

Legal Opinion: GCH-0040

Index: 2.296

Subject: Applic. of 24 CFR 886, Subpart C to Foreclosure Sales

February 4, 1992

MEMORANDUM FOR: Steven J. Hans, Director, Multifamily Property
Disposition Division, HMPD

FROM: Michael H. Reardon, Assistant General Counsel
Assisted Housing Division, GCH

SUBJECT: Applicability of 24 CFR 886, Subpart C
to Foreclosure Sales

This is in response to your December 13, 1991, memorandum on the captioned issue.

In our earlier meeting on this issue, you indicated that at the foreclosure sales of projects with HUD-held mortgages HUD was offering prospective purchasers section 8 assistance pursuant to HUD section 8 property disposition regulations at subpart C of 24 CFR section 886.

This practice has been questioned because HUD regulations at 24 CFR section 886.301 state that section 886, subpart C regulations apply to "HUD-owned housing" and HUD never takes title to these properties because they are purchased by unrelated third parties at the foreclosure sale. We believe that the practice of providing section 8 to projects sold at foreclosure sales in accordance with subpart C of section 886 is legally acceptable in light of the mandate of Section 181 of the Housing and Community Development Act of 1987.

Section 181(a) requires that the "Secretary ... shall manage or dispose of multifamily housing projects that are owned by the Secretary, or... being foreclosed upon by the Secretary, in a manner that ... will, in the least costly fashion among the reasonable alternatives available, further the goals of - (1) preserving (them) so that they are available to and affordable by low- and moderate -income persons."

Section 181(d) provides that "in carrying out the goals specified in subsection (a)(1) the Secretary shall ... enter into contracts under section 8 of the United States Housing Act of 1937 ... with owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary."

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HUD has not promulgated regulations which specifically

address section 181, but, rather, has administratively adopted the section 886, subpart C regulations to accomplish this statutory mandate. It is our opinion that HUD has the administrative discretion to use the section 886, subpart C regulations in this manner by administratively expanding the undefined term "HUD-owned housing" at 886.301 to include property with HUD-held mortgages which are acquired by third party purchasers at foreclosure sales. We believe that this practice is consistent with the treatment by Congress of these sales under Section 181 of the Housing and Community Development Act of 1981.

If you have any questions concerning this memorandum, please contact Joe Bacus at 708-0996.