

§ 246.8

§ 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.

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(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