

§ 291.415 Lease with option to purchase properties for use by the homeless.

(a) *Certification.* Eligible properties are available for lease to applicants, approved by HUD, that certify that the property will be utilized only for the purpose of providing transitional housing for the homeless during the lease term, and that the intended use of the property will be consistent with all local laws and regulations. The lease agreement will be in a form prescribed by the Secretary. Lessees must execute a sublease with occupants in a form prescribed by the Secretary limiting an occupant's tenancy to no longer than two years.

(b) *Term of lease.* (1) A lease of an eligible property may be negotiated for such time as the lessee requires, not to exceed one year. Leases are renewable, at the option of the lessee and with the approval of HUD, at the end of the first lease term for up to four additional one-year terms, on a year-to-year basis, provided the lessee has met the requirements under this program.

(2) Approvals for lease renewals will be denied if HUD determines that the lessee has not complied with the requirements of this part of the lease.

(3) A property will not be leased to a lessee for a period longer than five years. At the end of the five-year period, if the lessee has not exercised the option to purchase, HUD will notify the lessee to vacate the property and, if necessary, will take appropriate action under the eviction laws of the jurisdiction in which the property is located. All property returned to HUD must be vacant, and will be placed on the market for sale to the general public.

(4) Within 30 days of leasing a property from HUD or within 30 days after a property is vacated, a lessee must sublease the property to the homeless, unless a longer period is approved by HUD.

(c) *Rent.* (1) The lessee must pay HUD a nominal rent of \$1 for each one-year lease period.

(2) A lessee may charge rent, including utilities, to an occupant at a rate appropriate to the financial means of the occupant. Unless HUD approves after consideration of such factors as

the cost of operating housing in the area and the amount of the lessee's contributions to the program, such rent may not exceed the highest of:

(i) Thirty percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(ii) Ten percent of the family's monthly income; or

(iii) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(3) In no event may the rent charged an occupant exceed the occupant's pro rata share of the lessee's costs of operating the property.

(d) *Damage to leased properties.* Any damage to leased property caused by the intentional or negligent acts of the lessee or occupants must be repaired by the lessee at its own expense. If the lessee does not make the necessary repairs within a reasonable time after the damage occurs, HUD may, at its option, make the repairs and charge the cost to the lessee. Failure by the lessee to make the necessary repairs or to reimburse HUD for the cost of repairs will constitute grounds for termination of the lease and may result in termination from the program.

(e) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the lower of the fair market value established at the time of the initiation of the lease or at the time of the sale, less a discount determined appropriate by the Secretary but not less than 10 percent, provided lessees agree to use the properties either to house low-income tenants for a period of not less than 10 years or to resell the properties to low-income buyers. If the lessee does not agree to such conditions, the lessee must purchase the properties at the higher of the fair market value at the time of the initiation of the lease or at the time of the sale, less 10 percent.

Any repairs to or rehabilitation of a property done by a lessee during the lease term will not be reflected in the purchase price.

(2) Sales of leased properties will be on as-is, all-cash basis. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. The purchaser must pay all other closing costs.

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§ 291.430 Elimination of lead-based paint hazards.

(a) *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraphs (c) and (d) of this section) apply to the lease or sale of property constructed prior to 1978 under this subpart. This section establishes procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to properties that may be occupied by children under seven years of age. This section is promulgated under 24 CFR 35.25(b)(4) and supersedes, with respect to this program, the requirements prescribed in subpart C of 24 CFR part 35.

(b) *Definitions.* The following definitions apply to this section:

Applicable surfaces means all intact and non-intact painted interior and exterior surfaces of a residential structure.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(c) *Inspection and treatment of defective paint surfaces.* HUD will inspect the property for defective paint surfaces before offering the property for sale or lease. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed by HUD before the sale or lease of the property.

(d) *Testing and treatment of applicable surfaces.* (1) If the lessee or purchaser knows or has reason to expect that the property will be occupied by homeless families with children under the age of seven years, the lessee or purchaser

must cause the unit to be tested for lead-based paint on all applicable surfaces before initial occupancy. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint is identified, the lessee or purchaser must cause all applicable surfaces to be treated. Treatment must consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). If the lessee or purchaser certifies to HUD that the property will not be occupied by homeless families with children under the age of seven years, no testing or treatment will be required.

(2) If a lessee or purchaser has reason to believe that a property contains lead-based paint on applicable surfaces, it may, at its option, dispense with the testing procedure and proceed directly to treatment.

(3) The lessee or purchaser may not allow the property to be occupied by children under seven years of age until proof of testing or treatment, if necessary, has been submitted to and reviewed by HUD.

(e) Where testing of leased property reveals the presence of lead-based paint requiring treatment and the lessee concludes that the cost of treatment would be beyond its means, the lessee may cancel the lease.

§ 291.435 Applicability of other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following Federal requirements apply to lessees and purchasers under this subpart:

(a) *Nondiscrimination and equal opportunity.* (1) The nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 are modified as follows:

(i) As applicable, lessees and purchasers must also comply with the Americans With Disabilities Act (42