

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR-4611-P-01]

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: Proposed 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. However, the statutory right of tenants to organize includes those State-financed housing developments. This proposed rule would extend the protection of tenant organizations to include State-financed developments assisted under certain HUD programs.

This rulemaking also proposed to make a minor technical correction to a citation in the existing tenant participation regulation, and to correct a mistaken cross-reference.

DATES: *Comment Due Date:* August 19, 2002.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. 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.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. 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. The June 7, 2000, Final Rule

The final rule on tenant participation in multifamily insured and assisted housing, 65 FR 36272-36282 (June 7, 2000), expands tenant participation into new categories of HUD assisted housing pursuant to statutory changes enacted in 1998. Section 599 of the Quality Housing and Work Responsibility Act, Public Law 105-276 (approved October 21, 1998), codified at 12 U.S.C. 1715z-1b, extended the protection of tenant organizations to developments that receive project-based Section 8 assistance and enhanced vouchers. The June 7, 2000, final rule implements these provisions. In addition, section 183(a) of the Housing and Community Development Act of 1987, Public Law 100-242, 101 Stat. 1872, amended 12 U.S.C. 1715z-1b to expand tenant participation rights to include projects eligible for assistance under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q. The June 7, 2000, regulation implements that change as well.

In addition, the June 7, 2000, rule establishes some basic parameters for the structure and activities of tenant organizations. These include a basic list of protected organizational activities that owners of multifamily developments covered under the rule must allow, such as distributing leaflets, contacting tenants, holding meetings, and formulating responses for owners to consider to certain management actions that affect tenants. The rule also defines the characteristics of legitimate tenant organizations, regulates tenant organizers, and establishes an enforcement scheme. These changes are codified at 24 CFR part 245, subpart B.

Section 245.10(a)(3) of the June 7, 2000, rule 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 developments within the coverage of this subpart of the tenant participation rule.

Specifically, the governing law, 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." Thus, since eligibility for assistance is not based on federal insurance, and since tenant organization rights apply based on the eligibility for assistance, HUD has authority to apply the statutory protections for tenant organizations to developments financed by State agencies, so long as the developments receive one of the eligible forms of assistance.

Through an oversight, HUD failed to apply tenant organizational rights to these State-financed developments in the 1999 proposed rule that was the basis of the June 7, 2000, final rule. One of the commenters on the proposed rule pointed out this issue and inquired regarding whether HUD would consider amending the rule to include State-financed, HUD assisted developments. HUD did not incorporate such a change in the June 7 rule because the proposed rule had not clearly given notice of this issue for general public comment. HUD believes that there should be express notice to the affected public and a full opportunity to comment specifically on this issue prior to making such a change, and therefore issues this new proposed rule regarding this matter.

II. This Proposed Rule

This rulemaking proposes to apply the protections for tenant organizations to State-financed developments receiving one of the covered forms of assistance, Rent Supplement or assistance under section 236. To effect this change, this rule simply amends 24 CFR 245.10(a)(3). In addition, this rule technically corrects an error in a legal citation in 24 CFR 245.135(a)(3), and corrects a mistaken cross-reference to "subpart D" in 24 CFR 245.10(a)(3), replacing it with the correct reference to "subpart E."

III. 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 proposed 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 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 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 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.

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 proposed 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 proposed rule would permit 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

proposed rule would not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization.

Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed 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 proposed 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 proposes to amend 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 section 245.135:

a. Revise the authority citation at section 245.135(a)(3) to read "24 CFR part 24, subpart G."

Dated: February 28, 2002.

John C. Weicher,

Assistant Secretary for Housing, Federal Housing Commissioner.

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