

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR-4611-F-02]

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: Final 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. The statutory right of tenants to organize includes those state-financed housing developments. This final rule extends the protection of tenant organizations to include state-financed housing developments assisted under certain HUD programs.

DATES: *Effective Date:* May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, 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

On June 18, 2002 (67 FR 41583), HUD published a proposed rule that would apply the same protections provided to tenant organizations in HUD-assisted and/or insured multifamily housing developments to tenant organizations in state-financed, HUD-assisted housing developments receiving assistance under the Rent Supplement Program (12 U.S.C. 1701(s)) or under section 236 of the National Housing Act (12 U.S.C. 1715z-1). 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 those HUD programs. This rule extends to state-financed, HUD-assisted

housing developments the organizational rights of tenants in other HUD-assisted and insured multifamily housing developments.

Section 245.10(a)(3) of HUD's regulations 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 housing developments within the coverage of this subpart of the tenant participation rule.

Specifically, 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." Therefore, because eligibility for assistance is not based on federal insurance, and because tenant organization rights apply based on the eligibility for assistance, HUD has authority to apply the statutory protections for tenant organizations to state-financed, HUD-assisted housing developments, so long as the developments receive one of the eligible forms of assistance. Given this authority, this rule extends coverage of protections of tenant organizations to state-financed, HUD-assisted housing developments.

II. The Proposed Rule

On June 18, 2002 (67 FR 41582), HUD published a proposed rule that would amend 24 CFR 245.10(a)(3) to extend the protections for tenant organizations to state-financed, HUD-assisted housing developments that receive one of the covered forms of assistance, Rent Supplement or assistance under section 236. In addition, the proposed rule would correct an error in a legal citation in 24 CFR 245.135(a)(3), and correct a

cross-reference to "subpart D" in 24 CFR 245.10(a)(3), replacing it with the correct reference to "subpart E."

III. Final Rule

This final rule follows publication of the June 18, 2002, proposed rule and takes into consideration the public comments received on the proposed rule. This final rule adopts the proposed rule without change.

IV. Discussion of Public Comments on the June 18, 2002, Proposed Rule

The public comment period for the proposed rule closed on August 19, 2002. HUD received eight comments on the proposed rule, six from local tenant associations, one from a regional tenant advocacy corporation, and one from a national tenant association. All eight comments supported the rule.

Six of the eight commenters wrote that tenants of State-financed, HUD-assisted housing developments should be afforded the same rights and protections to organize and participate in the operation of their developments as tenants in HUD-assisted housing that is not State-financed. Three of the commenters added that tenant association independence from the development owners and management is a "most important" issue for their organizations. One commenter explained that experiential evidence demonstrated that once educated and empowered by their rights, tenants are "effective in preserving affordable housing and maintaining this valuable resource for their communities."

Comment: Four commenters submitted comments on enforcement of this rule. The comments generally noted the importance of enforcing the rule. Two of these four commented more specifically that there "must be an enforcement procedure, sanctions, and a listing of prohibited owner/management activities if these regulations are going to work."

HUD Response: HUD agrees that it is important that tenants' rights to organize be enforceable, however, HUD does not anticipate adding additional enforcement actions other than those that already exist in the overall final rule, "Tenant Participation in Multifamily Housing Projects," published on June 7, 2000 (65 FR 36272). Therefore, the comments relating to enforcement procedures, sanctions, and a listing of prohibited owner/management activities have already been addressed and do not need to be added to this final rule including Housing Finance Agencies.