

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 27 and 290

[Docket No. FR-4583-P-01]

RIN 2501-AC69

Prohibited Purchasers in Foreclosure Sales of Multifamily Projects With HUD-Held Mortgages and Sales of Multifamily HUD-Owned Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: 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.

DATES: *Comment Due Date:* September 5, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, 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: Marc Harris, Director, Field Asset Management Division, Office of Asset Management, Department of Housing and Urban Development, Room 6164, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708-2654. Hearing or speech-impaired individuals may call 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule proposes to codify HUD's policy of preventing a defaulting mortgagor on a multifamily project, and the defaulting mortgagor's related parties, from purchasing the property that was the subject of the default. This situation may arise in the foreclosure sale of a multifamily project with a HUD-held mortgage (addressed in 24 CFR part 27), or in the disposition of a HUD-owned multifamily project (addressed under 24 CFR part 290). HUD's policy is intended to prevent a party from benefiting from its default and failure to meet

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 by defaulting on its obligations, and does not impose any additional costs or burdens. Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 13132, Federalism

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 27

Administrative practice and procedure, Loan programs—housing and community development.

24 CFR Part 290

Mortgage insurance, Low and moderate-income housing.

Accordingly, parts 27 and 290 of title 24 of the Code of Federal Regulations are amended as follows:

PART 27—NONJUDICIAL FORECLOSURE OF MULTIFAMILY AND SINGLE FAMILY MORTGAGES

1. The authority citation for 24 CFR part 27 continues to read as follows:

Authority: 12 U.S.C. 1715b, 3701-3717; 3751-3768; 42 U.S.C. 1452b, 3535(d).

2. In § 27.20, a new paragraph (f) is added to read as follows:

§ 27.20 Conditions of foreclosure sale.

* * * * *

(f) The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105 or successor regulation.

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

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.

Dated: May 25, 2000.

Andrew Cuomo,

Secretary.

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