

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR-4611-F-02]

RIN 2502-AH55

Tenant Participation in State-Financed, HUD-Assisted Housing Developments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover state-financed housing developments that receive assistance under certain HUD programs. The statutory right of tenants to organize includes those state-financed housing developments. This final rule extends the protection of tenant organizations to include state-financed housing developments assisted under certain HUD programs.

DATES: *Effective Date:* May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On June 18, 2002 (67 FR 41583), HUD published a proposed rule that would apply the same protections provided to tenant organizations in HUD-assisted and/or insured multifamily housing developments to tenant organizations in state-financed, HUD-assisted housing developments receiving assistance under the Rent Supplement Program (12 U.S.C. 1701(s)) or under section 236 of the National Housing Act (12 U.S.C. 1715z-1). HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover state-financed housing developments that receive assistance under those HUD programs. This rule extends to state-financed, HUD-assisted

housing developments the organizational rights of tenants in other HUD-assisted and insured multifamily housing developments.

Section 245.10(a)(3) of HUD's regulations excludes state or local housing finance agency developments receiving assistance under section 236 of the National Housing Act or the Rent Supplement Program from the coverage of subpart B, which contains the specific protections and basic regulations for tenant organizations. The statutory language, however, gives HUD the authority to include these state-financed, HUD-assisted housing developments within the coverage of this subpart of the tenant participation rule.

Specifically, section 202(a) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1b(a), provides that "the term 'multifamily housing project' means a project which is eligible for assistance as described in section 1715z-1a(c) of this title * * *". The protection for tenant organizations, found in 12 U.S.C. 1715z-1b(b)(4), applies to multifamily housing projects as so defined. Developments eligible for assistance under 12 U.S.C. 1715z-1a(c) include those assisted under section 236, 12 U.S.C. 1715z-1, or section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s (Rent Supplements). Section 12 U.S.C. 1715z-1a(b) explicitly states that projects eligible for assistance under section 1715z-1a are eligible "without regard to whether such projects are assisted under the National Housing Act." Therefore, because eligibility for assistance is not based on federal insurance, and because tenant organization rights apply based on the eligibility for assistance, HUD has authority to apply the statutory protections for tenant organizations to state-financed, HUD-assisted housing developments, so long as the developments receive one of the eligible forms of assistance. Given this authority, this rule extends coverage of protections of tenant organizations to state-financed, HUD-assisted housing developments.

II. The Proposed Rule

On June 18, 2002 (67 FR 41582), HUD published a proposed rule that would amend 24 CFR 245.10(a)(3) to extend the protections for tenant organizations to state-financed, HUD-assisted housing developments that receive one of the covered forms of assistance, Rent Supplement or assistance under section 236. In addition, the proposed rule would correct an error in a legal citation in 24 CFR 245.135(a)(3), and correct a

cross-reference to "subpart D" in 24 CFR 245.10(a)(3), replacing it with the correct reference to "subpart E."

III. Final Rule

This final rule follows publication of the June 18, 2002, proposed rule and takes into consideration the public comments received on the proposed rule. This final rule adopts the proposed rule without change.

IV. Discussion of Public Comments on the June 18, 2002, Proposed Rule

The public comment period for the proposed rule closed on August 19, 2002. HUD received eight comments on the proposed rule, six from local tenant associations, one from a regional tenant advocacy corporation, and one from a national tenant association. All eight comments supported the rule.

Six of the eight commenters wrote that tenants of State-financed, HUD-assisted housing developments should be afforded the same rights and protections to organize and participate in the operation of their developments as tenants in HUD-assisted housing that is not State-financed. Three of the commenters added that tenant association independence from the development owners and management is a "most important" issue for their organizations. One commenter explained that experiential evidence demonstrated that once educated and empowered by their rights, tenants are "effective in preserving affordable housing and maintaining this valuable resource for their communities."

Comment: Four commenters submitted comments on enforcement of this rule. The comments generally noted the importance of enforcing the rule. Two of these four commented more specifically that there "must be an enforcement procedure, sanctions, and a listing of prohibited owner/management activities if these regulations are going to work."

HUD Response: HUD agrees that it is important that tenants' rights to organize be enforceable, however, HUD does not anticipate adding additional enforcement actions other than those that already exist in the overall final rule, "Tenant Participation in Multifamily Housing Projects," published on June 7, 2000 (65 FR 36272). Therefore, the comments relating to enforcement procedures, sanctions, and a listing of prohibited owner/management activities have already been addressed and do not need to be added to this final rule including Housing Finance Agencies.

V. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact remains applicable and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects and would have minimal economic impact on the owners of covered projects. Although the rule would require that owners permit tenants and tenant organizers to conduct reasonable activities related to the establishment or operation of tenant organizations, it would not impose any affirmative obligations on owners to assist tenant organizations in the conduct of these activities. For example, the owners of covered projects would

not be required to contribute, economically or otherwise, to the preparation or distribution of leaflets and other informational materials developed by a tenant organization. The rule permits tenant organizations to develop responses to economic proposals made by owners, such as rent increases and major capital additions. While HUD encourages owners to take these responses into consideration, the rule does not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization.

Federalism Impact

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. 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 the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this rule is a “significant regulatory action,” as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

■ For the reasons discussed in this preamble, HUD amends 24 CFR part 245 as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

■ 1. The authority citation for 24 CFR part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

■ 2. Amend § 245.10, paragraph (a)(3) as follows:

§ 245.10 Applicability of part.

(a) * * *

(3) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program (12 U.S.C. 1701s) administered through a state or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A, B and C of this part, and of subpart E of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

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■ 3. Make the following technical correction to § 245.135:

■ a. Revise the authority citation at § 245.135(a)(3) to read “24 CFR part 24, subpart G.”

Dated: April 15, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–10093 Filed 4–23–03; 8:45 am]

BILLING CODE 4210–27–P