



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Multifamily Directors of Project Management
All Multifamily Field Counsel
All Contract Administrators

Notice H 2012-21

Issued: October 17, 2012

Expires: This notice remains in effect until amended, superseded, or rescinded.

Cross References:
HUD Handbook 4381.5 REV-2

Subject: Implementation of Tenant Participation Requirements in accordance with 24 CFR 245 Subpart B and HUD Handbook 4381.5 REV-2 "The Management Agent Handbook"

A. Purpose

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 as defined in 24 CFR 245.110. The Department believes that tenant participation is an important element to maintaining sustainable projects and communities. This Notice addresses available sanctions and the use of civil money penalties as tools to enforce the Department's commitment to tenant participation.

B. Applicability

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

1. For a project that is subject to a HUD insured or Secretary-held mortgage under the National Housing Act. The project has a mortgage that:
 - a. Has received final endorsement on behalf of the Secretary and is insured or held by the Secretary under Title II of the National Housing Act; and

- b. Is assisted under:
 - i. Section 236 of the National Housing Act (12 U.S.C. 1715z-1);
 - ii. The Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR) Program 12 U.S.C. 1715(d)(3)/(d)(5);
 - iii. The Rent Supplement Program 12 U.S.C. 1701s); or
 - iv. The Section 8 Loan Management Set-Aside Program (LMSA) following conversion to such assistance from the Rent Supplement Program assistance.
2. Formerly HUD-owned project. The project, 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)(d)(5) BMIR Program (U.S.C. 1715(d)(3)/(d)(5));
 - c. The Rent Supplement Program (12 U.S.C. 1701s); or
 - d. The Section 8 LMSA Program following conversion to such assistance from assistance under the Rent Supplement Program, and
 - e. Was sold by the Secretary subject to a mortgage insured or held by the Secretary and includes an agreement to maintain the low- and moderate-income character of the project.
 3. State or local housing finance agency projects. 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.
 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 Public Housing Authority(s) (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.
7. The project receives assistance under the Section 811 Supportive Housing for Persons with Disabilities Program.
8. Cooperative mortgagors are not subject to the provisions of 24 CFR 245 Part B.

C. Rights of Tenants and Tenant Organizations

1. Rights of Tenants to Organize

24 CFR 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. A tenant organization is considered legitimate if it has been established by the tenants of a multifamily housing project covered under Section 245.10 for the purpose described above, 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 of legitimate tenant organization includes “organizing committees” newly formed by residents, and does not require specific structures, written by-laws, elections, or resident petitions.

A link¹ to this Notice will connect the reader to a brochure entitled “[Resident Rights & Responsibilities](#)” which addresses tenant rights to organize. Owners and/or management agents are required to provide the head of household with a copy of this brochure at move-in and annually at recertification (Ref: HUD Handbook 4350.3 REV-1: Occupancy Requirements of Subsidized Multifamily Housing Programs, Chapter 6-27, Paragraph B.1.i.).

2. Protected Activities

24 CFR 245.115 identifies activities that Owners and management agents must allow tenants and tenant organizers to conduct related to establishment or operation of a tenant organization. These activities include:

- i. distributing leaflets in lobby and common areas, under tenants’ doors, posting information on bulletin boards,

¹ <http://www.hud.gov/offices/hsg/mfh/gendocs/mfhrr.pdf>

- ii. initiating contact with tenants, conducting door-to-door surveys to ascertain interest in establishing a tenant organization, and to offer information about the tenant organization,
- iii. offering assistance for tenants to participate in tenant organization activities and
- iv. convening tenant organization meetings on-site 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.

Tenants also have the right to formulate responses to:

- i. Owners' requests for budget-based rent adjustments,
- ii. Partial Payment of Claims,
- iii. Conversion from project paid utilities to tenant-paid utilities,
- iv. A reduction in tenant utility allowances,
- v. Converting units to non-residential use, cooperative housing, or condominiums,
- vi. Major capital additions, and
- vii. Loan prepayments.

3. Meeting Space

- a. Owners and management agents of covered projects must 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 meeting spaces must be accessible to persons with disabilities, unless this is impractical for reasons beyond the Owner/management agent's control.
- b. An Owner may charge a reasonable fee, approved by HUD and received into the project's account, as may normally be imposed for use of such facilities in accordance with procedures prescribed by HUD. An Owner may elect to waive this

- c. fee and is not required to charge a HUD-approved fee. An Owner does not need HUD approval to waive this fee.
- d. The process of obtaining HUD approval for a fee will proceed according to the following:
 - i. Owner/management agents will submit a request, with supporting documentation (such as rates for similar areas of space from similar projects in near proximity), to charge a tenant organization/committee a reasonable fee for using space/facilities of the project.
 - ii. Hub/PC staff will approve the fee, if reasonable, as evidenced by supporting documentation.
 - iii. If such charges are recurring, Owner/management agents are not required to request HUD approval for each charge.
 - iv. Any HUD-approved fee must be documented in the monthly accounting reports and/or Annual Financial Statements (AFS), depending on the frequency of the charge.

4. Tenant Organizers

- a. 24 CFR 245.125 defines a “tenant organizer” as a tenant or non-tenant who assists other 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 management agents must allow tenant organizers to assist tenants in establishing and operating tenant organizations.
- b. 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. 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.

D. Impediments to Residents or Resident Associations Attempting to Exercise their Rights

HUD Handbook 4381.5 (REV-2), *The Management Agent Handbook*, Chapter 4 “Working with Residents” Section 4.8d identifies specific actions by Owners and management agents that constitute impediments to residents or resident associations attempting to exercise their rights. These include:

- Unreasonable denial of accessible meeting space to residents;
- Repeatedly sending management representatives to resident meetings when 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 project;
- Attempting to form a competing resident organization under the control of the management company or the Owner; and
- Running for office or otherwise serving as a member of the resident organization.

E. Enforcement Options

- a. Owners, management agents, principals, or affiliates of projects with an insured and assisted mortgage described in 24 CFR Section 245.10(a)(1) who violate any provision of 24 CFR Part 245, Subpart B, may be liable for one or more of the following sanctions:
 - i. Debarment - an exclusion of an individual, organization and its affiliates from conducting business with any Federal Agency government-wide. Debarment is the most serious compliance sanction and is typically imposed for a three-year period. See Title 2 CFR Parts 180 and 2424.
 - ii. Suspension - a temporary action with the same effect as debarment. See 2 CFR Parts 180 and 2424.
 - iii. Limited Denial of Participation (LDP) - an action that excludes a party from further participation in a certain HUD program area. The scope of the LDP may also be limited to a certain geographic area, and generally expires in one year.
 - iv. Civil Money Penalties – fines which may be imposed on Owners, principals of Owners, and management agents who knowingly and materially fail to comply with any provision of 24 CFR Part 245, Subpart B, and, therefore, fail to provide management for the project acceptable to the Secretary. By adjustment under the Federal Civil Penalties Inflation Adjustment Act of

- v. 1990, the maximum civil money penalty for each offense is currently \$37,500, but the actual amount of the penalty is determined by applying the factors listed in 24 CFR Section 30.80. These include, among other things, the gravity of the offense, the Owner's history of prior offenses, injury to the public resulting from the violations, the Owner's culpability for the violations, and the Owner's ability to pay the penalty. As these will vary from case to case, there is no schedule of Civil Money Penalty (CMP) amounts. The maximum amount is now \$37,500 but the actual amount sought in any particular case depends on the Departmental Enforcement Center's (DEC) analysis of the factors as they apply to each case.
- b. Owners, management agents, principals, affiliates of projects assisted under provisions described in 24 CFR Section 245.10(a)(2)-(7) who violate any provision of 24 CFR Part 245, Subpart B, may be liable for one or more of the above sanctions except for civil money penalties.

F. Enforcement Process

A tenant or tenant organization may file a written complaint with the local HUD office alleging a consistent pattern of violations of HUD program requirements, or a single violation that causes serious injury to the public or tenants.

The Owner/management agent must also be provided with a copy of the complaint and factual evidence must support the complaint.

Evidence supporting the complaint may be signed statements from tenants who have observed violations of 24 CFR 245 Subpart B, documents from Owners expressing opposition to tenant organizing activities, documents denying the use of facilities for purposes of organizing an association or holding meetings. Any or all of these and other forms of documentation may be considered when providing evidence supporting the complaint.

The Hub/PC Director must discuss the complaint with the project Owner or management agent and with the complainant tenant or tenant organization. Based on these discussions and review of the factual supporting documentation, the Hub/PC Director must determine whether the complaint is legitimate and enforcement action is required to cure a violation Part 245 Subpart B.

If the determination is to pursue enforcement action, a Notice of Violations (NOV) of the Regulatory Agreement or/and Notice of Default (NOD) of the Housing Assistance Payment Contract will be sent by the Hub Director or his/her designee to the project Owner. The Owner will have 30 days to respond to the NOV/NOD.

- i. If the Owner fails to respond, or the response does not satisfactorily address the violations alleged in the complaint, then an elective referral will be sent by the Hub/PC Director or his/her designee to the DEC, and the Owner should be flagged in the Active Partners Participation System (APPS).
- ii. If the Owner's response adequately addresses the violations alleged in the complaint and is found to be in compliance, then the flag is not placed in APPS and no referral to the DEC is required.

If a referral to the DEC is necessary, the Hub/PC Director or his/her designee must file an elective referral through the Integrated Real Estate Management System (iREMS). (See iREMS User's Guide, dated May 2008, Chapter 11 "Risk Management").

The DEC will review the administrative record of the referral to determine what action the Department will pursue. The DEC will advise the Hub Director as well as the Owner of the result of their review and the appeal process. The advice from the DEC will contain the pre-penalty notice language required by 24 CFR 30.70.

If you have questions regarding this Housing Notice, please contact your local HUD Hub and/or Project Manager, or contact your desk officer in the Office of Asset Management.

Carol Galante
Acting Assistant Secretary for Housing –
Federal Housing Commissioner