

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR-4403-P-01]

RIN 2502-AH32

Tenant Participation in Multifamily Housing Projects

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for tenant participation in multifamily housing projects. Specifically, the proposed rule would expand the number of categories of multifamily housing projects in which tenants have the right to establish and operate tenant organizations. The proposed rule would clarify the reasonable activities that the owner of a multifamily housing project, covered under this proposed rule, must allow tenants and tenant organizers to engage in while organizing their co-tenants and operating a tenant organization. The proposed rule would also clarify the requirements for establishing and operating a tenant organization.

DATES: *Comments Due Date:* August 16, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Multifamily Housing Programs, 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. Background

a. Tenant Participation in Multifamily Housing Projects

HUD supports the active involvement of tenants in creating and maintaining a suitable living environment and in contributing to the successful operation of their multifamily housing projects. This proposed rule would amend HUD's regulations at 24 CFR part 245 (entitled "Tenant Participation in Multifamily Housing Projects") to increase the number of categories of multifamily housing projects covered by part 245. The rule would also clarify the reasonable activities that tenants and tenant organizations may engage in and the requirements for establishing and operating a tenant organization. The amendments proposed by this rule are discussed below.

b. Increased Number of Categories of Multifamily Housing Projects Covered

The statutory authority for part 245 is section 202 of the Housing and Community Development Amendments of 1978 (Pub. L. 95-557, 92 Stat. 2080, 12 U.S.C. 1715z-1b) (1978 HCD Amendments Act). The coverage of section 202 was expanded by section 183 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, 101 Stat. 1815) (1987 HCD Act). This amendment added multifamily housing projects "eligible for assistance as described in * * * section 202 of the Housing Act of 1959" (1959 Housing Act).

The coverage of section 202 of the 1978 HCD Amendments Act was expanded again in 1998 by section 599 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, 112 Stat. 2461). This amendment added multifamily housing projects that receive:

project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

The proposed rule would revise § 245.10 (entitled "Applicability of part") to reflect these various statutory amendments to section 202 of the 1978 HCD Amendments Act. The proposed rule would make the following changes to § 245.10:

1. Paragraph (a)(2) (entitled "Section 202 project") would be removed along with the accompanying definition of

"Section 202 Loans for the Elderly or Handicapped BMIR Program" from paragraph (c). These paragraphs limited the type of Section 202 project covered by part 245. They are no longer applicable because of section 183 of the 1987 HCD Act, which amended section 202 of the 1978 HCD Amendments Act to include coverage of all Section 202 projects (note: the term "Section 202 projects" refers to section 202 of the 1959 Housing Act).

2. Paragraphs (a)(4)-(a)(7) would be added. Each paragraph would add a new category of multifamily housing project as follows:

Paragraph	Would add multifamily housing projects receiving
(a)(4)	Project-based assistance under section 8 of the United States Housing Act of 1937.
(a)(5)	Enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.
(a)(6)	Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program.
(a)(7)	Section 811 Supportive Housing for Persons with Disabilities program.

Section 245.10(a)(7) of this proposed rule would add Section 811 multifamily housing projects even though these projects are not explicitly mentioned in section 202 of the 1978 HCD Amendments Act. As noted, section 183 of the 1987 HCD Act expanded the scope of section 202 of the 1978 HCD Amendments Act to include multifamily housing projects described in section 202 of the 1959 Housing Act. At the time of the 1987 amendments, section 202 of the 1959 Housing Act included multifamily housing projects that are currently part of the Section 811 program. The Section 811 program was split out of section 202 of the 1959 Housing Act in 1990 by the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, 104 Stat. 4079). HUD does not believe that Congress intended to narrow the coverage of section 202 of the 1978 HCD Amendments Act to limit the ability of Section 811 residents to participate in tenant organization activities. HUD, therefore, is proposing to revise part 245 to reflect the coverage of section 202 of the 1959 Housing Act before its amendment in 1990.

c. Protected Activities

The role of the tenant organization is, among other things, to increase tenant participation and awareness in creating and maintaining a positive living environment. In order to achieve this goal, the proposed rule would require that owners of multifamily housing projects, covered under this proposed rule, allow tenants and tenant organizers to conduct reasonable activities related to the establishment and operation of a tenant organization.

The existing regulations preclude owners of multifamily housing projects from impeding the reasonable efforts of tenants to organize, but they are not specific with respect to what actions may constitute reasonable efforts. This lack of specificity, in a number of cases, has led to confusion. This confusion has contributed to disputes between owners and tenants and between owners and those attempting to organize tenants.

In an attempt to avoid this confusion, the proposed rule would retain the current reasonableness standard while listing specific activities that are protected. The list of activities is not exhaustive, but provides specific examples that would assist tenants, owners, and tenant organizers to determine what constitutes a protected activity under the part 245 regulations. The proposed rule would still require that owners of multifamily housing projects allow tenants and tenant organizers to conduct reasonable activities related to the establishment and operation of a tenant organization, in addition to the specific activities listed in the proposed rule.

Protected activities listed in the proposed rule include the distribution or posting of information regarding tenant organizations, initiating contact with tenants, assisting tenants to participate in tenant organization activities, convening regularly scheduled meetings on site, and formulating responses to various owner proposals such as rent increases, conversion from project-based paid utilities to tenant-paid utilities, tenant utility allowance reductions, conversion of residential units to non-residential use, cooperative housing, or condominiums, and major capital additions.

d. Tenant Organizers

Under the proposed rule, a tenant organization must consist of the tenants of a multifamily housing project covered under this proposed rule. However, tenants may have the assistance of tenant organizers who need not be tenants of the housing project. Where a

tenant organizer is not a tenant of the housing project and the owner of the housing project has a consistently enforced policy against door-to-door solicitation, the tenant organizer must be accompanied by a tenant while conducting tenant organization related activities on the housing project property.

Where the tenant organizer is not a tenant of the housing project and the owner of the housing project has a policy favoring solicitation, the non-tenant tenant organizer must likewise be afforded the same privileges and rights of access as other uninvited outside parties would have in the normal course of operations. If the owner of the housing project does not have a consistently enforced policy against solicitation, the housing project shall, for purposes of the tenant organizer's right to access, be treated as if it has a policy favoring solicitation.

e. Properly Established Tenant Organizations

The proposed rule would require owners of multifamily housing projects, covered under the proposed rule, to give reasonable consideration to concerns raised by a properly established tenant organization. Further, the owner must recognize the right of tenants to establish or replace a tenant organization. Under the proposed rule, a tenant organization has been properly established, if it has been established by the tenants of a multifamily housing project covered under 24 CFR 245.10 for the purpose of addressing the terms and conditions of their tenancy, has adopted written procedures in compliance with the proposed rule, and has elected a governing board in compliance with the proposed rule.

f. Additional Tenant Organizations

While HUD believes that, generally, one established tenant organization, elected by the tenants, presents the most effective means of providing a voice for tenants in relations with multifamily housing project owners, management agents, and HUD, HUD recognizes the fact that the established organization may not always adequately represent the concerns and opinions of all of the tenants.

To address this issue, the proposed rule requires owners and management agents to recognize the rights of tenants to organize to replace the leadership of an existing tenant organization through recall elections, to establish issue-based organizations in response to specific tenants' issues, or to establish additional tenant organizations. A tenant organizer may assist tenants in organizing a recall

election or establishing additional tenant organizations.

g. Enforcement Through Regulatory Agreements

If an owner does not comply with the provisions of its regulatory agreement with HUD, HUD has the right to declare a breach of the agreement. Regulatory agreements for most current insured mortgages mandate that owners adhere to HUD management requirements. The right of tenants to organize is such a requirement.

Notwithstanding this existing general enforcement authority, in order to provide greater clarity to owners, upon publication of a final rule, HUD intends to revise regulatory agreements to include the right of tenants to organize explicitly in the agreement itself. HUD will have the opportunity to revise the regulatory agreements during the development of new housing projects or whenever an owner seeks assistance or relief that requires an amendment to an existing regulatory agreement. For example, this might occur in a partial payment of claim, a bond refunding, or transfer of physical assets (sale of property). In addition to revising the regulatory agreements, HUD expects to take other appropriate actions (such as updating its handbooks and providing instructions to field office staff) to assist tenants and owners in implementing this rule.

h. Public Comments on This Proposed Rule

In order to reach consensus on the issue of the rights of tenants to organize multiple tenant organizations, and in the spirit of partnership and cooperation, HUD invites comments on this proposed rule from the public, particularly representatives of housing project owners, management agents, tenants and tenant groups, and all other interested parties. HUD will consider all of the comments in the development of the final rule.

II. 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

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

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

The General Counsel, as the Designated Official for HUD under Section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that this rule would not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects. Specifically, this proposed rule would expand the categories of multifamily housing projects in which tenants have the right to establish and operate tenant organizations. The proposed rule would also clarify the requirements for establishing and operating a tenant organization and the activities that owners of multifamily housing projects must allow tenant organizations to engage in. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal government and State and local governments.

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 as follows:

- a. Remove paragraph (a)(2);
- b. Remove from paragraph (c) the definition of "Section 202 Loans for the Elderly or Handicapped BMIR Program";
- c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;
- d. Revise redesignated paragraphs (a)(2)(ii) and (a)(3); and
- e. Add paragraphs (a)(4)–(7) to read as follows:

§ 245.10 Applicability of part.

- (a) * * *
- (2) * * *
- (ii) Was sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low- and moderate-income character of the project;
- (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 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 and C of this part and of subpart D 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;
- (4) The project receives project-based assistance under section 8 of the United States Housing Act of 1937;
- (5) The project receives enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997;
- (6) The project receives assistance under the Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program; or
- (7) The project receives assistance under the Section 811 Supportive Housing for Persons with Disabilities program.

* * * * *

Subpart B—Tenant Organizations

3. Add § 245.100 to read as follows:

§ 245.100 Right of tenants to organize.

The tenants of a multifamily housing project covered under § 245.10 have the

right to establish and operate a tenant organization for the purpose of addressing the terms and conditions of their tenancy.

4. Revise §§ 245.105 and 245.110 to read as follows:

§ 245.105 Recognition of tenant organizations.

Owners of multifamily housing projects covered under § 245.10, and their agents, must:

- (a) Recognize properly established tenant organizations; and
- (b) Give reasonable consideration to concerns raised by properly established tenant organizations.

§ 245.110 Properly established tenant organizations.

A tenant organization has been properly established if it has:

- (a) Been established by the tenants of a multifamily housing project covered under § 245.10 for the purpose of addressing the terms and conditions of their tenancy;
- (b) Adopted written procedures in compliance with § 245.115; and
- (c) Elected a governing board in compliance with § 245.120.

5. Add §§ 245.115, 245.120, 245.125, 245.130, 245.135, 245.140, 245.145, 245.150, 245.155, and 245.160 to read as follows:

§ 245.115 Constitution or by-laws.

A tenant organization must adopt written procedures either in the form of a constitution or in the form of by-laws. A tenant organization may determine the contents and structure of its constitution or by-laws, however, the constitution or by-laws must, at a minimum, contain:

- (a) Procedures for the election of a governing board, which assure fair elections;
- (b) Procedures for instituting a recall election to remove a governing board or board member;
- (c) The percentage of qualified voting members needed to hold a recall election, which may not be less than ten percent;
- (d) The frequency of elections;
- (e) The qualifications needed to run for a seat on the governing board; and
- (f) The structure of the governing board.

§ 245.120 Governing board.

(a) *Structure.* A tenant organization may determine the structure of its governing board, however, the governing board must, at a minimum:

- (1) Be democratically elected; and
 - (2) Consist of at least five members whose terms are staggered.
- (b) *Qualification to serve on governing board.* A tenant organization may

determine the qualifications required to serve on its governing board, however, a candidate for a seat on the governing board must, at a minimum be:

- (1) A qualified voting member; and
 - (2) In compliance with the lease.
- (c) *Term length and term limits.* A tenant organization may determine the length of a term for seats on the governing board, however, a seat on a governing board may not be held for more than three consecutive years. A tenant organization may determine whether a person serving on the governing board may be limited in the number of terms served.

§ 245.125 Qualified voting member.

(a) A person is a qualified voting member and may vote in any election involving the activities of a tenant organization, if the person is:

- (1) Eighteen years of age or older; and
- (2) Named in the lease for an apartment unit in the multifamily housing project represented by the tenant organization.

(b) A qualified voting member may designate another person to vote in an election, if that person is:

- (1) Eighteen years of age or older; and
- (2) Resides in the same apartment unit as the qualified voting member.

§ 245.130 Number of votes.

Each apartment unit in a multifamily housing project receives one vote per election, regardless of the number of occupants of that apartment unit.

§ 245.135 Election notices.

All qualified voting members of a tenant organization must be given at least thirty days notice of any elections relating to the activities of the tenant organization. This notice must include:

- (a) A description of the tenant organization's election procedures;
- (b) A description of the election eligibility requirements; and
- (c) The dates of nominations and elections.

§ 245.140 Protected activities.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

- (1) Distributing leaflets in lobby areas;
- (2) Placing leaflets at or under tenants' doors;
- (3) Distributing leaflets in common areas;
- (4) Initiating contact with tenants;
- (5) Conducting an initial door-to-door survey of tenants to solicit interest in

establishing a tenant organization and to offer information about tenant organizations;

(6) Posting information on bulletin boards;

(7) Assisting tenants to participate in tenant organization activities;

(8) Convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants; and

(9) Formulating responses to owner's requests for:

- (i) Rent increases;
- (ii) Partial payment of claims;
- (iii) The conversion from project-based paid utilities to tenant-paid utilities;
- (iv) A reduction in tenant utility allowances;
- (v) Converting residential units to non-residential use, cooperative housing, or condominiums;
- (vi) Major capital additions; and
- (vii) Prepayment of loans.

(b) In addition to the activities listed in paragraph (a) of this section, owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization.

§ 245.145 Meeting space.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:

- (1) Tenants or a tenant organization and used for activities related to the operation of the tenant organization; or
- (2) Tenants seeking to establish a tenant organization or collectively address the terms and conditions of their tenancy.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities.

(c) *Fees.* An owner of a multifamily housing project covered under § 245.10 may charge a fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. An owner may waive this fee.

§ 245.150 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenant

organizers to assist tenants in establishing and operating tenant organizations.

(c) Non-tenant tenant organizers. (1) If a multifamily housing project covered under § 245.10 has a consistently enforced policy against solicitation, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project.

(2) If a multifamily housing project covered under § 245.10 has a policy favoring solicitation, any non-tenant tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the

normal course of operations. If the project does not have a consistently enforced policy against solicitation, the project shall be treated as if it has a policy favoring solicitation.

§ 245.155 Tenant's right not to be re-solicited.

A tenant has the right to not be re-solicited regarding participation in a tenant organization.

§ 245.160 Additional tenant organizations.

(a) There may be more than one tenant organization for each multifamily housing project covered under § 245.10.

(b) Owners of multifamily housing projects covered under § 245.10, and

their agents, must recognize the rights of tenants to organize to replace the leadership of an existing tenant organization through recall elections, to establish issue-based organizations in response to specific tenants' issues, and to establish additional tenant organizations. A tenant organizer may assist tenants in organizing a recall election or establishing additional tenant organizations.

Dated: March 25, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

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