

which HUD has issued a commitment to insure.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

Subpart A—Eligibility Requirements

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244.1 Eligibility requirements.

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244.251 Cross-reference.

AUTHORITY: 12 U.S.C. 1715b, 1749aaa-5); 42 U.S.C. 3535(d).

SOURCE: 36 FR 24663, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

SOURCE: 61 FR 14407, Apr. 1, 1996, unless otherwise noted.

§ 244.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to group practice facilities (title XI) of the National Housing Act (12 U.S.C. 1749aaa), as amended.

§ 244.2 License.

The Commissioner shall not insure any mortgage under this part unless the appropriate licensing agency for the State, municipality or other political subdivision in which a project is or is to be located provides such assurances as the Commissioner considers necessary that the facility will comply with any applicable State or local standards and requirements for such facilities.

Subpart B—Contract Rights and Obligations

§ 244.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of part 207, subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act apply to a mortgage covering a group practice facility insured under title XI of the National Housing Act.

(b) For the purposes of this subpart all references in part 207 of this chapter to section 207 of the Act shall be construed to refer to title XI of the Act.

(c) All of the definitions in § 244.1 shall apply to this subpart. In addition as used in this part, the term *contract of insurance* means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

[36 FR 24663, Dec. 22, 1971, as amended at 50 FR 38787, Sept. 25, 1985]

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

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AUTHORITY: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 245.5 Purpose.

The purpose of this part is to recognize the importance and benefits of co-operation and participation of tenants in creating a suitable living environment in multifamily housing projects and in contributing to the successful operation of such projects, including their good physical condition, proper maintenance, security, energy efficiency, and control of operating costs.

[50 FR 32402, Aug. 12, 1985]

§ 245.10 Applicability of part.

(a) Except as otherwise expressly limited in this section, this part applies in its entirety to a mortgagor of any multifamily housing project that meets the following—

(1) *Project subject to HUD insured or held mortgage under the National Housing Act.* The project has a mortgage that—

(i) Has received final endorsement on behalf of the Secretary and is insured or held by the Secretary under the National Housing Act (12 U.S.C. 1701–1715z–20); and

(ii) Is assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program;

(D) The Section 8 Loan Management Set-Aside Program following conversion to such assistance from the Rent Supplement Program assistance;

(2) *Formerly HUD-owned project.* The project—

(i) Before being acquired by the Secretary, was assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program; or

(D) The Section 8 LMSA Program following conversion to such assistance from assistance under the Rent Supplement Program; and

(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 (12 U.S.C. 1701s) 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, B and C of this part, and of subpart E 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.

(b) *Limitation for cooperative mortgagor.* Only the provisions of subparts A and C of this part apply to a mortgagor of any multifamily housing project described in paragraph (a) of this section if the mortgagor is a cooperative housing corporation or association.

(c) *Definitions. Rent Supplement Program* means the assistance program authorized by section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Section 8 LMSA Program means the Section 8 Loan Management Set-Aside Program implemented under 24 CFR part 886, subpart A.

Section 221(d)(3) BMIR Program means the below-market interest rate mortgage insurance program under section 221(d)(3) and the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715l(d)(5)).

[61 FR 57961, Nov. 8, 1996, as amended at 65 FR 36280, June 7, 2000; 68 FR 20325, Apr. 24, 2003]

§ 245.15 Notice to tenants.

(a) Whenever a mortgagor is required under subparts D or E of this part to serve notice on the tenants of a project, the notice must be served by delivery, except, for a high-rise project, the notice may be served either by delivery or by posting. If service is made by delivery, a copy of the notice must be delivered directly to each unit in the project or mailed to each tenant. If service is made by posting, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located and, during any prescribed tenant period, in a conspicuous place at the address stated in the notice where the materials in support of the mortgagor's proposed action are to be made available for inspection and copying. Posted notices must be maintained intact and in legible form during any prescribed notice period.

(b) For purposes of computing time periods following service of notice, service is effected, in the case of service by delivery, when all notices have

been delivered or mailed and, in the case of service by posting, when all notices have been initially posted.

[50 FR 32402, Aug. 12, 1985, as amended at 61 FR 57961, Nov. 8, 1996]

Subpart B—Tenant Organizations

SOURCE: 65 FR 36281, June 7, 2000, unless otherwise noted.

§ 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;

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(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

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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 2 CFR part 2424), 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 2 CFR part 2424. 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 2 CFR part 2424.

(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 2 CFR part 2424.

(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 2 CFR part 2424, subpart J.

(b) These sanctions may also apply to affiliates (as defined in 2 CFR part 2424) of these persons or entities.

(c) The procedures in 2 CFR part 2424 shall apply to actions under this subpart.

[72 FR 73495, Dec. 27, 2007]

Subpart C—Efforts To Obtain Assistance

§ 245.205 Efforts to obtain assistance.

(a) Mortgagors subject to the requirements of this subpart shall not interfere with the efforts of tenants to obtain rent subsidies or other public assistance.

(b) A mortgagor subject to the requirements of this subpart who is a party to a rent supplement contract under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), a rental assistance payments contract under part 236, subpart D, of this chapter, or a Housing Assistance Payments Contract under 24 CFR part 886 shall not refuse to make assistance under such contract available to an existing tenant who is eligible therefor, provided that sufficient contract and budget authority and contract units are available under the contract. However, this provision shall not be deemed to require the mortgagor to give priority in the allocation of any such available assistance to an existing tenant instead of an eligible applicant on the mortgagor's waiting list or otherwise to supersede tenant selection procedures which are not otherwise inconsistent with applicable program regulation or instructions.

(c) Subject to the provisions of any contract made in connection with the purchase of a multifamily housing project owned by the Secretary, this section shall not be deemed to require a mortgagor subject to the requirement of this subpart to enter into a Housing Assistance Payments Contract pursuant to 24 CFR part 982 for the benefit of an existing tenant who obtains a Certificate of Family Participation.

[48 FR 28437, June 22, 1983. Redesignated at 50 FR 32403, Aug. 12, 1985, as amended at 61 FR 57961, Nov. 8, 1996]

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§ 245.210 Availability of information.

A mortgagor subject to the requirements of this subpart shall make available to tenants any information concerning rent subsidies or other public assistance that is prepared and distributed by HUD to the project for the purpose of distribution to tenants.

[48 FR 28437, June 22, 1983. Redesignated at 50 FR 32403, Aug. 12, 1985]

Subpart D—Procedures for Requesting Approval of an Increase in Maximum Permissible Rents

SOURCE: 50 FR 32403, Aug. 12, 1985, unless otherwise noted.

§ 245.305 Applicability of subpart.

(a) The requirements of this subpart apply to any request by a mortgagor, as provided by § 245.10, for HUD approval of an increase in maximum permissible rents.

(b) For purposes of this subpart, an increase in utility charges paid directly by the tenant does not constitute an increase in rents.

§ 245.310 Notice to tenants.

(a) At least 30 days before submitting a request to HUD for approval of an increase in maximum permissible rents, the mortgagor must notify the tenants of the proposed rent increase. Copies of the notice must be served on the tenants as provided in § 245.15. The notice must contain the following information in the following format or an equivalent format:

NOTICE TO TENANTS OF INTENTION TO SUBMIT
A REQUEST TO HUD FOR APPROVAL OF AN IN-
CREASE IN MAXIMUM PERMISSIBLE RENTS

Date of Notice

Take notice that on [date] we plan to submit a request for approval of an increase in the maximum permissible rents for [name of apartment complex] to the United States Department of Housing and Urban Development (HUD). The proposed increase is needed for the following reasons:

- 1.
- 2.
- 3.

The rent increases for which we have requested approval are:

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Bed-rooms	Present rent ¹		Proposed increase ¹		Proposed rent ¹	
	Basic	Market	Basic	Market	Basic	Market
5	\$	\$	\$	\$	\$
0
1
2
3
4

¹ Separate columns for basic and market rent should be used only for projects assisted under sec. 236 of the National Housing Act. In addition, in projects with more than 1 type of apartment having the same number of bedroom but different rents, each type should be listed separately.

A copy of the materials that we are submitting to HUD in support of our request will be available during normal business hours at [address] for a period of 30 days from the date of service of this notice for inspection and copying by tenants of [name of apartment complex] and, if the tenants wish, by legal or other representatives acting for them individually or as a group.

During a period of 30 days from the date of service of this notice, tenants of [name of apartment complex] may submit written comments on the proposed rent increase to us at [address]. Tenant representatives may assist tenants in preparing those comments. (If, at HUD's request or otherwise, we make any material change during the comment period in the materials available for inspection and copying, we will notify the tenants of the change or changes, and the tenants will have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed rent increase). These comments will be transmitted to HUD, along with our evaluation of them and our request for the increase. You may also send a copy of your comments directly to HUD at the following address: United States Department of Housing and Urban Development [address of local HUD field office with jurisdiction over rent increases for the project], Attention: Director, Housing Management Division, Re: Project No. [Name of Apartment Complex].

HUD will approve, adjust upward or downward, or disapprove the proposed rent increase upon reviewing the request and comments. When HUD advises us in writing of its decision on our request, you will be notified. If the request is approved, any allowable increase will be put into effect only after a period of at least 30 days from the date you are served with that notice and in accordance with the terms of existing leases.

[Name of mortgagor or managing agent]

(b) The mortgagor must comply with all representations made in the notice. The materials to be made available to

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tenants for inspection and copying are those specified in § 245.315.

§ 245.315 Materials to be submitted to HUD.

When the notice referred to in § 245.310 is served on the tenants, the mortgagor must send to the local HUD office copies of the following documents described in either paragraph (a) or (b) of this section, as specified by the local HUD office:

(a) Documents to be submitted under profit and loss approach:

- (1) A copy of the notice to tenants;
- (2) An annual Statement of Profit and Loss, Form HUD-92410, covering the project's most recently ended accounting year (this statement must have been audited by an independent public accountant if the project is required by HUD to prepare audited financial statements), and Form HUD-92410 for the intervening period since the date of the last annual statement if more than four months have elapsed since that date;
- (3) A narrative statement of the reasons for the requested increase in maximum permissible rents; and
- (4) An estimate of the reasonably anticipated increases in project operating costs that will occur within twelve months of the date of submission of materials under this section.

(5) A status report on the project's implementation of its current Energy Conservation Plan.

(b) Documents to be submitted under the forward-budget approach:

- (1) A cover letter summarizing the reasons a rent increase is needed;
- (2) A copy of the notice to tenants;
- (3) A rent increase worksheet providing an income and expense budget for the 12 months following the anticipated effective date of the proposed rent increase;
- (4) A brief statement explaining the basis for the expense lines on the rent increase worksheet;
- (5) A partially completed Rent Schedule, Form HUD-92458;
- (6) If the tenants receive utility allowances, the mortgagor's recommended utility allowance for each unit type and brief statement explaining the basis for the recommended increase; and

(7) A status report on the project's implementation of its current Energy Conservation Plan.

(The information collection requirements in paragraph (a) of this section were approved by the Office of Management and Budget under control number 2502-0310 and the information collection requirements in paragraph (b) were approved under control number 2502-0324)

§ 245.320 Request for increase.

Upon expiration of the period for tenant comments required in the notice format in § 245.310 and after review of the comments submitted to the mortgagor, the mortgagor must submit to the local HUD office, in addition to the materials enumerated in § 245.315 and any revisions thereto, the request for an increase in the maximum permissible rents, together with the following:

(a) Copies of all written comments submitted by the tenants to the mortgagor;

(b) The mortgagor's evaluation of the tenants' comments with respect to the request;

(c) A certification by the mortgagor that:

(1) It has complied with all of the requirements of this subpart;

(2) The copies of the materials submitted in support of the proposed increase were located in a place reasonably convenient to tenants in the project during normal business hours and that requests by tenants to inspect the materials, as provided for in the notice, were honored;

(3) All comments received from tenants were considered by the mortgagor in making its evaluation; and

(4) Under the penalties and provisions of title 18 U.S.C., section 1001, the statements contained in this request and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete.

§ 245.325 Notification of action on request for increase.

(a) When processing a request for an increase in maximum permissible rents, HUD shall take into consideration reasonably anticipated increases in project operating costs that will

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occur (1) within 12 months of the date of submission of materials to HUD under § 245.315(a) (profit and loss approach) or (2) within 12 months of the anticipated effective date of the proposed rent increase for submissions under § 245.315(b) (forward-budget approach).

(b) After HUD has considered the request for an increase in rents, has found that it meets the requirements of § 245.320, and has made its determination to approve, adjust upward or downward, or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval, adjustment upward or downward, or disapproval. The mortgagor must make the reasons for approval, adjustment, or disapproval known to the tenants, by service of notice on them as provided in § 245.15.

§ 245.330 Non-insured projects.

(a) In the case of a proposed rent increase for a project assisted under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965, but which does not have a mortgage insured by HUD or held by the Secretary, the provisions of this section and of §§ 245.305 through 245.320 shall apply to the mortgagor (project owner), except that—

(1) The notice format prescribed in § 245.310 must be modified to reflect the procedural changes made by this section;

(2) The material (including tenant comments) required to be submitted to HUD under §§ 245.315 and 245.320 must be submitted to the State or local agency administering the section 236 assistance or rent supplement assistance contracts, rather than to HUD. An equivalent State or local agency form or standard accounting form may be substituted for the Statement of Profit and Loss, Form HUD-92410 required under § 245.315(a)(2), if approved by the local HUD office; and

(3) The State or local agency must certify that the mortgagor has complied with the requirements of §§ 245.310, 245.315, 245.320, and 245.325.

(b) After the State or local agency has considered the request for an increase in maximum permissible rents that meets the requirements of § 245.320

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(including consideration of anticipated cost increases, as provided in § 245.325(a)), it must make a determination to approve, adjust upward or downward, or disapprove the request. If the agency determines to approve or adjust the request, it must submit to the appropriate local HUD office the mortgagor's requests for approval of an increase in maximum permissible rents, along with the comments of the tenants and the mortgagor's evaluation of the comments, and must certify to HUD that the mortgagor is in compliance with the requirements of this subpart. HUD shall review the agency's determination and certification and, within 30 days, of their submission to HUD, notify the agency of its approval, adjustment upward or downward, or disapproval of the proposed rent increase. HUD will not unreasonably withhold approval of a rent increase approved by the State or local agency.

(c) If the agency determines to disapprove the request, there is no HUD review of the agency's determination.

(d) The agency must notify the mortgagor of the final disposition of the request, and it must furnish the mortgagor with a written statement of the reasons for its approval, adjustment, or disapproval. The mortgagor must make the reasons for approval, adjustment or disapproval known to the tenants, by service of notice on them as provided in § 245.15.

Subpart E—Procedures for Requesting Approval of a Covered Action

SOURCE: 61 FR 57962, Nov. 8, 1996, unless otherwise noted.

§ 245.405 Applicability of subpart.

The requirements of this subpart apply to any request by a mortgagor, as provided by § 245.10, for HUD approval of one or more of the following covered actions:

(a) Conversion of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant utility allowances.

(b) Conversion of residential units in a multifamily housing project to a non-residential use or to condominiums, or

the transfer of the project to a cooperative housing mortgagor corporation or association. Conversion of a project to a cooperative or of a portion of a project to nonresidential use does not constitute a change of use requiring mortgagee approval.

(c) A partial release of mortgage security. The requirements of this subpart, however, do not apply to any release of property from a mortgage lien with respect to a utility easement or a public taking of such property by condemnation or eminent domain.

(d) Making major capital additions to the project. For the purposes of this subpart, the term “major capital additions” includes only those capital improvements that represent a substantial addition to the project. Upgrading or replacing existing capital components of the project does not constitute a major capital addition to the project.

§ 245.410 Notice to tenants.

At least 30 days before submitting a request to HUD for approval of an action described in § 245.405, the mortgagor must serve notice of the proposed covered action on the project tenants, as provided in § 245.15. The notice shall state that—

(a) The mortgagor intends to submit a request to HUD for approval of the covered action or actions specified in the notice;

(b) The tenants have the right to participate as provided in § 245.420, and what those rights are, including the address at which the materials required to be made available for inspection and copying under that section are to be kept;

(c) Tenant comments on the proposed covered action may be sent to the mortgagor at a specified address or directly to the local HUD office, and comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD's approval is submitted;

(d) HUD will approve or disapprove the proposed action, based upon its review of the information submitted and all tenant comments received. In the case of a proposed reduction in tenant-paid utilities, the notice must also

state that HUD may adjust the proposed reduction upward or downward;

(e) In the case of a proposed conversion of residential units, partial release of mortgage security, or major capital additions to the project, the proposed action may require the owner to request HUD approval of a rent increase; and

(f) The mortgagor will notify the tenants of HUD's decision and it will not begin to effect any approved action (in accordance with the terms of existing leases) until at least 30 days from the date of service of the notification.

§ 245.415 Submission of materials to HUD: Timing of submission.

(a) *Initial submission.* The mortgagor must submit the materials applicable to the covered action, as specified in §§ 245.416 through 245.419, to the local HUD office when the notice required under § 245.410 is served on the tenants.

(b) *Subsequent submission.* If additional notice under § 245.420(c) is required, the mortgagor must submit to HUD any changes to the materials required under §§ 245.416 through 245.419 when the notice required under § 245.420(c) is served on the tenants.

§ 245.416 Initial submission of materials to HUD: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

In the case of a conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances, the mortgagor must submit the following materials to the local HUD office:

(a) A copy of the notice to tenants;

(b) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities—

(1) A statement indicating:

(i) The type of utility or utilities involved;

(ii) The number of units in the project by type and size;

(iii) The average utility consumption data by unit type and size for comparable projects, and utility rate information, as obtained from the utility supplier;

(iv) The estimated monthly cost of the utilities to be paid by the tenants by unit type and size, based upon the

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consumption data and rate information described in paragraph (b)(1)(iii) of this section;

(v) The monthly cost for the past year of paying for the utility or utilities involved on a project basis (actual cost) and by unit type and size (estimated breakdown);

(vi) An estimate of the cost of conversion, as obtained from the utility supplier or from bids from contractors;

(vii) The source and terms of financing for the conversion (to the extent known); and

(viii) The estimated effect of the conversion on the total housing costs of the tenants by unit type and size, taking into account the estimated cost of conversion (including the cost of its financing), the estimated monthly cost of utilities to be paid by the tenants by unit type and size, the proposed utility allowances, and the estimated change in the rents paid to the mortgagor resulting from the conversion; and

(2) A copy of the portion of the project's Energy Conservation Plan which addresses the cost-effectiveness determination associated with converting the project to tenant-paid utilities; and

(c) In the case of a proposed reduction in tenant utility allowances, a statement indicating the information described in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of this section, the utility allowances proposed for reduction, and a justification of the proposed reduction.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.417 Initial submission of materials to HUD: Conversion of residential units to a nonresidential use, or to cooperative housing or condominiums.

In the case of a conversion of residential units to a nonresidential use, or to cooperative housing or condominiums, the mortgagor must submit the following materials to the local HUD office in accordance with §§ 245.415 and 245.419:

(a) In the case of a proposed conversion of residential rental units to nonresidential use:

(1) A statement describing the proposed conversion;

(2) A statement describing the estimated effect of the proposed conversion on the value of the project, the project rent schedule, the number of dwelling units in the project, a list of the units to be converted and their occupancy, the amount of subsidy available to the project, and the project income and expenses (including property taxes);

(3) A statement assessing the compatibility of the proposed nonresidential use with the residential character of the project;

(4) Written approval of the mortgagee if required;

(5) An undertaking by the mortgagor to pay all relocation costs that may be required by HUD for tenants required to vacate the project because of the conversion; and

(6) A copy of the notice to tenants.

(b) In the case of a proposed transfer of the project to a cooperative housing mortgagor corporation or association (conversion of residential rental units to residential cooperative housing), the materials specified in paragraphs (a)(1), (a)(2) and (a)(3) of this section and the following additional materials:

(1) An estimate of the demand for cooperative housing, including an estimate of the number of present tenants interested in purchasing cooperative housing;

(2) Estimates of downpayments and monthly carrying charges that will be required; and

(3) Copies of proposed organizational documents, including By-Laws, Articles of Incorporation, Subscription Agreement, Occupancy Agreement, and Sale Document.

(c) In the case of a proposed conversion of residential rental units to condominium units, the materials specified in paragraphs (a)(1), (a)(4), and (a)(6) of this section and the following additional materials:

(1) An estimate of the demand for condominium housing, including an estimate of the number of present tenants interested in purchasing units;

(2) Estimates of downpayments, monthly mortgage payments and condominium association fees that will be required; and

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(3) A list of the units to be converted and their occupancy.

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§ 245.418 Initial submission of materials to HUD: Partial release of mortgage security.

In the case of a partial release of mortgage security, the mortgagor must submit the following materials to the local HUD office:

(a) A statement describing the portion of the property that is proposed to be released and the transaction requiring the release;

(b) A statement describing the estimated effect of the proposed release on the value of the project, the number of dwelling units in the project, the project income and expenses (including property taxes), the amount of subsidy available to the project, and the project rent schedule;

(c) A statement describing the proposed use of the property to be released and the persons who will have responsibility for the operation and maintenance of that property, and assessing the compatibility of that use with the residential character of the project;

(d) A statement describing the proposed use of any proceeds to be received by the mortgagor as a result of the release; and

(e) A copy of the notice to tenants.

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§ 245.419 Initial submission of materials to HUD: Major capital additions.

In the case of major capital additions, the mortgagor must submit the following materials to the local HUD office:

(a) The general plans and sketches of the proposed capital additions;

(b) A statement describing the estimated effect of the proposed capital additions on the value of the project, the project income and expenses (including property taxes), and the project rent schedule;

(c) A statement describing how the proposed capital additions will be financed and the effect, if any, of that financing on the tenants;

(d) A statement assessing the compatibility of the proposed capital additions with the residential character of the project; and

(e) A copy of the notice to tenants.

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§ 245.420 Rights of tenants to participate.

(a) The tenants (including any legal or other representatives acting for tenants individually or as a group) must have the right to inspect and copy the materials that the mortgagor is required to submit to HUD pursuant to § 245.415, for a period of 30 days from the date on which the notice required under § 245.410 is served on the tenants. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed conversion to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant comment period in the materials submitted to HUD pursuant to § 245.415, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed covered action, before the mortgagor may submit its request to HUD for approval of the covered action.

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§ 245.425 Submission of request for approval to HUD.

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

- (a) The mortgagor's written request for HUD approval of the covered action;
- (b) Copies of all written tenant comments;
- (c) The mortgagor's evaluation of the tenant comments on the proposed conversion or reduction;
- (d) A certification by the mortgagor that it has complied with all of the requirements of § 245.410, § 245.415, §§ 245.416 through 245.419, as applicable, § 245.420, and this section; and
- (e) Such additional materials as HUD may have specified in writing.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.430 Decision on request for approval.

(a) After considering the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor in writing of its approval or disapproval of the proposed covered action, including, if applicable, its adjustment upward or downward of the proposed reduction in tenant-paid utilities. HUD must provide its reasons for its determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed covered action, the notice must state:

(1) The effective date of the covered action (which must be at least 30 days from the date of service of the notice and in accordance with the terms of existing leases);

(2) In the case of HUD's approval of a conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances, the amount of the rent to be paid to the mortgagor and the utility allowance for each unit; and

(3) In the case of HUD's approval of a conversion of residential units in a multifamily housing project to a non-residential use or the transfer of the project to a cooperative housing mortgagor corporation or association, which residential rental units are to be converted and whether the conversion is to nonresidential use or to cooperative or condominium units.

§ 245.435 Non-insured projects: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

(a) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances involving a project that is assisted under section 236 of the National Housing Act (12 U.S.C. 1715z-1) or section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) but that does not have a mortgage insured by HUD or held by the Secretary, the provisions of this section and of §§ 245.405 through 245.425 apply to the mortgagor (project owner), except that—

(1) The notice to tenants required under § 245.410 must be modified to reflect the procedural changes made by this section;

(2) The materials (including tenant comments) required to be submitted to HUD under §§ 245.415 and 245.425 must be submitted to the State or local agency administering the Section 236 assistance or rent supplement assistance contracts, rather than to HUD; and

(3) The State or local agency must certify that the mortgagor has complied with the requirements of §§ 245.410, 245.415, 245.416, 245.420, and 245.425.

(b) After the State or local agency has considered the request for approval of a conversion or reduction that meets the requirements of § 245.425, it must make a determination to approve or disapprove the conversion, or to approve, adjust upward or downward, or disapprove the reduction. If the agency determines to approve the conversion or reduction (as originally proposed or as adjusted), it must submit to the appropriate local HUD office the mortgagor's request for approval of the conversion or reduction, along with the

comments of the tenants and the mortgagor's evaluation of the comments, and must certify to HUD that the mortgagor is in compliance with the requirements of this subpart. HUD must review the agency's determination and certification and notify the agency of its approval or disapproval of the proposed conversion or of its approval, adjustment upward or downward, or disapproval of the proposed reduction. HUD will not unreasonably withhold approval of a conversion or reduction approved by the State or local agency.

(c) If the agency determines to disapprove the conversion or reduction, there is no HUD review of the agency's determination.

(d) The agency must notify the mortgagor of the final disposition of the request, and it must furnish the mortgagor with a written statement of the reasons for its approval or disapproval. The mortgagor must make the reasons for approval or disapproval known to the tenants, by service of notice on them as provided in §245.15. If the agency has approved the proposed conversion or a reduction, the notice must set forth the information prescribed in §245.430(b) (1) and (2).

PART 246—LOCAL RENT CONTROL

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AUTHORITY: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 246.1 Scope and effect of regulations.

(a) The regulation of rents for a project coming within the scope of "Subpart B—Unsubsidized Insured Projects" is preempted under these regulations only when the Department determines that the delay or decision of the local rent control board, or other authority regulating rents pursuant to state or local law (hereinafter referred to as board) jeopardizes the Department's economic interest in a project covered by that subpart. The regulation of rents for projects coming within the scope of "Subpart C—Subsidized Insured Projects" is preempted in its entirety by the promulgation of these regulations. The regulation of rents for projects coming within the scope of "Subpart D—HUD-Owned Projects" rests within the exclusive jurisdiction of the Department.

(b) Any state or local law, ordinance, or regulation is without force and effect insofar as it purports to regulate rents of: (1) Projects for which a determination of preemption has been made pursuant to subpart B, or (2) projects coming within the scope of subpart C or D. Compliance with such law, ordinance, or regulation shall not be required as a condition of, or prerequisite to, the remedy of eviction, and any law, ordinance, or regulation which purports to require such compliance is similarly without force and effect.

(c) It is the purpose of the Department that these regulations shall bar all actions of a board that would in any way frustrate the purpose or effect of these regulations or that would in any way delay, prevent or interfere with the implementation of any increase in rental charges approved by HUD.

(d) These regulations may be offered as a defense to a proceeding by whomsoever initiated, which may be brought or threatened to be brought against any owner, mortgagor or managing