



ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

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

Multifamily Regional Center/Hub Directors
Multifamily Program Center Directors
Multifamily Operations Officers
Multifamily Directors of Project Management
Multifamily Field Counsel
Multifamily Owners and Management Agents

NOTICE H 2016-05

Issued: March 31, 2016

Expires: This notice remains in effect until amended, superseded, or rescinded.

Cross References: HUD Handbook
4381.5 REV-2 *The Management Agent Handbook*

Subject: Revision of Tenant Participation Requirements in accordance with 24 CFR Part 245

A. Purpose

This notice restates requirements issued through Notice H 2014-12 and revises penalties for non-compliance. Specifically, the revisions expand the property types that may be assessed civil money penalties to additionally include non-insured projects that have a project-based Section 8 contract that has been renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). In addition, the notice expands discussion of accessible meeting space and clarifies the role of HUD-initiated conciliation in resolving tenant complaints. All other sections of Notice H 2014-12 are incorporated herein with minor or no revisions.

The Department of Housing and Urban Development's regulations governing tenant participation in multifamily housing projects are found at 24 CFR Part 245 Subpart B. 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 or owner 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
 - a. 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.
 - b. 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.). This brochure is provided in accessible formats, as necessary, to ensure effective communication with persons with disabilities and those who are limited English proficient.
2. Protected activities
 - a. 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,
 - 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.

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

b. Tenants also have the right to be notified of and 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 address issues related to their living environment collectively. Owners must give priority to meeting spaces that provide physical access for individuals with disabilities in accordance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504) and Titles II and III of the Americans with Disabilities Act of 1990 (ADA), as applicable. All programs or activities must be held in accessible locations unless the owner can demonstrate that doing so would result in a fundamental alteration of the program or an undue financial and administrative burden. The owner must take any action that would not result in such an alteration or such burden but would ensure that individuals with disabilities receive the benefits and services of the program or activity. Individuals with disabilities must receive services in the most integrated setting appropriate to their needs. In addition, if owners and management agents of covered projects organize or facilitate such meetings, then the owners and management agents of covered projects must take appropriate steps to ensure effective communication with individuals with disabilities through the provision of appropriate auxiliary aids and services as applicable and required by Section 504 and/or the ADA. Similarly, owners and management agents of covered projects must make reasonable accommodations for individuals with disabilities.
- 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 fee and is not required to charge a HUD-approved fee. An owner does not need HUD approval to waive this fee.

- c. 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 community space or facilities.
 - 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

- 1. 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:
 - a. Unreasonable denial of accessible meeting space to residents;
 - b. Repeatedly sending management representatives to resident meetings when residents have requested management not to attend;
 - c. Evicting, threatening to evict, withholding entitlements, or otherwise penalizing residents for organizing or asserting their rights;

- d. Attempting to form a competing resident organization under the control of the management company or the owner; and
- e. Running for office or otherwise serving as a member of the resident organization.

E. Enforcement options

1. 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:
 - a. 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 Part 2424.
 - b. Suspension – a temporary action with the same effect as debarment. See 2 CFR Parts 180 and 2424.
 - c. 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. See 2 CFR Part 2424.
 - d. 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, or fail to administer the subsidy contract in accordance with HUD regulations and requirements. By adjustment under the Federal Civil Penalties Inflation Adjustment Act of 1990, the maximum civil money penalty for each offense is currently \$42,500, 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 amounts. 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.
2. 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.

However, civil money penalties, as described in Section E.1.d of this Notice, may be imposed in relation to non-insured properties that have a project-based Section 8 contract that has been renewed under MAHRA.

F. Enforcement Process

1. A tenant or tenant organization may file a written complaint with the local HUD office, with copies to the owner/management agent, alleging a consistent pattern of violations of HUD program requirements. A tenant or tenant organization may file a written complaint citing a single violation describing conditions that cause serious injury to tenants or the public.
 - a. The written complaint must include factual evidence presented in support of the complaint. Evidence supporting the complaint may be:
 - i. signed statements from tenants who have observed violations of 24 CFR 245 Subpart B or other program obligations,
 - ii. documents from owners expressing opposition to tenant organizing activities,
 - iii. documents denying the use of facilities for purposes of organizing an association or holding meetings, and
 - iv. any other form of documentation may be considered when providing evidence supporting the complaint.
 - b. The Regional or Satellite Office Director must attempt to bring the parties together to endeavor to achieve conciliation with respect to every tenant complaint. If both parties agree to participate in a conciliation process and are able to reach an agreement that would correct the alleged violations, they will execute a conciliation agreement outlining the terms for such correction. The Regional or Satellite Office Director will approve and sign the agreement but only if it thoroughly ensures that the conditions or circumstances underlying the tenant complaints have been addressed. If either party breaches the agreement, the Regional or Satellite Office Director can reopen the case and pursue enforcement action.
 - c. The choice to participate in conciliation is voluntary on the part of both parties. If either party refuses to participate in conciliation, or if the conciliation effort does not result in a mutually acceptable agreement, the Regional or Satellite Office Director will conduct a thorough investigation into the alleged violations. If, upon completion of the investigation, he or she finds no reasonable cause to believe that a violation has occurred, the Regional or Satellite Office Director will issue a determination of "no reasonable cause" and close the case. Notification of the determination must be provided to the complainant, owner, and management agent.
 - d. If, after conducting a thorough investigation, the Regional or Satellite Office Director determines that the owner has committed one or more violations of the requirements contained in 24 C.F.R. Part 245, the Regional or Satellite Office Director will provide written notice of the violations to the owner. The notice will describe the violations and direct the owner to correct them within 30 days. If the applicable regulatory agreement and/or HAP contract requires the owner to

provide management for the project that is acceptable to HUD, the Regional or Satellite Office Director's notice will further inform the owner that its violations of 24 C.F.R part 245 constitute unacceptable management and, therefore, are also violations of the regulatory agreement and/ or the HAP contract.

- e. If the owner fails to respond, or the response does not satisfactorily address the violations alleged in the Regional or Satellite Office Director's letter, then an elective referral will be sent by the Regional or Satellite Office Director or designee to the Department Enforcement Center (DEC), and the owner must be flagged in the Active Partners Participation System (APPS).
2. A complainant who disagrees with the decision of "no reasonable cause" from the Regional or Satellite Office Director can request reconsideration of the case by sending a letter to the Director of the Office of Asset Management and Portfolio Oversight, 451 7th Street, SW, Room 6180, Washington, DC 20410.
 - a. Upon receipt of a request for reconsideration, the Office of Asset Management and Portfolio Oversight (OAMPO) will notify all of the parties that the request has been received and invite them to submit any additional evidence pertinent to the investigation.
 - b. OAMPO will review all of the materials from the investigation and any additional evidence that the parties provide and make a final determination.
 - c. If the OAMPO determination results in a finding of reasonable cause HUD will issue a determination of "reasonable cause", which will include an explanation of the basis for the determination, and pursue the enforcement remedies described in Section E herein. HUD will send a copy of the charge to each party in the case.

G. Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0324 and 2502-0601. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

If you have questions regarding this Housing Notice, you may contact your Account Executive in the Field Asset Management Division, Office of Asset Management and Portfolio Oversight, Headquarters.

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