

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.

[61 FR 55715, Oct. 28, 1996]

§ 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Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraphs (c) and (d) of this section) apply to the lease or sale of property constructed prior to 1978 under this subpart.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

U.S.C. 12131) and implementing regulations in 28 CFR parts 35 and 36.

(ii) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and Executive Order 11246 (30 FR 12319, 12935, 3 CFR, 1946-1965 Comp., p. 339; Executive Order 11625 (36 FR 19967, 3 CFR, 1971-1975 Comp., p. 616); Executive Order 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198; and Executive Order 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393) do not apply to this subpart.

(2) Lessees or purchasers that intend to serve designated populations of the homeless must comply, within the designated population, with the requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and disability.

(3) If the procedures that the lessee or purchaser intends to use to make known the availability of housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the availability of the housing.

(4) The lessee or purchaser must adopt procedures to make available information on the existence and locations of facilities and services that are

accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(b) *Conflicts of interest.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the lessee or purchaser of property under this subpart, or who is in a position to participate in a decisionmaking process or gain inside information with regard to the lease or purchase of the property, may obtain a personal or financial interest or benefit from the lease or purchase of the property, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

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§ 291.440 Recordkeeping requirements.

Each lessee must establish and maintain sufficient records to enable the Secretary to determine whether the requirements of this subpart have been met. This includes, where available, racial, ethnic, gender, and disability status data on the applicants for, and beneficiaries of, this homeless initiative.

(Approved by the Office of Management and Budget under OMB control number 2502-0412)

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