upon documentation provided by the purchaser, that the purchaser has obtained a commitment of permanent financing to replace the short-term loan from a lender who meets standards established by the Department; and

(d) The terms of the loan are consistent with prevailing practices in the marketplace or the provision of the loan results in no cost to the Government, as defined in section 502 of the Congressional Budget Act of 1974.

§ 290.78 Under what conditions may HUD provide up-front grants?

For a HUD-owned multifamily housing project, HUD may utilize the budget authority provided for contracts issued under this part for project-based Section 8 assistance to (in addition to providing project-based Section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other HUD-approved related development costs to reduce the level of Section 8 contract rents if HUD determines that action under this section is more cost-effective than providing project-based Section 8 assistance in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project).

§ 290.80 What additional tenant-based assistance may HUD offer?

To facilitate the sale of a multifamily housing project, HUD may make tenant-based Section 8 assistance available to families eligible to receive such assistance residing in a multifamily housing project that do not otherwise qualify for project-based assistance.

§ 290.82 How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?

(a) *In general.* Notwithstanding any other provision of law, after providing notice to and an opportunity for comment by preexisting tenants, HUD may allow up to:

(1) 10 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be made available for uses other than rental or cooperative uses, such as, low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

(2) 5 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be used in any manner, if HUD and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

(b) *Computation of number of eligible units.* The number of units eligible for alternate uses in any fiscal year will be determined at the beginning of the fiscal year as the applicable percentages in paragraph (a) (1) or (2) of this section (i.e., either 10 percent or 5 percent) of the estimated total number of units to be disposed of in the fiscal year, taking into consideration the total number of units in multifamily housing projects disposed of by the Department in the immediately preceding fiscal year, and the extent of the disposition activity planned in the current fiscal year.

(c) *Displacement protection.* HUD may take actions under paragraph (a) of this section only if:

(1) Tenant-based Section 8 assistance is made available to each family eligible for such assistance residing in the project that is displaced as a result of such actions; and

(2) HUD determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

§ 290.84 What disposition assistance may be available to rebuild a multifamily housing project?

(a) Notwithstanding any provision of section 8 of the United States Housing Act of 1937, HUD may provide project-based assistance up to the levels required in § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project) to support the rebuilding of a HUD-owned multifamily housing project rebuilt or to be rebuilt (in whole or in part and on-site, off-site, or in a combination of both) in connection with a disposition under this part, if HUD determines all of the following:

(1) The project is not being maintained in a decent, safe, and sanitary condition;

(2) The costs to HUD for rebuilding are such that the monthly debt service needed to amortize the cost of relocating tenants, demolition, site preparation, rebuilding, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A), and would be less expensive than rehabilitation;

(3) The unit of general local government in which the project is located approves the rebuilding and makes a financial contribution or other commitment to the project determined by HUD to be satisfactory;

(4) The rebuilding is a part of a local neighborhood revitalization plan

approved by the unit of general local government.

(b) The provisions of § 290.42 apply to any tenants of the project who are displaced through an action taken under paragraph (a) of this section.

§ 290.86 What emergency assistance funds may be provided to tenants?

HUD may make arrangements with State agencies and units of general local government of States receiving emergency assistance under part A of title IV of the Social Security Act for the provision of assistance under that Act on behalf of eligible families who would reside in any multifamily housing projects.

§ 290.88 Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

HUD may determine to demolish, or otherwise dispose of, a HUD-owned multifamily housing project, or any portion of such a project, or to foreclose a HUD-held mortgage on a multifamily housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- and very low-income families under appropriate circumstances which may include one or more those listed in paragraphs (a) through (g) of this section. If HUD decides not to preserve an occupied multifamily housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in § 290.42.

(a) The costs to HUD of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market.

(b) Construction is substantially incomplete.

(c) Preservation is not feasible because of environmental factors that cannot be mitigated by HUD or the purchaser. For example, when the project is located on a site that cannot be made to comply with the Section 8 Site and Neighborhood standards in 24 CFR 886.307(k) because of factors that adversely affect the health, safety and general welfare of residents such as air pollution; smoke; mud slides; fire or explosion hazards. Preservation may also be infeasible because of

significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection; high crime rates; drug infestation; or lack of public community services needed to support a safe and healthy living environment for residents.

(d) HUD determines the project is unfit for rehabilitation.

(e) Rehabilitation would cost more than constructing comparable new housing.

(f) A reduction in the number of units in the project will enhance long-term project viability, for example, demolition of a building to provide space for a playground, open space, or combining one-bedroom units to create larger units for families.

(g) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located.

Subpart I—Sale of HUD-Held Multifamily Mortgages

§ 290.100 What is the purpose of this subpart?

The purpose of this subpart is to set out HUD's policy regarding the sale of subsidized and unsubsidized HUD-held mortgages. Except as otherwise provided in § 290.106(a)(2), the Department will sell these mortgages on a competitive basis. HUD retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. However, when a qualifying mortgage is offered for sale, the procedures set out in this part will govern the sale.

§ 290.102 What effect does this subpart have on the applicability of Civil Rights requirements?

Nothing in this subpart relieves HUD or housing that receives federal financial assistance from federal civil rights requirements, including section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, the Age Discrimination Act of 1975, Executive Order 11063, and related regulations and requirements. This includes housing in which less than 50% of the units are receiving housing assistance payments under either Section 23 or Section 8 of the United States Housing Act of 1937 and housing in which the rent of any unit is paid by a Section 8 certificate or voucher.

§ 290.104 What tenant protections will apply in the sale of HUD-held subsidized mortgages?

HUD will only sell subsidized mortgages if the sale is part of a transaction that will ensure that the project subject to the mortgage will continue to operate, at least until the maturity date of the mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the mortgage was insured prior to its assignment.

§ 290.106 How will HUD sell current subsidized mortgages?

HUD will sell current mortgages, as follows:

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

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

(2) On a negotiated basis, to State or local governments, or to a group of investors that includes an agency of a State or local government, if:

(i) The terms of the sale include an agreement by the State or local government, or an agency of the State or local government, to:

(A) Act as mortgagee or owner of a beneficial interest in the mortgage; and

(B) Ensure that the project will maintain occupancy by the tenant group originally intended to be served by the subsidized housing program; and

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

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

(a) of this section.

§ 290.108 How will HUD sell delinquent subsidized mortgages?

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

(a) The mortgages are restructured; and

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

§ 290.110 What is HUD's policy for selling HUD-held unsubsidized mortgages?

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

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

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

(1) HUD believes that foreclosure is unavoidable; and

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

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

2. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

3. Section 886.302 is amended by revising the definitions of the terms “*Eligible project or project*”, and “*Owner*”, to read as follows:

§ 886.302 Definitions.

* * * * *

Eligible project or project. A multifamily housing project (see 24 CFR part 290):

(1) For which the disposition in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families; and

(2) The units of which are decent, safe, and sanitary.

* * * * *

Owner. The purchaser, including a cooperative entity or an agency of the Federal Government, under this subpart, of a HUD-owned project; or the purchaser, including a cooperative entity or an agency of the Federal Government, through a foreclosure sale of a project that was subject to a HUD-held mortgage.

* * * * *

4. Section 886.310 is revised to read as follows:

§ 886.310 Initial contract rents.

HUD will establish contract rents at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A).

5. Section 886.311 is revised to read as follows:

§ 886.311 Term of contract.

The contract term for any unit shall not exceed 15 years, except that the term may be less than 15 years as

provided under either paragraph (a) or (b) of this section.

(a) The contract term may be less than 15 years if HUD finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial viability of the project can be maintained under a contract having a term less than 15 years. Where a contract of less than 15 years is provided under this paragraph, the amount of rent payable by tenants of the project for units assisted under such a

contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

(b) The contract term may be less than 15 years if the assistance is provided under a contract authorized under section 6 of the HUD Demonstration Act of 1993, and pursuant to a disposition plan under this part for a project that is determined by the HUD to be otherwise in compliance with this part.

6. Section 886.319 is revised to read as follows:

§ 886.319 Responsibility for contract administration.

HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

Dated: October 13, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95-5093 Filed 3-1-95; 8:45 am]

BILLING CODE 4210-27-P