

## Questions Corner: New Tenant Participation Rules and Enforcement Procedures in HUD Multifamily Housing

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On September 4, 2014, HUD issued Notice 2014-12,<sup>1</sup> implementing new enforcement procedures for tenant participation requirements in HUD-subsidized multifamily housing.<sup>2</sup> This Questions Corner will review tenant participation rules and describe how HUD Notice 2014-12 enhances the appeal procedure when an owner violates 24 C.F.R. Part 245.

### **Q: What properties does the notice affect?**

A: HUD Notice 2014-12 applies to Section 236, Section 221, the Rent Supplement Program, Project-Based Section 8, Section 202, Section 811, and other types of HUD multifamily properties.<sup>3</sup>

### **Q: Which tenant participation rules does the notice reaffirm?**

A: Broadly, HUD Notice 2014-12 reaffirms HUD's commitment to tenant participation in HUD-subsidized multifamily properties.<sup>4</sup> Tenant organizations enjoy the right to: (1) organize;<sup>5</sup> (2) engage in protected activities; and (3) meet in a space provided by the owner or property manager. The rule also reiterates the rights of individual tenant organizers.

### ***Forming Tenant Organizations***

HUD regulations define a legitimate tenant organization as one that: “meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.”<sup>6</sup> Notice 2014-12 reminds owners and managers of covered properties that they are obligated to recognize these tenant organizations. The Notice also refers directly to the HUD manual, “Resident Rights and Responsibilities,” which addresses the rights of tenants in HUD-subsidized properties to organize.<sup>7</sup> Owners and managers are required to provide all tenants with a copy of this manual at move-in and at recertification.<sup>8</sup>

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<sup>1</sup> Implementation of Tenant Participation Requirements in accordance with 24 C.F.R. Part 245, H 2014-12 (Sept. 4, 2014) [hereinafter HUD Notice 2014-12].

<sup>2</sup> This notice supersedes Implementation of Tenant Participation Requirements in accordance with 24 C.F.R. Part 245 Subpart B and HUD Handbook 4381.5 REV-2 “The Management Agent Handbook,” H 2012-21 (Oct. 17, 2012).

<sup>3</sup> HUD Notice 2014-12, *supra* note 1, at 1-3.

<sup>4</sup> See 24 C.F.R. Part 245 for the regulations governing tenant participation in multifamily buildings.

<sup>5</sup> 12 U.S.C. § 1715z-1b(b)(4) (2014).

<sup>6</sup> 24 C.F.R. § 245.110 (2014).

<sup>7</sup> The “Resident Rights and Responsibilities” manual can be found at <http://www.hud.gov/offices/hsg/mfh/gendocs/mfhrrr.pdf>.

<sup>8</sup> HUD, Handbook 4350.3, REV-1, CHG-4, ¶ 6-27B(1)(i) (Nov. 2013).

### ***Protected Activities***

HUD Notice 2014-12 lists various protected tenant organization activities, as described in the tenant participation regulations. Activities include posting information on common-area bulletin boards and contacting residents directly with tenant organization information.<sup>9</sup> The Notice also enumerates situations in which tenants have the right to notice and comment on revisions to management policy.<sup>10</sup> Finally, Notice 2014-12 provides examples of impediments that resident organizations may face when exercising their rights.<sup>11</sup> The Notice echoes HUD Handbook 4381.5, which identifies specific management acts considered impediments to the exercise of resident rights, including penalizing residents for their participation in tenant organizations.<sup>12</sup>

### ***Meeting Spaces***

The Notice reaffirms that owners and managers must make meeting space available to tenant organizations and describes when a reasonable fee may be imposed to use building facilities.<sup>13</sup> Denying access to a meeting space is also considered an impediment to a tenant's exercise of their rights.<sup>14</sup>

### ***Individual Tenant Organizers***

The Notice defines and describes rights of "tenant organizers," including allowing organizers to assist tenants in establishing and operating tenant organizations.<sup>15</sup> The regulations define a tenant organizer as a "tenant or a non-tenant who assists tenants in establishing and operating a tenant organization," and not "an employee or representative of current or prospective owners, managers, or any of their agents."<sup>16</sup>

### **Q: What new rules does the Notice implement?**

A: Previous HUD guidance allowed tenants to file complaints. But if a Hub/PC Director found no reasonable cause underlying a complaint or purported violation, tenants had no appeal mechanism.<sup>17</sup> HUD Notice 2014-12 enhances the complaint process by adding an appeal procedure.<sup>18</sup>

### **Q: How can a tenant or tenant organization enforce tenant participation rules?**

A: A resident or organization may file a complaint with the local HUD office.<sup>19</sup> The complaint must include factual evidence supporting the alleged violation such as

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<sup>9</sup> HUD Notice 2014-12, *supra* note 1, at 3-4; 24 C.F.R. § 245.115 (2014).

<sup>10</sup> HUD Notice 2014-12, *supra* note 1, at 4.

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> See HUD, Handbook 4381.5, REV-2, ¶ 4.8(d) (June 8, 2006).

<sup>13</sup> HUD Notice 2014-12, *supra* note 1, at 4-5.

<sup>14</sup> *Id.* at 5-6; HUD, Handbook 4381.5, REV-2, ¶ 4.8(d) (June 8, 2006).

<sup>15</sup> HUD Notice 2014-12, *supra* note 1, at 5.

<sup>16</sup> 24 C.F.R. § 225.125 (2014).

<sup>17</sup> See Implementation of Tenant Participation Requirements in accordance with 24 C.F.R. 245 Subpart B and HUD Handbook 4381.5 REV-2 "The Management Handbook," H 2011-29 (Oct. 13, 2011).

<sup>18</sup> HUD Notice 2014-12, *supra* note 1 at 6-8.

<sup>19</sup> *Id.* at 7.

statements from tenant witnesses and/or documents from management.<sup>20</sup> The Hub/PC Director must then bring the parties together and attempt conciliation, though participation in conciliation is voluntary for all participants.<sup>21</sup> If the parties reach an agreement, it must be memorialized in writing and contain terms that will correct the alleged violation. The Hub/PC Director must approve and sign a conciliation agreement but the Director will do so only if the agreement protects the public interest.<sup>22</sup>

If no agreement is reached, the Hub/PC Director must conduct an investigation of the allegations in the complaint. If the Hub/PC Director finds no reasonable cause to believe a violation occurred, the Director will notify the parties and close the case. If the Director finds reasonable cause, the Director must notify the owner, who has 30 days to correct the violation.<sup>23</sup> The Director will also inform the owner if the violation of the tenant participation regulations constitutes a violation of the owner's regulatory agreement with HUD.<sup>24</sup>

**Q: What if the owner fails to respond to a violation notice?**

A: If the owner fails to respond or does not address the violations in the notice, the owner will be referred to HUD's enforcement department.<sup>25</sup> There are several enforcement options when an owner or manager violates the tenant participation rules, including debarment, suspension, limited denial of participation, and civil money penalties.<sup>26</sup>

**Q: How can a tenant or organization appeal a finding of "no cause"?**

A: If no agreement is reached during conciliation and, after an investigation, the Director finds "no reasonable cause," the tenant or organization can now appeal that decision. An appeal requires a written request for reconsideration sent to HUD's Director of the Office of Asset Management at the address specified in the Notice.<sup>27</sup> Upon receipt of the request, HUD must invite the parties to submit any additional information to help determine whether a violation of 24 C.F.R. Part 245 has occurred.<sup>28</sup> After reviewing any additional information, HUD can either affirm its "no reasonable cause" finding and close the case, or it can re-open the case. Upon re-opening, the Hub/PC Director must resume an investigation and conciliation.<sup>29</sup> The Hub/PC Director will then make a final determination. If the Hub/PC Director finds evidence that a violation occurred, HUD must pursue enforcement according to the Notice.<sup>30</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 8.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 6. These enforcement actions are restated from previous notices.

<sup>27</sup> *Id.* at 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*; *see supra* text accompanying note 21.

<sup>30</sup> *Id.* at 6, 8.

This new appeal process provides tenants and advocates with an additional tool to enforce the tenant participation rules set forth in 24 C.F.R. Part 245. Resident participation is critical to enforce tenants' rights in HUD-subsidized housing and to ensure that residents have a voice in management policies and procedures.