

“Note Regarding Pre-1996 Regulations” (for Companion Website, Ch. 3 Rents).

Many unsubsidized HUD-insured developments (e.g., Section 220, Section 221(d)(4)) are no longer subject to HUD rent regulation, at least under currently codified regulations. Prior to 1996, extensive regulations covered HUD-insured unsubsidized properties, but HUD removed many of the rent calculation and rent increase regulations in an ostensible “streamlining” effort published at 61 Fed. Reg. 14,396 (Apr. 1, 1996). Many of the rent calculation regulations (e.g., 24 C.F.R. § 207.19 (1995)) simply disappeared without a notice and comment period, allegedly because they were unnecessary or duplicative of governing statutes (e.g., 12 U.S.C.A. § 1713 (West 2001) (for Section 207 and Section 234 properties)). HUD provided no savings provision nor any specific explanation concerning the removed rule’s purpose or how it would be replaced.

A successor provision, 24 C.F.R. § 200.105, concerning mortgagor regulation, refers to the provisions of the Regulatory Agreement, so presumably those provisions still apply. The HUD Handbook provisions governing budget-based rents in HUD-insured and subsidized properties, HUD, MULTIFAMILY ASSET MANAGEMENT AND PROJECT SERVICING, 4350.1, REV-1, through CHG-9 (Sept. 1992 - Jan. 1996), ¶ 7-3, have not been revised since 1992, prior to the 1996 removal of the regulations. HUD has published no notices specifically addressing the issue.

Thus, if necessary, advocates should argue the old regulatory scheme still applies, though absent from the CFR, because it was apparently removed illegally. Throughout this section, we refer to the former regulations where relevant, assuming their contents would still apply. *See* former 24 C.F.R. § 220.511 and 221.531(c) (1994) (unsubsidized HUD-insured developments still subject to rent control include any development with project-based Section 8 assistance and those developments where such approval is necessary to comply with the Internal Revenue Service or state law) and 61 Fed. Reg. 14,405 (Apr. 1, 1996).