

which residential rental units are to be converted and whether the conversion is to nonresidential use or to cooperative or condominium units.

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

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

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

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

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

(b) After the State or local agency has considered the request for approval of a conversion or reduction that meets the requirements of § 245.425, it must make a determination to approve or disapprove the conversion, or to approve, adjust upward or downward, or disapprove the reduction. If the agency determines to approve the conversion or reduction (as originally proposed or as adjusted), it must submit to the appropriate local HUD office the mortgagor's request for approval of the conversion or reduction, along with the comments of the tenants and the mortgagor's evaluation of the comments, and must certify to HUD that the mortgagor is in compliance with the requirements of this subpart. HUD must review the agency's determina-

tion and certification and notify the agency of its approval or disapproval of the proposed conversion or of its approval, adjustment upward or downward, or disapproval of the proposed reduction. HUD will not unreasonably withhold approval of a conversion or reduction approved by the State or local agency.

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

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

## PART 246—LOCAL RENT CONTROL

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

**Subpart A—General Provisions**

**§ 246.1 Scope and effect of regulations.**

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

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

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

(d) These regulations may be offered as a defense to a proceeding by whomsoever initiated, which may be brought or threatened to be brought against any owner, mortgagor or managing agent of a project subject to these regulations who demands, receives or retains, or seeks to demand, receive or retain, rental charges approved by HUD, or as a basis for declaratory, injunctive or other relief against any person or agency, public or private, who attempts to enforce, or threatens

to enforce, any state or local law, ordinance, or regulation which is without force and effect by reason of this regulation.

(e) This part applies to mortgages insured under the National Housing Act. It does not apply to mortgages insured under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707).

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984, and amended at 58 FR 64038, Dec. 3, 1993; 59 FR 62524, Dec. 5, 1994]

**Subpart B—Unsubsidized Insured Projects**

SOURCE: 44 FR 58504, Oct. 10, 1979, unless otherwise noted. Redesignated at 49 FR 6713, Feb. 23, 1984.

**§ 246.4 Applicability.**

This subpart applies to all projects with mortgages insured or held by HUD, except those to which subpart C applies.

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984]

**§ 246.5 Rental charges.**

The Department will generally not interfere in the regulation of rents by a rent control board or agency constituted under State or local laws (hereinafter referred to as board) for unsubsidized projects with mortgages insured or held by HUD. However, HUD will preempt the regulation of rents, together with any board regulations which require the mortgagor to offer a lease for a term in excess of one year, under certain conditions. This preemption may occur for such a project when the Department determines that the delay or decision of a board prevents the mortgagor from achieving a level of residential income necessary to maintain and operate adequately the project, which includes sufficient funds to meet the financial obligations under the mortgage.”

**§ 246.6 Initiation.**

When a mortgagor determines that the permitted increase in rents as prescribed by the board will not provide a rent level necessary to maintain and operate adequately the project, and the

mortgagor elects to request preemption under this subpart, it shall:

(a) File an application for whatever relief or redetermination is permitted under the State or local law and;

(b) Notify: (1) The tenants in accordance with § 246.7 of this subpart, (2) the appropriate HUD office pursuant to § 246.8, and (3) the board of the mortgagor's intention to file a request for preemption of local rent control regulation pursuant to the provisions of regulations in this subpart. This action may be taken if either the board's written decision is unacceptable to the mortgagor or no written decision is received from the board within 30 days of the mortgagor's request under paragraph (a) of this section.

#### § 246.7 Notice to tenants.

At least 30 days before filing a formal request to HUD for preemption of local rent control regulations, the mortgagor shall notify the tenants of its intention to so file. Copies of the Notice shall be:

(a) Delivered directly or by mail to each tenant; and

(b) Posted in at least 3 conspicuous places within each structure or building in which the affected dwelling units are located.

The Notice shall contain the addresses where the materials, which constitute a complete submission as required by § 246.8 in support of the proposed preemption request, are to be made available to tenants as well as the required information in the following equivalent format:

#### NOTICE TO TENANTS OF INTENTION TO FILE A REQUEST TO HUD FOR PREEMPTION OF LOCAL RENT CONTROL REGULATIONS

Date of Notice \_\_\_\_\_

Take notice that on (Date) we requested the (Name) board to review our application for redetermination of permitted rents.

Take further notice that on (Date), if the (Name) board fails to approve an income level necessary to maintain and operate adequately the project, or to act upon our request, we plan to file a request for preemption of local rent control regulations for (Name of Apartment Complex) with the United States Department of Housing and Urban Development (HUD) which will result in an increase in your rental rate as provided within the terms of your lease. The re-

quested preemption action is supported by the following:

(1) HUD approved Gross Potential Income: Year approved, \_\_\_\_, \$ \_\_\_\_\_.

(2) Current Total Residential Rents Allowed by Local Rent Control Board, \$ \_\_\_\_\_.

(3) Projected Total Annual Residential Rents Allowable Under Local Board Regulations 6 Months After Date of this Notice, \$ \_\_\_\_\_.

(4) Income Required to Operate Project as Supported by Profit and Loss Statement Being Submitted to HUD, \$ \_\_\_\_\_.

Copies of the materials that we intend to submit to HUD in support of our request will be available during normal business hours as well as one evening a week after business hours which will be (Day) at (Address) for a period of 30 days from the date of this Notice. The materials may be inspected and copied by tenants of (Name of Apartment Complex and HUD Project No.) and if the tenants wish, by legal or other representatives duly authorized in writing to act for one or more of the tenants.

During a period of 30 days from the date of this notice, tenants of (Name of Apartment Complex and HUD Project No.) may submit written comments on the proposed preemption request to us at (Address). Tenant representatives may assist tenants in preparing those comments. The inspection and comment period will be extended as necessary to (a) assure a 30-day comment period on a complete mortgagor's submission and (b) to allow at least 5 days to comment on any written decision made by the board, if the decision is received by the mortgagor on or before the expiration of the thirty-day period and it was not available to the tenants during the first 25 days of the 30-day period. These comments will be transmitted to HUD, along with our evaluation of them and our preemption request. You may also send a copy of your comments directly to HUD at the following address: United States Department of Housing and Urban Development, (address of local HUD field office with jurisdiction over preemption of rents for the project) Attention: Director, Housing Re: (Project No.) and (Name of Apartment Complex). HUD will approve or disapprove the preemption request in whole or in part upon reviewing the materials and comments. When HUD advises us in writing of its decision on our request, you will be notified at least 30 days before any change in the rental structure is put into effect, in accordance with the terms of existing leases.

\_\_\_\_\_  
(Name of mortgagor or managing agent)

The mortgagor shall comply with all representations made in this Notice.

## § 246.8

## 24 CFR Ch. II (4-1-10 Edition)

### § 246.8 Materials to be submitted to HUD in support of preemption request.

(a) After posting or delivery of the Notice as required by § 246.7, the mortgagor shall immediately send HUD notification of its intention to file a preemption request, to include:

(1) The written Notice to the tenants, which will state the date of its posting and distribution.

(2) An annual Statement of Profit and Loss, on a form prescribed by the Commissioner, audited by an independent public accountant and covering the most recently ended accounting year, and if more than four months have elapsed since the date of the Profit and Loss Statement, an unaudited accrual Profit and Loss Statement on a form prescribed by the Commissioner for the intervening period since the date of the annual statement, with the mortgagor's certification as to its accuracy.

(3) A certified statement which provides a separate breakdown for the percentage of vacancies for the present and previous year.

(4) A certified statement which provides a separate breakdown of the actual rent loss due to nonpayment of rent for the past 2 years.

(5) A certified statement which provides a separate breakdown of rent loss due to tenant turnover for the past 2 years.

(6) A certified statement covering known approved rate or cost increases not yet experienced by the project which can be documented by the following:

- (i) Tax rates or appraisals,
- (ii) Utility rates,
- (iii) Contracts for employees or services,
- (iv) Insurance, and

(7) A certified statement covering known decreases of rates or costs not yet experienced by the project which have been approved and can be documented as follows:

- (i) Tax rates or appraisals,
- (ii) Utility rates,
- (iii) Contracts for employees or services,
- (iv) Insurance.

If there are none, the mortgagor must so certify.

(8) A copy of the full application to the board with supporting documentation.

(b) The local HUD office shall review the mortgagor's submission promptly upon receipt, to ascertain that it is complete as required by paragraph (a) of this section. Should the submission be found to be incomplete, the local HUD office shall notify the mortgagor within 48 hours of the review of its determination that further material is necessary to constitute a complete submission as defined in paragraph (a) of this section.

(c) When the submission is complete, the HUD office shall hold the mortgagor's submission as specified in paragraph (a) of this section in abeyance until a preemption request is received pursuant to § 246.9.

(d) If the mortgagor subsequently re-submits any change to the submission as described in paragraphs (a) (1) through (7) of this section, it will be required to provide the tenants with an additional 30 days to comment.

### § 246.9 Request for preemption.

(a) Upon expiration of the period for tenant comments required by this rule and after review of the comments submitted to it, the mortgagor may submit its request for preemption. That request must include the following:

(1) A certification by the mortgagor following the requirements specified in paragraph (b) of this section;

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

(3) The mortgagor's evaluation of the tenant's comments with respect to the request; and

(4) The board's decision or a statement from the mortgagor certifying that a decision from the board has not been received.

(b) The certification of the mortgagor as required by paragraph (a)(1) of this section shall include the following:

(1) That the Notice required by § 246.7 was given pursuant to the provisions of that section;

(2) That the mortgagor has taken reasonable steps to assure that the substance of the Notice has been conveyed to each resident household, and that the mortgagor exercised its best efforts

to assure that the posted Notices were maintained intact and in legible form for the specified thirty (30) days;

(3) That: (i) The copies of the materials submitted in support of the preemption request were located in a place reasonably convenient to tenants in the project during normal business hours and at least one evening a week after business hours, and (ii) that requests by tenants to inspect such materials, as provided for in the Notice, were honored;

(4) That copies of all comments received from the tenants were considered and are being transmitted to HUD together with the certifications; and

(5) A statement that "under the penalties and provisions of title 18 U.S.C., section 1001, the statements contained in this application and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete."

(c) Should the mortgagor receive a delayed decision from the board after filing its preemption request, HUD shall be informed immediately and furnished with a copy of the board's decision.

#### § 246.10 HUD procedures.

(a) The local HUD office will review the information submitted by the mortgagor together with the decision of the board, if any. The local HUD office will, if it finds that the delay or decision of the board fails to provide adequate residential income to protect the Department's economic interest in the projects and the board will not modify its position to the satisfaction of the local HUD office, make a report with appropriate recommendations concerning the actions that should be taken by HUD to the Office of Multifamily Housing Management and Occupancy, Headquarters. The report shall be sent to the Office of Multifamily Housing Management and Occupancy, Headquarters, and shall include appropriate recommendations concerning the action that should be taken by HUD.

(b) The Office of Multifamily Housing Management and Occupancy will review the report and will consider whether to preempt the board's regulation. If it finds that the income level

permitted by the board is inadequate to maintain the project as described in § 246.5, it shall issue a formal certification to the board that its authority has been preempted as to such rents. Copies of the certification shall be transmitted to the mortgagor, the local HUD office, and the board.

#### § 246.11 Notification of action on preemption request.

(a) After HUD has considered the preemption request which meets the requirements of § 246.9 and has made its determination to approve or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval or disapproval. The mortgagor shall make known to tenants, by posting or delivery in the manner outlined in § 246.7, the reasons for approval or disapproval.

(b) The mortgagor may effect collection of the HUD-approved income level which is set at the time of the preemption determination after the expiration of 30-days notice to the tenants, subject to the terms and rights a tenant may have under the existing lease.

(c) Once the project reaches the income level approved under these procedures, the project will be returned to the control of the local rent control board covering both the rents and the terms of prospective leases.

#### § 246.12 Preemption of prospective term of lease.

(a) In those instances where it will take more than 60 days (2 months) for the project to reach the new income levels, HUD preemption of prospective lease terms shall be effective for those new or renewed leases which by regulation of a local rent control board would require the mortgagor to offer a lease for a term in excess of one year.

(b) As a condition for HUD preemption, the mortgagor must give only one-year leases to tenants whose leases expire during the preemption period.

### Subpart C—Subsidized Insured Projects

#### § 246.20 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of:

## § 246.21

(a) Interest reduction payments under section 236 of the National Housing Act;

(b) Below-market interest rates under section 221(d)(3) and (5) of the National Housing Act;

(c) Direct loans at below-market interest rates under section 202 of the Housing Act of 1959 (as in effect immediately before October 1, 1991);

(d) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(e) Housing assistance payments under 24 CFR part 886, subpart A (Section 8 Loan Management Set Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or

(f) Housing assistance payments pursuant to a contract under section 8 of the United States Housing Act of 1937 or section 23 of that Act (as in effect immediately before January 1, 1975), except that this subpart will only apply with respect to units occupied by tenants receiving housing assistance thereunder if the contract covers fewer than all units in the project.

[63 FR 64803, Nov. 23, 1998]

### § 246.21 Rental charges.

The Department finds that it is necessary and desirable to minimize defaults by the mortgagor in its financial obligations with regard to projects covered by this subpart, and to assist mortgagors to preserve the continued viability of those projects as a housing resource for low-income families. The Department also finds that it is necessary and desirable to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards, (hereinafter referred to as board), or other authority, acting pursuant to state or local law as it affects projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

## 24 CFR Ch. II (4-1-10 Edition)

### § 246.22 Procedures.

(a) The mortgagor shall file its application for approval of increases in rental charges with the appropriate local office of HUD.

(b) The local HUD office will process the application for increases in rental charges in accordance with HUD's regulations, including part 245 of this chapter, and instructions and procedures, all adopted pursuant to the statutory authority described in § 246.8, and shall notify in writing any board in the area in which the project is located that it is processing the application and, that, pursuant to this subpart, HUD has preempted the entire field of rent regulation by a board acting pursuant to state or local law as it affects the project.

(c) The mortgagor may effect collection of the new rents in accordance with the procedures described in part 245, subpart D of this chapter. The mortgagor shall furnish the board a schedule of any new rents approved by HUD within ten (10) days after the approved rents have become effective. Notice to the board of the approved increases in rents does not confer upon the board a right to approve or disapprove the Department's action or to exercise jurisdiction over the implementation of the rent increases by the mortgagor. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

### Subpart D—HUD-Owned Projects

#### § 246.30 Rental charges.

The Department has exclusive jurisdiction over the rents of all projects which it owns, irrespective of the existence, or the provisions, of any State or local rent control law or ordinance.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

#### § 246.31 Procedures.

(a) The local HUD office will notify in writing any local rent control board (hereinafter referred to as board) in the

area in which the project is located that it is considering increasing the rents for a project within the scope of this subpart, and that the increases are expected to become effective after the expiration of thirty (30) days' notice to the tenants, subject to whatever rights a tenant may have under a lease. The local HUD office will also notify the board that, pursuant to this subpart, the Department has exclusive jurisdiction over the rents for the project.

(b) After the increases have become effective, the local HUD office will furnish the board a schedule of the new rents that are being charged by HUD. Notice to the board of the increased rents does not confer upon the board a right to approve or disapprove of the Department's action, or to exercise jurisdiction over the implementation of the rent increases by the Department. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

## PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

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- 247.10 Inapplicability to substantial rehabilitation or demolition; right of disposition unimpaired.

AUTHORITY: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z-1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

SOURCE: 41 FR 43330, Sept. 30, 1976, unless otherwise noted. Redesignated at 49 FR 6713, Feb. 23, 1984.

## Subpart A—Subsidized Projects

### § 247.1 Applicability.

Except as provided in §§ 247.5 and 247.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupancy of a tenant in a subsidized project as defined in § 247.2(e). (Termination of tenancy of a family assisted with tenant-based assistance under the Section 8 Existing Housing Certificate or Housing Voucher Program is not subject to this part.)

[54 FR 236, Jan. 4, 1989]

### § 247.2 Definitions.

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

*Eviction* means the dispossession of the tenant from the leased unit as a result of the termination of the tenancy, including a termination prior to the end of a term or at the end of a term.

*Landlord* means either the owner of the property or his representative, or the managing agent or his representative, as shall be designated by the owner.

*Rental agreement* means all agreements, written or oral, between the landlord and tenant (and valid rules and regulations adopted by the landlord pursuant to a written agreement) relating to the use and occupancy of a dwelling unit and surrounding premises.

*State landlord and tenant act* means any state statute or local ordinance which imposes obligations on a landlord and tenant in connection with the occupancy of a dwelling unit and surrounding premises and which provides that violations of such obligations by the tenant constitute grounds for eviction.

*Subsidized project* means a multifamily housing project (with the exception of a project owned by a cooperative housing mortgagor corporation or association) that receives the benefit of subsidy in the form of: below-market interest rates under section 221(d) (3)