Part IV

Department of Housing and Urban Development

24 CFR Parts 27 and 290

Prohibited Purchasers in Foreclosure Sales of Multifamily Projects With HUD-Held Mortgages and Sales of Multifamily HUD-Owned Projects; Proposed Rules
This proposed rule would prohibit a defaulting mortgagor or related parties to the mortgagor from bidding on or acquiring the multifamily property that was the subject of the mortgagor’s default. The purpose of this rule is to prevent a mortgagor from benefitting from its default and failure to meet its obligations. For example, an owner could avoid prepayment restrictions by defaulting and then buying at the foreclosure, or an owner could default and then buy back the project at foreclosure for less than the amount of the debt on which the default occurred.

The regulations governing nonjudicial foreclosure and the disposition of multifamily projects would be amended by adding, respectively, a new paragraph to § 27.20(f) and a new § 290.18. The new paragraph and section would specifically prohibit the defaulting mortgagor or any principal, successor, affiliate, or any assignee of any of the listed parties from bidding on or otherwise acquiring the defaulted property.

In codifying this general policy in HUD's regulations, the Assistant Secretary for Housing still retains the authority to waive these restrictions, since there may be instances in which it would be in HUD's interest to permit the defaulting mortgagor or the mortgagor's related parties to acquire the defaulted property. For example, it would be in HUD’s interest to permit the defaulting mortgagor to bid or purchase at a price that covers the default, or where it could be clearly shown that the default did not occur as a result of the action or inaction of the mortgagor.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only addresses circumstances in which a party may benefit at the public expense as a result of the action or inaction of the mortgagor.

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.
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3. The authority citation for 24 CFR part 290 continues to read as follows:

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

4. In subpart A, a new § 290.18 is added, to read as follows:

§ 290.18 Restrictions on sale to former mortgagors.

The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the mortgage on the property at the time of the default resulting in acquisition of the property by HUD shall not be eligible to purchase the property. A “principal” and an “affiliate” are defined as provided at 24 CFR 24.105 or successor regulation.


Andrew Cuomo,
Secretary.

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