



OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

AUG 27 2010

TO: All Owners and Management Agents

SUBJECT: Tenant Participation in Multifamily Housing Projects:
24 CFR Part 245, Subpart B

This is a follow-up to my June 18, 2010, letter (attached) on the Department of Housing and Urban Development's multifamily tenant participation regulation, 24 CFR Part 245, Subpart B.

My June 18, 2010, letter highlighted certain key features of 24 CFR Part 245, Subpart B and provided notice to multifamily owners and management agents that the Department is currently developing a Housing Notice to implement enforcement of the regulation. The letter provided examples of properties covered under 24 CFR Part 245, Subpart B, but did not include a comprehensive list, which created confusion and concern among some tenants and tenant organizations. Accordingly, this memorandum provides a comprehensive list of properties covered by 24 CFR Part 245, Subpart B, as well as the sanction authority available to the Department based upon project type. Covered properties and sanction authority will also be extensively discussed in the forthcoming Housing Notice implementing the Department's enforcement policy.

The following replaces the paragraph of the same title in the June 18, 2010, letter.

Properties covered by 24 CFR Part 245, Subpart B

24 CFR Part 245, Subpart B, applies to:

1. Projects with an insured mortgage or a HUD-held mortgage under the National Housing Act that have received final endorsement and are assisted under:
 - a) Section 236;
 - b) the Section 221(d)(3) BMIR Program;
 - c) the Rent Supplement Program; or
 - d) the Section 8 Loan Management Set-Aside Program following conversion to such assistance from the Rent Supplement Program.

24 CFR Part 245, Subpart B does not apply to projects insured and assisted under these programs that are owned by cooperative housing corporations or associations.

Owners who violate 24 CFR Part 245, Subpart B for this category of projects are subject to Civil Money Penalties under 12 U.S.C. § 1735f-15 and other sanctions available to the Department.

2. Formerly HUD-owned properties that:
- A. before being acquired by the Secretary were assisted under:
 - 1) Section 236;
 - 2) the Section 221(d)(3) BMIR Program;
 - 3) the Rent Supplement Program;
 - 4) the Section 8 Loan Management Set-Aside Program following conversion to such assistance from assistance under the Rent Supplement Program; and
 - B. were sold by the Secretary subject to a mortgage insured or held by HUD and an agreement to maintain the low and moderate income character of the project.

Owners who violate 24 CFR Part 245, Subpart B for this category of projects are not subject to Civil Money Penalties but other sanctions are available to the Department.

3. Uninsured properties that receive:
- a) Assistance under Section 236 or the Rent Supplement Program administered through state or local finance agencies;
 - b) Project-Based Section 8 Assistance (does not cover tenant participation in Public Housing Authorities that may administer such assistance);
 - c) Enhanced Vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended;
 - d) Assistance under the Section 202 Direct Loan or Section 202 Supportive Housing for the Elderly Programs or the Section 811 Supportive Housing for Persons with Disabilities Program.

Owners who violate 24 CFR Part 245, Subpart B for this category of projects are not subject to Civil Money Penalties but other sanctions are available to the Department.

Additional information regarding tenant participation in multifamily projects may be found at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4381.5/index.cfm> (HUD Management Agent Handbook 4381.5) and at <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi> (24 CFR Part 245 in its entirety). Please contact your local HUD Program Center with questions.

Thank you for your partnership and participation in HUD's Multifamily Programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol J. Galante". The signature is written in a cursive style with a large initial "C".

Carol J. Galante
Deputy Assistant Secretary for Multifamily
Housing Programs

Attachment

June 18, 2010, Letter to Multifamily Owners and Management Agents



OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

JUN 18 2010

TO: All Owners and Management Agents

SUBJECT: Tenant Participation in Multifamily Housing Projects 24 CFR Part 245

The Department of Housing and Urban Development's regulations governing tenant participation in multifamily housing projects are found at 24 CFR Part 245. These regulations reflect the Department's commitment to tenant participation, individually and through legitimate tenant organizations. We believe that tenant participation is an important element to maintaining sustainable projects and communities.

This letter highlights certain key features of Part 245 and serves as a reminder that compliance with these requirements is expected. By issuance of a Housing Notice currently being developed, the requirements of Part 245 will be enforced through the imposition of Civil Monetary Penalties. The Housing Notice will be developed with appropriate consultation and input from our stakeholders.

Properties covered by Part 245

24 CFR Part 245 applies to projects with an insured mortgage or a HUD-held previously insured mortgage assisted under Section 236, the Section 221(d)(3) BMIR Program, the Rent Supplement Program, or the Section 8 Loan Management Set-Aside Program following conversion to such assistance from the Rent Supplement Program Assistance. Part 245 also covers formerly HUD-held properties that were previously assisted under the Section 236, 221(d)(3), Rent Supplement or Section 8 LMSA programs that have been sold by the Secretary with a mortgage insured or held by HUD with an agreement to maintain the low and moderate income character of the building.

The Department amended Part 245 on April 24, 2003 to extend coverage to non-HUD insured properties that receive assistance under the Section 236 or Rent Supplement programs administered by state or local agencies.

Right of tenants to organize

Part 245.100 provides tenants of a covered multifamily housing project the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment as well as activities related to housing and community development.

Legitimate tenant organizations

Part 245.110 defines a legitimate tenant organization as one that has been established for the purposes stated in Part 245.100 and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives. The definition covers "organizing committees" newly formed by residents, and does not require specific structures, written by-laws, elections, or resident petitions for a group to be

considered legitimate.

Protected activities

Part 245.115 identifies specific activities that owners and agents must allow tenants and tenant organizers to conduct related to establishment or operation of a tenant organizations. These activities include distributing leaflets in lobby and common areas, under tenants' doors; initiating contact with tenants; conducting door-to-door surveys and information dissemination about the organization; posting information on bulletin boards; and convening tenant organization meetings on-site in a manner that is fully independent of management representatives. Tenants also have the right to formulate responses to owners' requests for rent increases, conversion from project paid utilities to tenant-paid utilities; converting units to non-residential use or condominiums; capital additions; and loan prepayment. In order to preserve the independence of tenant organizations, the regulations specify that management representatives may not attend tenant meetings unless specifically invited by the tenant organization. Owners and agents are prohibited from requiring tenants or tenant organizers from obtaining prior permission before engaging in activities protected under Part 245.115.

Meeting space

Part 245.120 requires owners and agents of covered projects to reasonably make available the use of any community room or other available space appropriate for meetings when requested by tenants or the tenant organization for activities related to the operation or establishment of the tenant organization or to collectively address issues related to their living environment. These meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. An owner may charge a reasonable fee, approved by HUD, as may normally be imposed for use of such facilities in accordance with procedures prescribed by HUD. An owner may elect to waive this fee.

Tenant organizers

Part 245.125 defines a "tenant organizer" as a tenant or non-tenant who assists tenants in establishing and operating a tenant organization, and who is not an employee or representative of current or prospective owners, managers or their agents. Owners and agents must allow tenant organizers to assist tenants in establishing and operating tenant organizations.

A non-tenant, tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project only in cases where the project has a consistently enforced, written policy against canvassing (unless the organizer represents a nonprofit organization directly funded by HUD to provide eligible education and outreach assistance to tenants, in which case this requirement does not apply). Where there is such a non-canvassing policy, non-tenant organizers must be afforded the same rights and privileges as other uninvited outside parties; where there is no such policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

Impediments to Residents or Resident Associations Attempting to Exercise Their Rights

Chapter 4 of Handbook 4381.5 (Rev. 2) identifies specific actions by owners/and agents that constitute impediments to residents or resident associations attempt to exercise their rights. These include:

Unreasonably denying accessible meeting space to residents; repeatedly sending management representatives to resident meetings which residents have requested management not to attend; evicting, threatening to evict, withholding entitlements, or otherwise penalizing residents for organizing or asserting their rights; attempting to adversely influence resident leaders by offering individual inducements such as employment, preferential transfers, rent abatements, favored repairs, or other benefits not available to all residents in the development; attempting to form a competing resident organization under the control of the management company or the owner; sexually harassing residents.

Enforcement

Part 245.135 states that owners, agents, and principals or affiliates who violate any provision of Part 245 may be liable for sanction, including, pursuant to 24 CFR Part 30, the imposition of Civil Monetary Penalties, for a multifamily property of five or more units covered by Part 245 that also has a mortgage insured, co-insured or held by HUD or a loan under Section 202 or 811.

The Department is currently developing guidance and instructions to field staff to implement the imposition of Civil Monetary Penalties for violation of these regulations. This guidance will be provided to owners as a Housing Notice with appropriate consultation and input from our stakeholders.

Owners and agents may contact their local HUD Program Center with questions. HUD Handbook 4381.5 and 24 CFR Part 245 is accessible at www.hud.gov.

Thank you for your partnership and participation in HUD's programs, and for your attention to these important requirements.

Sincerely,



Carol J. Galante
Deputy Assistant Secretary for
Multifamily Housing Programs



Federal Register

Wednesday,
June 7, 2000

Part V

Department of Housing and Urban Development

24 CFR Part 245
Tenant Participation in Multifamily
Housing Projects; Final Rule

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).

Subpart A—General Provisions

§ 245.10 [Amended]

2. Amend 24 CFR 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 (this regulation does not cover tenant participation in PHAs that administer such project-based assistance);

(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, as amended;

(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.

3. Subpart B is revised to read as follows:

Subpart B—Tenant Organizations

Sec.

- 245.100 Right of tenants to organize.
- 245.105 Recognition of tenant organizations.
- 245.110 Legitimate tenant organizations.
- 245.115 Protected activities.
- 245.120 Meeting space.
- 245.125 Tenant organizers.
- 245.130 Tenants' rights not to be canvassed.
- 245.135 Enforcement.

Subpart B—Tenant Organizations

§ 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 issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.

§ 245.105 Recognition of tenant organizations.

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

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

§ 245.110 Legitimate tenant organizations.

A tenant organization is legitimate if it has been established by the tenants of a multifamily housing project covered under § 245.10 for the purpose described in § 245.100, and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.

§ 245.115 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 door-to-door surveys of tenants to ascertain 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, in a manner that is fully independent of management representatives. In order to preserve the independence of tenant organizations, management representatives may not attend such meetings unless invited by the tenant organization to specific meetings to discuss a specific issue or issues; 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.
- (c) Owners of multifamily housing projects and their agents shall not require tenants and tenant organizers to obtain prior permission before engaging in the activities permitted under paragraphs (a) and (b) of this section.

§ 245.120 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 issues related to their living environment.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. If the complex has an accessible common area or areas, it will not be impractical to make organizational meetings accessible to persons with disabilities.

(c) *Fees.* An owner of a multifamily housing project covered under § 245.10 may charge a reasonable, customary and usual 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.

§ 245.125 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization, and who is not an employee or representative of current or prospective owners, managers, or their agents.

(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, written policy against canvassing, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project, except in the case of recipients of HUD Outreach and Assistance Training Grants ("OTAG") or other direct HUD grants designed to enable recipients to provide education and outreach to tenants concerning HUD's mark-to-market program (see 24 CFR parts 401 and 402), who are conducting eligible activities as defined in the applicable Notice of Funding Availability for the grant or other effective grant document.

(2) If a multifamily housing project covered under § 245.10 has a written policy favoring canvassing, 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, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

§ 245.130 Tenants' rights not to be re-canvassed.

A tenant has the right not to be re-canvassed against his or her wishes regarding participation in a tenant organization.

§ 245.135 Enforcement

(a) Owners of housing identified in § 245.10, and their agents, as well as any principals thereof (as defined in 24 CFR 24.105), who violate any provision of this subpart so as to interfere with the organizational and participatory rights of tenants, may be liable for sanctions under 24 CFR part 24. Such sanctions may include:

(1) *Debarment.* A person who is debarred is prohibited from future participation in Federal programs for a period of time. The specific rules and regulations relating to debarment are found at 24 CFR part 24, subpart C.

(2) *Suspension.* Suspension is a temporary action with the same effect as debarment, to be taken when there is adequate evidence that a cause for debarment may exist and immediate action is needed to protect the public interest. The specific rules and regulations relating to suspension are found at 24 CFR part 24, subpart D.

(3) *Limited Denial of Participation.* An LDP generally excludes a person from future participation in the Federal program under which the cause arose. The duration of an LDP is generally up to 12 months. The specific rules and regulations relating to LDPs are found at 24 CFR subpart G.

(b) These sanctions may also apply to affiliates (as defined in 24 CFR part 24) of these persons or entities.

(c) The procedures in 24 CFR part 24 shall apply to actions under this subpart.

Dated: June 1, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00-14217 Filed 6-2-00; 2:57 pm]

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