

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 245**

[Docket No. FR-4403-F-02]

RIN 2502-AH32

**Tenant Participation in Multifamily  
Housing Projects**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule enhances and expands the rights of tenants in HUD-insured and assisted housing to organize and participate in project operation. Pursuant to statutory changes enacted in 1998, the rule expands the assistance programs in which tenants have rights to organize. The rule also defines general characteristics of a legitimate tenant organization, such as regularity of meeting and democratic organization, while leaving the specific organizational structures and procedures to local decisionmaking by the tenants themselves. The rule outlines examples of appropriate tenant organization activities that housing owners and managers must allow, and requires that tenants have input on certain management decisions. The rule sets parameters as well for the conditions under which tenant organizers may operate. Finally, in response to public comments, the rule clarifies that existing administrative enforcement mechanisms apply.

**DATES:** *Effective Date:* July 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. 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. The June 17, 1999 Proposed Rule**

The proposed rule of June 17, 1999 (see 64 FR 32782) amended the tenant participation rules in 24 CFR part 245. Implementing the statutory mandate of section 599 of the Public Housing Reform Act, Pub. L. 105-276 (approved October 21, 1998), codified at 12 U.S.C. 1715z-1b, the proposed rule expanded the categories of multifamily housing projects covered by part 245. The proposed rule sought to clarify the

reasonable tenant organizing activities that the owner of a covered multifamily housing project must allow, and set forth extremely detailed requirements for establishing, operating, and structuring a tenant organization. In addition, the proposed rule established policies regarding outside tenant organizers, the establishment of more than one tenant organization, and the right of tenants to replace the leadership of existing tenant organizations. A discussion of the specific provisions is found in the preamble of the proposed rule at 64 FR 32782-32783 (June 17, 1999).

**II. This Final Rule**

This final rule adopts certain of the provisions of the proposed rule, while adding certain provisions and eliminating others in response to public comments. Specifically, this final rule significantly revises proposed § 245.110, and eliminates proposed §§ 245.115—245.135 (this final rule renumbers proposed §§ 245.140—160 as §§ 245.115—245.135). A large number of commenters stated that these sections, which proposed specific requirements for the structure, voting procedures, and governing boards of tenant organizations, tended to be overly prescriptive and that tenants should be allowed to decide these matters for themselves based on their particular situations and the best arrangements for their housing complexes. While HUD would like tenant organizations to move toward some sort of formal structures, HUD has decided to adopt this “grassroots” approach in arriving at those structures. Thus, rather than defining in detail what constitutes a properly established tenant organization, the final rule establishes basic general principles for legitimate tenant organizations. For similar reasons, the final rule eliminates proposed § 245.160, related to additional tenant organizations and recall elections.

The final rule revises the purpose statement in § 245.100 to more fully implement the purpose of the statute. In addition, the revision responds to commenters who noted that the proposed language defined the purpose of tenant organizations too narrowly.

One of the basic principles is that a tenant organization should be independent of management. In order to insure the independence of tenant organizations from owners and managers, the final rule revises proposed § 245.140 (now § 245.115) to clarify that management representatives may not attend organization meetings unless invited by the organization to

attend specific meetings to discuss particular issues.

The final rule has made a change to the provisions regarding non-tenants who seek to organize the tenants at a complex, in order to conform this rule to the requirements of the mark-to-market program. Specifically, persons who have received HUD grants to inform tenants regarding mark-to-market, and who are acting pursuant to the terms of such grant, may enter the property and speak to tenants without being accompanied.

In response to comments regarding tenants with disabilities, the rule has been slightly revised to take into account the fact that, if a building, for whatever reason, does not have or has not been retrofitted with accessible common areas, the tenant organization may have to work with management to find a cooperative solution so that disabled tenants may attend.

Finally, numerous commenters stated that HUD should include an enforcement scheme. The rule adds a new § 245.135 to clarify that the administrative enforcement mechanisms in 24 CFR part 24 apply.

The public comment period on this proposed rule closed on August 16, 1999. HUD received 73 comments from a wide variety of commenters, including individual tenants, tenant organizations, public housing authorities, legal aid organizations, public interest advocacy groups, building industry representatives, multifamily management representatives, and one member of Congress. It should be noted that a number of commenters were organizations and associations whose comments were supported by a large number of other commenters. Because the commenters commented on a wide variety of topics related to the proposed rule, the following summary groups the comments by subject.

**III. Summary of Public Comments**

**1. General Comments**

*Comment:* The applicability of the rule should be curtailed. Tenant participation in rental housing is not essential to the operation of housing, and the final rule should not provide tenants with day to day input into management decisions.

Nonprofit elderly projects should be excluded from the rule.

*Response.* The rule implements a statutory requirement that project owners not impede the reasonable efforts of tenants to organize and represent their members (see 12 U.S.C. 1715z-1b(b)(4)). In addition, elderly projects are included in the tenant

management provisions of the statute, and hence cannot be excluded from the rule. Therefore, HUD has made no change to the rule as a result of these comments.

*Comments: Certain technical changes should be made.* The term "resident" should be used in place of "tenant."

The final rule should include a statement that it preempts local law with respect to tenant organization, because owners may claim that state laws allow them to bar one or more protected activities.

The regulations should be made consistent with the public housing tenant participation regulations at 24 CFR part 964.

*Response.* Regarding the use of the term "tenant," this is the appropriate term based on the language in the statute, which extends the right to organize to "tenants" (see section 202(a) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1b(a)).

Regarding the suggestion that the regulation contain an explicit statement that it preempts State law, HUD has concluded that regulatory preemption is not necessary for HUD to fully implement the tenant participation statute.

Regarding consistency with the public housing regulations, there are important differences between public housing and housing with mortgages insured or assisted under other HUD programs. In public housing, the operation of the housing itself is much more pervasively regulated than the private assisted housing that this regulation affects. The tenant participation guidelines in this rule are designed to fit the characteristics of assisted housing programs other than public housing.

For these reasons, HUD has not made any changes to this rule as a result of these comments.

*Comment: Sensitivity training is necessary.* HUD should provide sensitivity training in tenants' rights to HUD field office staff and property owners and management.

*Response.* Any sensitivity issues will be addressed via handbook revisions, rather than implementing sensitivity training as part of this rule.

*Comment: Cooperation by HUD field offices is necessary.* HUD's Washington Headquarters must enforce cooperation from local HUD offices, since not all local HUD offices support tenant organization.

*Response.* All HUD offices will be required to comply with this regulation. No further change in this regulation is required as a result of this comment.

*Comment: Notices to tenants.* The rule should directly implement the policies regarding tenant organizations contained in the HUD publication entitled "Tenants' Rights and Responsibilities."

Owners and managers should be required to issue to tenants a notice regarding tenants' rights to organize.

Once a tenant organization has been formed at a particular housing complex, all local notices regarding building code violations and all Federal notices concerning programmatic regulations should be formally transmitted to the tenant organization.

*Response.* Regarding implementation of the policies concerning tenant organizations in the HUD publication (which is entitled "Resident Rights and Responsibilities"), the publication reiterates in a user-friendly manner the policies relating to tenant organizations that are incorporated in the rule itself. Therefore, it is not necessary to separately implement the policies stated in the brochure as a rule.

Regarding the suggestion that project owners be required to notify tenants of their rights to organize, however, HUD does plan to require affected property owners and managers to provide information on tenants' rights to tenants and tenant organizations through changes to the model lease, Use Agreement and Regulatory Agreement.

Regarding the formal transmission to tenant organizations of notices of local building code violations and all Federal notices regarding new program regulations, while HUD is sympathetic to the need for information, HUD does not believe that the best way to accomplish this goal is through a generally applicable regulation. Local code violations are a matter governed by local law, and individual tenant organizations can negotiate information sharing with management on this subject, in accordance with procedures and policies for their area. Certainly, HUD expects assisted housing owners to comply with HUD's Uniform Physical Conditions Standards as set forth in regulations.

As to new program regulations, such regulations are published in the **Federal Register**, which is publicly accessible (see HUD World Wide Web site instructions in the following paragraph). To the extent that HUD sends notices to assisted housing providers regarding HUD policies, these notices are also available from HUD's World Wide Web site or by calling the local HUD field office or HUD's Multifamily Housing Clearinghouse (800-685-8470).

Accessing HUD's World Wide Web: if you have a computer with Internet

access, you can access HUD notices and rules. From the HUD home page - (<http://www.hud.gov>) select "Reading Room" from the left hand side of the HUD home page. On the next screen, select "Bookshelf 12: Legal Information." On the next screen, scroll down to "HUD Handbooks, Regulations and Notices." Click on that link. On the next page, click on "Search HUDCLIPS databases." Alternatively, you can go directly to HUDCLIPS at <http://www.hudclips.org>. HUDCLIPS provides tools to search or browse through various HUD materials, including **Federal Register** publications, handbooks and notices (please keep in mind that these instructions are current as of this date, and WWW pages may change from time to time).

## 2. Comments on Section 245.10, the Applicability of Part 245

*Comment: Exemption from coverage should be omitted.* The exception in § 245.10(a)(3), which exempts from the coverage of "Subpart B " Tenant Organizations" all State or local housing finance agency projects receiving assistance under section 236 of the National Housing Act (see 12 U.S.C. 1715z-1) but without FHA-insured or HUD-held mortgages, should be dropped.

*Response:* HUD is currently investigating whether the exclusion of the State-financed Section 236 projects is appropriate, and is strongly considering proposing a rule that would reverse this exclusion. However, that change will have to be part of a separate rulemaking, as notice of coverage of State-financed section 236 projects was not given in the proposed rule.

*Comment: "Enhanced" vouchers should not be included.* Projects receiving enhanced vouchers should not be included in the rule because doing so would segregate tenants paying market rent from those receiving rental assistance, and also because it may deter owners from accepting enhanced vouchers.

Some commenters questioned how the rule could be enforced as to enhanced vouchers in the absence of a regulatory agreement with HUD.

Other commenters took a contrary view and asserted that the rule should clearly state that it applies to housing with "enhanced" or "preservation" vouchers.

*Response.* Section 599 of the Public Housing Reform Act, Pub. L. 105-276 (approved October 21, 1998) expressly includes in the coverage of section 202 " \* \* \* a project which 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.” Section 245.10(a)(5) implements this express legal requirement. Section 538 of the FY 2000 Department of Veteran’s Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 106–74, approved October 20, 1999), unified the various enhanced voucher authorities. This section is codified at 42 U.S.C. 1437f(t).

As to the issue of enforcement, payments of the non-tenant portion of rent on enhanced vouchers are made to the owner by the PHA via a Housing Assistance Payment contract. Such a contract is a lower-tier covered transaction for the purposes of the enforcement mechanisms at 24 CFR part 24, which include Limited Denials of Participation, Suspension and Debarment. Therefore, the enforceability of this rule in the case of enhanced vouchers is clear.

*Comment: Definition of “project.”* The final rule should include a definition of the term “project” to make clear that an entire development or complex is encompassed in the rule.

*Response.* The term “project” is generally understood. For example, see the definition of project under HUD’s part 200 regulations at 24 CFR 200.3. A further definition of “project” for part 245 is not required.

### 3. Comments on Section 245.100, the Right of Tenants To Organize

*Comment: Purpose clause is too narrow.* The proposed purpose for organizing and operating a tenant organization, that is, “for the purpose of addressing the terms and conditions of their tenancy,” is too narrow. Tenant organizations can be involved in a variety of community activities, such as related to job training, neighborhood improvements, Crime Watch, Meals on Wheels, and other activities.

This section should be broadly phrased to protect tenants’ First Amendment right to organize for any lawful purpose.

*Response.* The purpose of the underlying legislation includes a recognition of the benefits of tenant participation in “creating a suitable living environment in multifamily housing projects” (see 12 U.S.C. 1715z-1b(a)). Indeed, as commenters point out, tenant organizations have been involved in a variety of activities that enhance their living environment beyond merely the terms and conditions of their tenancy, including the examples mentioned by the commenters listed

above. Therefore, HUD agrees that the purpose of addressing “terms and conditions of tenancy” should be revised. HUD has revised § 245.100 to read: “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.”

Regarding the suggestion that the rule should be as broad as the tenants’ First Amendment right to organize for any purpose, HUD strongly supports the First Amendment rights of all assisted housing tenants, and expects assisted housing owners and managers to respect those rights. This statute and rule, however, are specifically addressed to tenant organizing for the purpose of enhancing the tenants’ living environment.

*Comment: Clarify independence from owners.* Tenants have the right to operate tenant organizations independently of the owner and the owner’s agents. To accomplish this, the final rule should add a provision that permits a tenant organization to exclude from its governing board, its membership, and its meetings any employee or agent of the owner, including one who is a tenant.

*Response.* HUD agrees that tenant organizations should be independent of owners and management. Therefore, this final rule revises § 245.110 to state in part that a legitimate tenant organization “meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.” The final rule also specifies that, in order to preserve independence, tenant organization meetings should take place without the presence of management representatives, unless the organization has invited them to specific meetings to discuss specific issues.

### 4. Section 245.105, Recognition of Tenant Organizations

*Comment: Preamble language undercuts rule.* One commenter stated that language in the preamble that states that “[w]hile HUD encourages owners to take these responses into consideration, the proposed rule would not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization” weakens the assumption that tenant opinions will be given any reasonable consideration, and calls into question the purpose of the rule.

*Response.* HUD believes that the rule as crafted strikes the right balance between the rights of tenants and project owners and managers. The language in the preamble does nothing more than recognize, in the context of a discussion of the impact of the rule on small business, that the rule does not grant tenant organizations the right to force management to alter its proposals. On the other hand, the rule requires management “to give reasonable consideration” to concerns raised by tenant organizations and requires multifamily housing owners to allow tenants to formulate responses to owners’ requests for rent increases, partial payment of insurance claims, reduction in tenant utility allowances, and other matters stated in § 245.115(a)(9). HUD fully expects owners to consider the comments and input of tenant organizations. Since HUD believes that the existing regulatory language strikes the appropriate balance, HUD has adopted no change as a result of this comment.

*Comment: Rights of individual tenants.* The proposed rule will negatively affect the rights of individual tenants outside of organizations. The rule implies that the owner is not required to give consideration to the concerns of individual tenants.

The rule should clarify that it does not supersede subparts D and E.

*Response.* HUD has carefully reviewed the rule, and determined that nothing in the rule purports to deprive individual tenants of any existing legal rights, or supersede subparts D and E (indeed, the rule only purports to revise a portion of subpart A, and subpart B). Therefore, HUD concludes that no further clarification of the regulation is needed.

5. Section 245.110, “Properly Established” Tenant Organization; Cross-References to Sections 245.115 (Constitution or By-Laws); 245.120 (Governing Board); 245.125 (Qualified Voting Member); 245.130 (Number of Votes); 245.135 (Election Notices)

*Comments: The proposed rule micro-manages the structure of tenant organizations.* A “properly established” tenant organization should not be defined in terms of its compliance with proposed § 245.110 and the other particular proposed organizational requirements that section cross-referenced, but rather, HUD should use the definition in its Management Agent Handbook 4381.5 REV–2, which states that legitimate tenant organizations are groups that meet regularly, operate democratically, are representative of all residents in the development, and are

independent of non-resident owners and management agents. In addition, a legitimate tenant organization should be completely independent of management and the owner.

The "properly established" concept as proposed undermines the right of tenants to establish and operate tenant organizations.

The following proposed sections represent inappropriate and unnecessary intrusions into the rights of tenants to determine the structure of their organizations: §§ 245.115(b), 115(c); 245.120(a)(2), 120(b)(2), 120(c); 125; 130; and 135.

Proposed §§ 245.110–245.135 may be appropriate in the public housing context, but for privately owned housing, they are unreasonable, unworkable, unduly burdensome, and serve no useful purpose. HUD should adopt the definition from the Management Agent Handbook.

The proposed requirements would interfere with existing functional tenant organizations. Such organizations should be allowed to continue operating as they have.

A tenant organization's legitimacy is not derived from written by-laws, staggered terms, and term limits. Rather, it is derived from the respect tenants accord the organization. The organizational proposals are not based on reality and should be dropped.

*Response.* While HUD believes that tenant organizations should have formal organizational structures, HUD recognizes that, given the wide variety of possible structures that tenant organizations could use, depending on their particular needs and membership, it is appropriate to allow tenants to determine their organizations' structures and procedures based on their needs. Therefore, HUD has accepted the suggestion of a number of commenters to incorporate the guidance for tenant organizations from the Management Agent Handbook in place of the detailed organizational requirements of proposed §§ 245.110–245.135. Tenant organizations will be able to establish their procedures and structures within those basic requirements of meeting regularly, being democratically operated, representing all the residents of the development, and being completely independent of owners and management and their representatives.

#### 6. Section 245.115, Constitution or By-Laws

*Comment: Elections every three years.* The rule should require that elections be held at least every three years. The rule should require that an independent third party oversee the elections.

*Response.* As stated above, given the multiplicity of different types of tenant organizations and the large number of comments opposed to HUD imposing specific organizational requirements by regulation, HUD has revised the rule to require that tenant organizations, inter alia, operate democratically and represent all the residents. Thus, tenant organizations will have flexibility to set their own election procedures within those guidelines.

#### 7. Section 245.120, Governing Board

*Comment: Independence from owners.* The final rule should clarify that owners and management employees may not run for elected office or serve on a tenant organization's board of directors.

*Response.* The provision in § 245.110 that tenant organizations are completely independent of owners, management and their representatives implies that management personnel may not serve on a tenant organization's board of directors or as officers, and adequately addresses this issue.

*Comment: Procedures for electing governing board.* The governing board should be democratically elected by qualified voting members.

The issue of staggered terms (see proposed § 245.120(a)(2)) should be decided by the tenant organization.

The proposed three year term limit for members of the governing board should be removed because it will undermine the effectiveness of tenant organizations by depriving them of their best leaders after three years.

The requirement that governing board members be in compliance with their leases should be dropped. First, there are tenant confidentiality concerns. Secondly, the requirement gives the owner too much control over the membership of the governing board. The appropriate sanction for lease noncompliance is eviction.

*Response.* HUD agrees not to include the governing board regulations in the final rule, but rather, in accordance with the approach taken regarding other portions of the rule, to allow tenant organizations to select their own organizational structures. Any governing boards would be covered by the overall requirements that the tenant organization must operate democratically and be representative of the residents.

#### 8. Section 245.125, Qualified Voting Member

*Comment: Conformance with public housing requirements.* This section should be revised to conform with 24

CFR 964.115(c), the public housing resident council requirements.

*Response.* The requirements of the public housing program are not necessarily appropriate for other assisted housing, which is privately owned and operated. Furthermore, considering the numerous comments that HUD received that the proposed rule was overly prescriptive as to the nature of tenant organizations, HUD has decided to allow the tenants themselves to decide this issue rather than closely regulating this area.

#### 9. Section 245.130, Number of Votes

*Comment: There should be more than one vote per unit.* Commenters stated that there should be one vote per resident rather than one vote per unit. One suggestion was that each member of a tenant family whose income is counted toward rent should be allowed to vote. Other commenters stated that any resident who is at least 18 years of age and whose name appears on the unit lease should be allowed to vote, as in public housing.

*Response.* Considering the numerous comments that HUD received that the proposed rule was overly prescriptive as to the structure and procedures of tenant organizations, HUD has decided to allow the tenants themselves to decide this issue.

#### 10. Section 245.135, Election Notices

*Comment: 30 day notice.* This section should require at least thirty days' notice of nominations, as does 24 CFR 964.115(c), relating to public housing resident councils.

*Response.* Considering this comment along with other comments stating that HUD's proposals, including this section, were too prescriptive in view of the varying needs of different tenant organizations, HUD has eliminated proposed § 245.135. Tenant organizations can establish their own procedures within the parameters of democratic operation.

#### 11. 24 CFR 245.140, Protected Activities

*Comment: Prior permission not required.* The final rule should include additional language that makes it clear that no prior notice to or permission from owners and managers of a project is needed prior to the tenant organization undertaking the activities permitted by this section.

*Response.* Upon consideration of this comment, HUD agrees that a management requirement of prior permission before conducting activities permitted by the regulation could constitute a significant impediment to tenants' enjoyment of the right to

organize and to the organization's independence, contrary to the purpose of the underlying statute. Therefore, HUD has revised the final rule to clarify this point. However, HUD believes that it is good practice for tenant organizations to communicate with management about their activities, and doing so supports a spirit of partnership in maintaining a positive living environment.

*Comment: Certain permitted tenant activities should be omitted.* HUD should remove from the list of permitted activities certain matters under § 245.140(a)(9) (§ 245.115(a)(9) in this final rule), including partial payment of claims; conversion from project-based paid utilities to tenant paid utilities; converting residential units to non-residential use, cooperative housing, or condominiums; major capital improvements; and prepayment of loans. Including these items in the list may give a false impression that an owner must do what the tenant organization recommends. These decisions are best determined by individuals who have specialized training, not tenants.

Requiring an owner to receive tenant comments on proposed capital improvements is unreasonable and unwarranted. Similarly, it is inappropriate for tenants to be involved in property financing decisions, such as prepayment of loans.

*Response.* The commenters' concern that the list of examples of permitted activities may give a false impression that owners have to comply with tenant recommendations is not supported by the text of the rule, which only requires that owners and their agents give "reasonable consideration" to concerns that tenant organizations raise. Therefore, HUD does not believe that the commenters' fears in this regard warrant a revision of the proposed rule. Furthermore, the list of areas on which tenant organizations may comment can affect the living conditions of tenants. Thus, permitting tenant comment in these areas is both reasonable and within the parameters of the underlying statute.

*Comment: Permitting leaflets will permit offensive materials.* Giving blanket protection to leaflet and post information on bulletin boards would strip the owners of the ability to control offensive materials, particularly in culturally diverse environments.

*Response.* Tenant activities, including distributing leaflets and posting on bulletin boards, are protected by this rule insofar as they are "related to the establishment or operation of a tenant organization" (see proposed

§ 245.140(a)). The purpose of a tenant organization is to address matters relating to the tenants' living environment. Activities outside of those parameters are not protected by this rule (although there may be other general legal protections, such as broader First Amendment rights). For this reason, HUD does not adopt the suggestion to eliminate leaflets and posting from the tenant organizations' permitted activities.

*Comment: Additional facilities.* One commenter asked whether the rule would require the installation of additional facilities, such as a bulletin board if the housing complex had none.

*Response.* The rule does not require housing complexes to add additional facilities.

*Comment: The list of permitted activities is not exhaustive.* The rule should make clear that the list of permitted activities in proposed § 245.140(a) is not exhaustive.

*Response.* Section 245.115(b) (proposed as § 245.140(b)) makes sufficiently clear that the list is not exhaustive.

*Comment: Right of tenants to conduct door to door contact.* The right of tenants to contact other tenants door to door should not be limited to an initial survey to solicit interest (see proposed § 245.140(a)(5)).

*Response.* While the list in proposed § 245.140(a) does not purport to be exhaustive, HUD agrees, for the sake of improved clarity, to amend proposed § 245.140(a)(5) as suggested (see § 245.115(a)(5) of this final rule). In accordance with the comment below regarding use of the word "solicit," HUD is substituting other language for that term in this section as well.

*Comment: Remove the term "solicit" from the rule.* Use of the term "solicit" inaccurately describes the work done by tenant organizers and will support attempts by management to prevent tenant organizers from conducting legitimate outreach activities.

*Response.* HUD agrees that the term "solicit" has negative connotations unrelated to tenant organizing, and will use other terms in the final rule.

*Comment: The term "reasonable" should be removed from proposed § 245.140(b).* Section 245.140(b) provides that tenant organizations may conduct other "reasonable" activities related to the establishment or operation of a tenant organization. Owners could use this language to attempt to intimidate tenants or tenant organizers by claiming they are not acting "reasonably." Alternatively, the rule could alter the wording to "activities reasonably related \* \* \*".

*Response.* "Reasonableness" is a common, generally understood legal principle, which is also used in the underlying statute. The list of activities in proposed § 245.140(a) (§ 245.115(a) in this final rule) provides examples of the sorts of activities that might be considered "reasonable." Since the activities of tenant organizations do, in fact, have to be reasonable, HUD has made no changes to the rule as a result of this comment.

*Comment: Support for proposed § 245.140.* Proposed § 245.140 should not be "watered down."

*Response:* HUD is not making any change to § 245.140 that would "water it down."

*Comment: There should be specific instructions regarding leaflets.* Placing leaflets at tenants' doors creates a potential safety hazard. The rule should require that leaflets either be placed under doors, attached to doors, or placed in an orderly fashion in a public location.

*Response.* HUD has considered this comment, but does not believe that a rule concerned with general policies regarding tenant organizations is the appropriate venue for instructions on distributing leaflets. If HUD were to provide any such guidance, it would most likely be in the form of handbook revisions or informational brochures.

## 12. Section 245.145, Meeting Space

*Comment: The rule should clarify that tenants have a right to meet without representatives of owners and management.* A new paragraph should be added to this section clarifying this principle and further stating that tenants who are not management representatives should have the option to exclude tenants who are management representatives from their meetings.

*Response.* The final rule provides that legitimate tenant organizations are "completely independent of owners, management, and their representatives" (see § 245.110). In order to preserve this independence, while organizations can certainly choose to invite management representatives to attend specific meetings on specific issues, as a general practice, absent such invitation, meetings should be without the presence of management representatives or agents. This rule makes a clarifying change to § 245.115(a)(8) (redesignated from proposed § 245.140(a)(8)).

*Comment: Persons with disabilities.* The rule should require tenant organizations only to make "reasonable efforts" to make their meetings accessible to persons with disabilities. Under the proposed rule, a tenant organization may be effectively

prohibited from holding meetings if the only reasonable place to hold a meeting is in a project's community room and the room is inaccessible to persons with disabilities.

*Response.* Under section 804(f)(3)(C) of the Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(f)(3)(C), multifamily dwellings built for initial occupancy after March 13, 1991 are generally required to have accessible common areas. In addition, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, prohibits discrimination against disabled individuals by recipients of federal financial assistance, which includes housing complexes receiving HUD assistance through the Section 8 and other programs. Pursuant to these legal requirements, HUD expects that many of the complexes at which tenant organizations have been or will be formed under this regulation would have accessible common areas, including meeting rooms. For those complexes which do not have accessible common areas, because, for example, they predate the legal requirement to have them and have not been retrofitted, HUD expects tenant organizations and management to work together to find a solution so that all tenants who wish to do so may participate in organizational meetings.

*Comment: Owners should not be allowed to charge fees for meeting space.* Through the charging of fees, deposits or amounts to cover additional insurance, owners could effectively deny tenants the right to use community rooms. As an alternative, the regulation could provide that the costs of providing meeting space are eligible project expenses.

*Response.* The proposed rule simply continues HUD's current policy of allowing reasonable, customary and usual fees, as approved by HUD, that owners would normally charge for the use of such facilities. Under this approach, owners may not charge fees for tenant organizations to use meeting space where they do not charge such fees for other uses of the space, and they may not single out tenant groups for higher fees. HUD believes that this approach reasonably balances the tenant organizations' needs against the owner's costs.

The alternative suggestion of charging the fees to project costs does not necessarily resolve the issue of owner's costs. While some owners may be willing to waive fees altogether and use their project accounts to defray the costs, others may not be in a financial position to do so because of other costs of operating the project.

### 13. Section 245.150, Tenant Organizers

*Comment: Independence from owners.* The rule should make clear that tenant organizers cannot be affiliated with current or prospective owners or management.

*Response.* In order to further the intent of the rule that tenant organizations be independent from owners and management, HUD has revised proposed § 245.150 as suggested. That section is renumbered as § 245.125 in this final rule.

*Comment: Tenant organizers should be held to standards.* Tenant organizers should be held to the same standards as agents and owners. Outside organizers should be required to disclose background qualifications, experience and potential conflicts of interest.

The final rule should establish qualifications for non-resident tenant organizers, who otherwise could potentially serve as agents for outside influences with no stake in the ultimate impact on the tenant community.

*Response.* HUD believes that the proposed disclosures and requirements would overly restrict tenant organizing activity. It should be up to the tenants themselves to assess whether to speak to tenant organizers and make their own judgments about the organizers' presentation and potential agenda.

*Comment: Advance notification.* Owners should be notified in advance when a non-resident tenant organizer plans to visit a property, and be permitted to have a representative monitor the organizer while he or she conducts organizing activities.

*Response.* While HUD believes it is good practice for tenants to provide information to owners regarding their organizing activities, the intent of this regulation is to ensure that tenant organizations are independent from owners and management. Thus, for example, § 245.115 (proposed § 245.140) does not require permission from owners to conduct organizing activities. Requiring advance notice of a non-resident tenant organizer would make such independence more difficult and could have the effect of impeding organizational efforts, contrary to section 202(b)(4) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1b. Therefore, HUD has adopted no change to the rule as a result of this comment.

*Comment: Owner's policies regarding door to door canvassing.* With respect to non-resident tenant organizers, the proposed rule differentiates between a situation where the owner has a "consistently enforced" policy against door to door canvassing, and where the

owner does not have such a policy. One comment inquires who will make the determination of whether the owner has such a policy. A number of comments stated that the policy should be required to be in writing to avoid disputes.

*Response.* In order to avoid disputes and selective enforcement of anti-canvassing rules, HUD has revised the proposed regulation to require that policies be in writing, in addition to being consistently enforced as the proposed rule stated. HUD hopes that these criteria are sufficiently objective so as to avoid most disputes, but in the event disputes arise the HUD field office can assist in resolving the issue.

*Comment: New policies.* The final rule should clarify that owners and management may not initiate a new policy against contacting residents door to door in response to, or to prevent tenant organizing.

*Response.* Under the system set forth in the rule, a policy against door to door canvassing would not serve to prevent tenant organizing. Rather, it would simply require non-resident tenant organizers to be accompanied by a tenant. Furthermore, the rule requires the policy to be both "consistently enforced" and "written." A written policy solely applied against tenant organizers and not other door to door canvassers would not meet the standards of the rule for a consistently enforced policy. Also, it is contrary to law and regulation for an owner to impede the reasonable efforts of tenants to organize. HUD can enforce this regulation by proceedings under 24 CFR part 24, including Limited Denials of Participation, suspension, and debarment. Thus, HUD believes there are sufficient protections in the rule and statute to guard against contrived or bad faith uses of anti-canvassing policies.

*Comment: There should be no restrictions on tenant organizers.* Tenants should not be required to accompany non-tenant organizers because tenants are often not willing to take on this role because of fears of retaliation by management.

The rule requiring that organizers be accompanied by a tenant when canvassing door to door if management has a consistently enforced policy against canvassing will likely lead to a proliferation of non-solicitation policies. It will be difficult to prove if the policies have been consistently enforced. There is a long tradition in this country of door to door outreach of this kind in buildings that are not subsidized by the Federal government. Supreme Court decisions have supported the right of organizers to go door to door.

The final rule should provide that organizers may contact tenants door to door if either accompanied by a resident or acting at the request of one.

It would be preferable to omit any limitation on non-resident tenant organizers from the rule. However, if retained, § 245.150(c) should be revised as follows:

§ 245.150(c)(1): "If a multifamily project covered under § 245.10 has a consistently enforced pre-existing, written policy against contacting residents door-to-door that is not otherwise prohibited by law, then a non-tenant tenant organizer conducting door-to-door contact while on any property or building of the project may do so if either accompanied by or acting at the request of a tenant of the property."

§ 245.150(c)(2): Change the word "solicitation" to "door-to-door contact."

§ 245.150(c)(3): "Where a pre-existing, written policy against contacting residents door-to-door does not exist as of the date of publication of these regulations, an owner or management agent may not initiate a new policy against contacting residents door-to-door in response to or to prevent tenant organization activities."

§ 245.150(c)(4): "The limitation on door-to-door contact by non-tenant tenant organizers in paragraph (c)(1) shall not be construed to prohibit or limit any other protected activities by non-tenant tenant organizers enumerated in § 245.140 or to prohibit or limit the right of tenant of the covered project to contact other residents door-to-door or otherwise assert their rights under § 245.140."

§ 245.150(c)(5): "Where a pre-existing, written policy against contacting residents door-to-door already exists, a non-tenant tenant organizer may conduct an initial door-to-door contact without an invitation by a resident."

§ 245.150(c)(6): "Non-tenant tenant organizers funded through HUD's Outreach and Training Grant or Intermediary Technical Assistant Grant program or through VISTA Volunteer positions provided by the Corporation for National Service (CNS) and funded by HUD through a contract with CNS to provide outreach and training assistance to residents of covered projects may conduct initial or on-going door-to-door contact with residents without an invitation by a resident."

*Response.* HUD believes that the issue of non-resident tenant organizers requires balancing of an owner's property rights with tenants' right to organize. There are a variety of forums by which non-residents can contact residents, including mail or meeting them in a public area outside the project property. In addition, HUD agrees that in cases where management has a *bona fide* policy against contacting residents door-to-door, it is reasonable to require outside organizers to be accompanied by

a tenant to ensure that at least one tenant has invited the organizer onto the property. However, HUD also agrees that the activities of certain grant recipients whose purpose is to provide education and outreach to tenants concerning restructuring of assistance under the mark-to-market program, should not be so conditioned. HUD has therefore made a change to the proposed rule at § 245.150(c), codified in this final rule as § 245.125(c).

*Comment: Section 245.150(c) violates the First Amendment.* This section will have a chilling effect on tenants' rights of association, and as such is unconstitutional under *Laird v. Tatum*, 408 U.S. 1, 11 (1972). Therefore, the section should be omitted entirely.

*Response.* The proposed regulation permitting outside organizers to canvass on private property despite non-soliciting policies serves to protect tenants' organizational rights as well as the property interests of owners. HUD disagrees that this regulatory accommodation violates the holding of *Laird v. Tatum* or any case law concerning First Amendment rights that applies in this situation.

#### 14. Section 245.155, Re-solicitation

*Comment: Proposed § 245.155 should be omitted from rule.* The section is not necessary, because any tenant can simply refuse to speak to tenant organizers and choose not to attend meetings of the tenant organization. On the other hand, the section can be used by owners to keep tenant organizers from the property. Owners can seek out dissenters as a means to undermine legitimate tenant organizations.

*Response.* HUD has considered this comment and believes that the rule should respect the wishes of tenants, having been made aware of their rights, not to be repeatedly solicited. Since the right not to be re-solicited only applies to "a tenant," that is, on an individual basis, HUD does not believe management can use this section as a mechanism to keep tenant organizers from talking to tenants who have not asserted this right. Proposed § 245.155 is renumbered as § 245.130 in this final rule.

#### 15. Section 245.160, Additional Tenant Organizations

*Comment: The rule should not allow more than one tenant organization at a project.* Allowing more than one tenant organization could cause legal and administrative difficulties.

Allowing multiple tenant organizations would make it unclear who speaks for the community.

From management's perspective, multiple tenant organizations would be burdensome for management to accommodate. From the tenants' perspective, they would be better served by a single, strong organization that a multitude of fragmented organizations. At a minimum, the rule should provide that a tenant organization must represent at least 10% of all a project's residents, and not less than five residents in any case.

Allowing multiple tenant organizations could encourage confusion and dissension among tenants when a minority of tenants decide to form their own organization.

Allowing additional tenant organizations would create schisms, issue-based factions, and animosity among tenants and effectively destroy the effectiveness of the rule, and provide no means to establish an effective consensus among tenants in representing issues to management.

*Response.* The final rule omits the proposed language explicitly providing for multiple tenant organizations, in favor of the general definition in § 245.110. HUD believes that this general definition supplies sufficient guidance.

*Comment: Management control.* The rule should not permit the creation of a second organization under management control.

*Response.* HUD believes that the provision for complete independence of the tenant organization in § 245.110 adequately addresses this concern.

*Comment: Proposed section 245.160(b), replacement of leadership.* The final rule should only require owners to recognize the right of tenants to replace their leadership if the replacement is done according to the written procedures contained in the tenant organizations' by-laws, that meet the standards of proposed § 245.115.

*Response.* HUD also received numerous comments generally on proposed §§ 245.110—245.135, to the effect that these sections sought to excessively micro-manage tenant organizations, and would eliminate or hamper many effective organizations that follow different procedures. Therefore, HUD has decided to allow tenants to choose their organizational procedures and structures within the general guidelines of § 245.110. For this reason, the final rule omits proposed § 245.160(b).

#### 16. Enforcement

*Comment: Final rule should expressly provide tenants with the right to enforce the regulations.* The rule will only be meaningful if it can be enforced by

tenants and tenant organizations in addition to HUD. In addition to providing by regulation tenant enforcement rights, HUD should explicitly make the tenants third party beneficiaries of the regulatory agreement between HUD and the owners. HUD should make tenants partners in the enforcement of HUD requirements.

The final rule should explicitly state enforcement procedures and penalties for violations.

The following should be added as new enforcement sections to the final rule:

*Section 245.170 Enforcement.*

(a) HUD staff shall utilize the procedures prescribed in the Management Agent Handbook 4381.5 REV-2 to identify, assess, and respond to resident complaints regarding owner agent conduct or omissions, including harassment of residents or resident associations who attempt to exercise their rights, lease violations, failure to maintain HQS requirements, or failure by the owner/agent to properly carry out its management responsibilities.

(b) HUD field staff shall assess resident complaints regarding harassment and owner/agent responses on these matters as part of field Management Reviews.

(c) If the owner/agent fails to adequately respond to outstanding resident complaints within a reasonable time period set by the HUD field office, HUD staff shall implement sanctions against the agent and/or owner.

(d) HUD staff shall classify the property as "troubled" due to persistent, validated resident complaints of a serious nature, including but not limited to harassment of the residents association or individual tenants for asserting their rights.

(e) Upon publication of a final rule, HUD shall revise regulatory agreements and contracts with owners and their agents to include the rights of tenants to organize and assert their individual rights explicitly in the agreements and contracts themselves, including but not limited to the renewal of expiring project-based or Preservation Voucher Section 8 contracts, amendments to existing regulatory agreements (which might occur in a partial payment of claim, bond refinancing, transfer of physical assets, or sale of the property), new regulatory agreements, and a revision to HUD's Model Lease as published in the Handbook 4350.3, Occupancy Standards for HUD Assisted Housing.

*Section 245.180 Sanctions and Penalties.*

(a) HUD shall pursue removal of the agent or appropriate civil and/or criminal penalties as sanctions for violations of residents rights to organize or assert their individual rights as tenants, including but not limited to:

(1) Removal of an agent under a HUD regulatory agreement, if any;

(2) Civil penalties up to \$25,000 for violations of residents' right to organize or their individual rights as tenants;

(3) A fine of not more than \$10,000, imprisonment of not more than five years or both for knowingly and willingly falsifying, concealing, or making any false, fictitious or fraudulent statement regarding harassment or interference with residents asserting their right to organize or their individual rights as tenants;

(4) Referral to the Attorney General and/or HUD's Enforcement Center with a recommendation for civil action, including mandatory or injunctive relief, to enjoin against owner/agent actions violating residents' right to organize or assert their individual rights as tenants.

(b) In cases of extended noncompliance affecting a property, or widespread noncompliance affecting more than one property, HUD will consider taking the following enforcement actions, without further notice to the owner/agent:

(1) Debarment from or limited denial of participation in HUD programs;

(2) Initiate legal action to place the property in receivership;

(3) Partially abate the project's assistance contracts;

(4) Take steps to have the property declared in default of the mortgage and initiate foreclosure proceedings.

(c) HUD shall otherwise follow the procedures prescribed in the Management Agent Handbook (4381.5, REV-2) in assessing these penalties.

*Response.* HUD agrees that it is important that tenants' rights to organize be enforceable. HUD can enforce the provisions of this tenant participation rule under the procedures of 24 CFR part 24, which provides for Limited Denials of Participation ("LDP"), debarment, and suspension in the case of such violations. These are powerful sanctions, and HUD will use them as necessary to address interference with tenants' right to organize. HUD has made an amendment to the rule to clarify that this existing authority applies with respect to this regulation.

Regarding tenant enforcement of the right to organize, HUD expects to

consider whether to require prospective changes to the model lease, Regulatory Agreement and Use Agreement memorializing the right to tenant participation, and making tenants third-party beneficiaries of the Regulatory and/or Use Agreement. Such changes could strengthen the ability of tenants to enforce their rights to organize, if necessary.

On the issues of civil money penalties and criminal sanctions, HUD's statutes provide specific instances in which civil money penalties are applicable. HUD does not believe it can expand those instances to include tenant organizational rights without a statutory change. Likewise, HUD does not have statutory authority to impose criminal penalties such as imprisonment. However, HUD can use the existing administrative enforcement system. Because of the availability of the sanctions of LDP, suspension and debarment, HUD believes it currently has sufficient enforcement authority to address violations of this regulation.

*Comment: The final rule should expressly prohibit harassment.* Because of the lack of enforcement actions by HUD, the final rule should state that HUD will no longer tolerate harassment of tenants and tenant organizations asserting their protected rights.

The prohibited harassment tactics listed in chapter 7 of HUD's Management Agent Handbook should be included in the final rule, along with the listed sanctions available.

*Response.* The rule states that: tenants have a right to organize (§ 245.100); owners and their agents must recognize legitimate tenant organizations and give reasonable consideration to their concerns; and owners and their agents must allow tenants to conduct reasonable activities related to the establishment and operation of a tenant organization. These provisions suffice to require owners and their agents to allow tenant organizations to function. Violations of these regulatory provisions can be addressed through administrative means, as set forth in new § 245.135. A provision specifically on harassment would not add significantly to these existing protections, which apply to any interference with tenants' organizational rights.

*Comment: The rule should include a list of prohibited activities.* The rule should contain the following additional section:

*Section 245.170 Impediments to residents or resident associations attempting to exercise their rights.*

(a) Actions by owners/agents that constitute impediments to resident or

resident associations attempting to exercise their rights include, but are not limited to, the following:

(1) Unreasonable denial of accessible meeting space to residents;

(2) Sending management representatives (including residents who are management employees or who receive rent concessions in exchange for management services) to resident meeting when residents have not invited these representatives to attend;

(3) Evicting, threatening to evict, withholding entitlements, or otherwise penalizing tenants for organizing or asserting their rights;

(4) 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 development;

(5) Attempting to form a competing resident organization under the control of the management company or the owner;

(6) Sexual harassment of residents by owners/agents;

(7) Interfering with or obstructing residents or non-tenant tenant organizers from engaging in any protected activities set forth in § 245.140 of these regulations; and

(8) Engaging in any activity designed to intimidate, harass, or retaliate against tenant or non-tenant tenant organizers exercising their right to organize or assert their rights.

(b) Owner or management employees may not run for elected office or serve on the board of directors of the residents organization.

(c) HUD considers any of the above action taken by owner/agents to be a violation of residents' rights to organize and assert individual rights.

*Response.* The rule as proposed contains a list exemplifying protected activities (see § 245.115(a)), and also protects other reasonable activities related to establishing and operating a tenant organization (see § 245.115(b)). Therefore, actions that interfere with these activities are prohibited. Additionally, some of the suggested additions are simply beyond the scope of this rulemaking in any case; the prohibition on sexual harassment of residents, for example, is enforced through the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the regulations promulgated pursuant thereto. Therefore, HUD makes no change to the final rule as a result of this comment.

#### IV. Findings and Certifications

##### *E.O. 12866 Statement*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410-0500.

##### *Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule, while it requires owners and their agents to permit reasonable tenant organizing activities, does not impose any affirmative obligation on owners to give financial or other assistance to tenant organizations in the conduct of these activities.

The rule would permit tenant organizations to develop responses to economic proposals made by owners that could affect the living environment of the tenants, such as rent increases and major capital additions, and requires owners to give reasonable consideration to such responses. However, it does not require owners to adopt such proposals.

##### *Environmental Impact*

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

##### *Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an

agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538)(UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

##### **List of Subjects in 24 CFR Part 245**

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

For the reasons stated in the preamble, HUD amends part 245 as follows:

#### **PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS**

1. The authority citation for 24 CFR part 245 continues to read as follows:

**Authority:** 12 U.S.C. 1715z-1b; 42 U.S.C. 3535(d).

##### **Subpart A—General Provisions**

###### **§ 245.10 [Amended]**

2. Amend 24 CFR 245.10 as follows:

- a. Remove paragraph (a)(2);
- b. Remove from paragraph (c) the definition of "Section 202 Loans for the Elderly or Handicapped BMIR Program";
- c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;
- d. Revise redesignated paragraphs (a)(2)(ii) and (a)(3); and
- e. Add paragraphs (a)(4)–(7) to read as follows:

###### **§ 245.10 Applicability of part.**

- (a) \* \* \*
- (2) \* \* \*
- (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 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 and C of this part and of subpart D 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.

\* \* \* \* \*

3. Subpart B is revised to read as follows:

#### **Subpart B—Tenant Organizations**

Sec.

- 245.100 Right of tenants to organize.
- 245.105 Recognition of tenant organizations.
- 245.110 Legitimate tenant organizations.
- 245.115 Protected activities.
- 245.120 Meeting space.
- 245.125 Tenant organizers.
- 245.130 Tenants' rights not to be canvassed.
- 245.135 Enforcement.

#### **Subpart B—Tenant Organizations**

##### **§ 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;
- (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 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 24 CFR 24.105), 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 24 CFR part 24. 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 24 CFR part 24, subpart C.

(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 24 CFR part 24, subpart D.

(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 24 CFR subpart G.

(b) These sanctions may also apply to affiliates (as defined in 24 CFR part 24) of these persons or entities.

(c) The procedures in 24 CFR part 24 shall apply to actions under this subpart.

Dated: June 1, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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