

**Subpart D—Procedures for Requesting Approval of an Increase in Maximum Permissible Rents**

SOURCE: 50 FR 32403, Aug. 12, 1985, unless otherwise noted.

**§ 245.305 Applicability of subpart.**

(a) The requirements of this subpart apply to any request by a mortgagor, as provided by § 245.10,\* for HUD approval of an increase in maximum permissible rents.

(b) For purposes of this subpart, an increase in utility charges paid directly by the tenant does not constitute an increase in rents.

**§ 245.310 Notice to tenants.**

(a) At least 30 days before submitting a request to HUD for approval of an increase in maximum permissible rents, the mortgagor must notify the tenants of the proposed rent increase. Copies of the notice must be served on the tenants as provided in § 245.15. The notice must contain the following information in the following format or an equivalent format:

**NOTICE TO TENANTS OF INTENTION TO SUBMIT  
A REQUEST TO HUD FOR APPROVAL OF AN  
INCREASE IN MAXIMUM PERMISSIBLE  
RENTS**

**Date of Notice**

Take notice that on [date] we plan to submit a request for approval of an increase in the maximum permissible rents for [name of apartment complex] to the United States Department of Housing and Urban Development (HUD). The proposed increase is needed for the following reasons:

- 1.
- 2.
- 3.

The rent increases for which we have requested approval are:



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Bedrooms	Present rent <sup>1</sup>		Proposed increase <sup>1</sup>		Proposed rent <sup>1</sup>	
	Basic	Market	Basic	Market	Basic	Market
5	\$.....	\$.....	\$.....	\$.....		\$.....
0						
1						
2						
3						
4						

<sup>1</sup> Separate columns for basic and market rent should be used only for projects assisted under sec. 236 of the National Housing Act. In addition, in projects with more than 1 type of apartment having the same number of bedroom but different rents, each type should be listed separately.

A copy of the materials that we are submitting to HUD in support of our request will be available during normal business hours at [address] for a period of 30 days from the date of service of this notice for inspection and copying by tenants of [name of apartment complex] and, if the tenants wish, by legal or other representatives acting for them individually or as a group.

During a period of 30 days from the date of service of this notice, tenants of [name of apartment complex] may submit written comments on the proposed rent increase to us at [address]. Tenant representatives may assist tenants in preparing those comments. (If, at HUD's request or otherwise, we make any material change during the comment period in the materials available for inspection and copying, we will notify the tenants of the change or changes, and the tenants will have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed rent increase). These comments will be transmitted to HUD, along with our evaluation of them and our request for the increase. 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 rent increases for the project], Attention: Director, Housing Management Division, Re: Project No. [Name of Apartment Complex].

HUD will approve, adjust upward or downward, or disapprove the proposed rent increase upon reviewing the request and comments. When HUD advises us in writing of its decision on our request, you will be notified. If the request is approved, any allowable increase will be put into effect only after a period of at least 30 days from the date you are served with that notice and in accordance with the terms of existing leases.

\_\_\_\_\_  
[Name of mortgagor or managing agent]

(b) The mortgagor must comply with all representations made in the notice. The materials to be made available to tenants for inspection and copying are those specified in § 245.315.

§ 245.315 Materials to be submitted to HUD.

When the notice referred to in § 245.310 is served on the tenants, the mortgagor must send to the local HUD office copies of the following documents described in either paragraph (a) or (b) of this section, as specified by the local HUD office:

(a) Documents to be submitted under profit and loss approach:

- (1) A copy of the notice to tenants;
- (2) An annual Statement of Profit and Loss, Form HUD-92410, covering the project's most recently ended accounting year (this statement must have been audited by an independent public accountant if the project is required by HUD to prepare audited financial statements), and Form HUD-92410 for the intervening period since the date of the last annual statement if more than four months have elapsed since that date;
- (3) A narrative statement of the reasons for the requested increase in maximum permissible rents; and
- (4) An estimate of the reasonably anticipated increases in project operating costs that will occur within twelve months of the date of submission of materials under this section.
- (5) A status report on the project's implementation of its current Energy Conservation Plan.

(b) Documents to be submitted under the forward-budget approach:

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(1) A cover letter summarizing the reasons a rent increase is needed;

(2) A copy of the notice to tenants;

(3) A rent increase worksheet providing an income and expense budget for the 12 months following the anticipated effective date of the proposed rent increase;

(4) A brief statement explaining the basis for the expense lines on the rent increase worksheet;

(5) A partially completed Rent Schedule, Form HUD-92458;

(6) If the tenants receive utility allowances, the mortgagor's recommended utility allowance for each unit type and brief statement explaining the basis for the recommended increase; and

(7) A status report on the project's implementation of its current Energy Conservation Plan.

(The information collection requirements in paragraph (a) of this section were approved by the Office of Management and Budget under control number 2502-0310 and the information collection requirements in paragraph (b) were approved under control number 2502-0324)

**§ 245.320 Request for increase.**

Upon expiration of the period for tenant comments required in the notice format in § 245.310 and after review of the comments submitted to the mortgagor, the mortgagor must submit to the local HUD office, in addition to the materials enumerated in § 245.315 and any revisions thereto, the request for an increase in the maximum permissible rents, together with the following:

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

(b) The mortgagor's evaluation of the tenants' comments with respect to the request;

(c) A certification by the mortgagor that:

(1) It has complied with all of the requirements of this subpart;

(2) The copies of the materials submitted in support of the proposed increase were located in a place reasonably convenient to tenants in the project during normal business hours and that requests by tenants to in-

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spect the materials, as provided for in the notice, were honored;

(3) All comments received from tenants were considered by the mortgagor in making its evaluation; and

(4) Under the penalties and provisions of title 18 U.S.C., section 1001, the statements contained in this request and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete.

**§ 245.325 Notification of action on request for increase.**

(a) When processing a request for an increase in maximum permissible rents, HUD shall take into consideration reasonably anticipated increases in project operating costs that will occur (1) within 12 months of the date of submission of materials to HUD under § 245.315(a) (profit and loss approach) or (2) within 12 months of the anticipated effective date of the proposed rent increase for submissions under § 245.315(b) (forward-budget approach).

(b) After HUD has considered the request for an increase in rents, has found that it meets the requirements of § 245.320, and has made its determination to approve, adjust upward or downward, or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval, adjustment upward or downward, or disapproval. The mortgagor must make the reasons for approval, adjustment, or disapproval known to the tenants, by service of notice on them as provided in § 245.15.

**§ 245.330 Non-insured projects.**

(a) In the case of a proposed rent increase for a project assisted under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965, but which does not have a mortgage insured by HUD or held by the Secretary, the provisions of this section and of §§ 245.305 through 245.320 shall apply to the mortgagor (project owner), except that—

(1) The notice format prescribed in § 245.310 must be modified to reflect

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the procedural changes made by this section;

(2) The material (including tenant comments) required to be submitted to HUD under §§ 245.315 and 245.320 must be submitted to the State or local agency administering the section 236 assistance or rent supplement assistance contracts, rather than to HUD. An equivalent State or local agency form or standard accounting form may be substituted for the Statement of Profit and Loss, Form HUD-92410 required under § 245.315(a)(2), if approved by the local HUD office; and

(3) The State or local agency must certify that the mortgagor has complied with the requirements of §§ 245.310, 245.315, 245.320, and 245.325.

(b) After the State or local agency has considered the request for an increase in maximum permissible rents that meets the requirements of § 245.320 (including consideration of anticipated cost increases, as provided in § 245.325(a)), it must make a determination to approve, adjust upward or downward, or disapprove the request. If the agency determines to approve or adjust the request, it must submit to the appropriate local HUD office the mortgagor's requests for approval of an increase in maximum permissible rents, 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 shall review the agency's determination and certification and, within 30 days, of their submission to HUD, notify the agency of its approval, adjustment upward or downward, or disapproval of the proposed rent increase. HUD will not unreasonably withhold approval of a rent increase approved by the State or local agency.

(c) If the agency determines to disapprove the request, 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, adjustment, or disapproval. The mortgagor must make the reasons for approval,

adjustment or disapproval known to the tenants, by service of notice on them as provided in § 245.15.

**Subpart E—Procedures for Requesting Approval of a Conversion From Project-Paid Utilities to Tenant-Paid Utilities or of a Reduction in Tenant Utility Allowances**

Source: 50 FR 32404, Aug. 12, 1985, unless otherwise noted.

**§ 245.405 Applicability of subpart.**

The requirements of this subpart apply to any request by a mortgagor covered by § 245.10\* for HUD approval of the conversion of a project from project-paid utilities to tenant-paid utilities, or of a reduction in tenant utility allowances.

**§ 245.410 Notice to tenants.**

At least 30 days before submitting a request to HUD for approval of a conversion from project-paid utilities to tenant-paid utilities, or of a reduction in tenant utility allowances, the mortgagor must serve notice of the proposed conversion or reduction on the project tenants, as provided in § 245.15. The notice shall state the following:

(a) That the mortgagor intends to submit a request to HUD for approval of conversion from project-paid utilities to tenant-paid utilities, or of a reduction of tenant utility allowances;

(b) That the tenants have the right to participate as provided in § 245.420, and what those rights are, including the address at which the material required to be made available for inspection and copying under that section are to be kept;

(c) That tenant comments on the proposed conversion or reduction may be sent to the mortgagor at a specified address or directly to the local HUD office, and that comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD's

\*EDITORIAL NOTE: Section 245.10 was redesignated as § 245.105 at 50 FR 32403, Aug. 12, 1985.

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approval of the conversion or reduction is submitted;

(d) That HUD will approve or disapprove the proposed conversion, or approve, adjust upward or downward, or disapprove the proposed reduction, based upon its review of the information submitted and all tenant comments received; and

(e) That the mortgagor will notify the tenants of HUD's decision and that it will not begin to effect any approved conversion or reduction (in accordance with the terms of existing leases) until at least 30 days from the date of service of the notification.

**§ 245.415 Initial submission of materials to HUD.**

(a) When the notice required under § 245.410 is served on the tenants, the mortgagor must submit the following materials to the local HUD office:

(1) A copy of the notice to tenants;

(2) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities—

(i) A statement indicating:

(A) The type of utility or utilities involved;

(B) The number of units in the project by type and size;

(C) The average utility consumption data by unit type and size for comparable projects, and utility rate information, as obtained from the utility supplier;

(D) The estimated monthly cost of the utilities to be paid by the tenants by unit type and size, based upon the consumption data and rate information described in paragraph (a)(2)(i)(C);

(E) The monthly cost for the past year of paying for the utility or utilities involved on a project basis (actual cost) and by unit type and size (estimated breakdown);

(F) An estimate of the cost of conversion, as obtained from the utility supplier or from bids from contractors;

(G) The source and terms of financing for the conversion (to the extent known); and

(H) The estimated effect of the conversion on the total housing costs of the tenants by unit type and size, taking into account the estimated cost of conversion (including the cost of its

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financing), the estimated monthly cost of utilities to be paid by the tenants by unit type and size, the proposed utility allowances, and the estimated change in the rents paid to the mortgagor resulting from the conversion; and

(ii) A copy of the portion of the project's Energy Conservation Plan which addresses the cost-effectiveness determination associated with converting the project to tenant-paid utilities; and

(3) In the case of a proposed reduction in tenant utility allowances, a statement indicating the information described in paragraphs (a)(2)(i) (A), (B), (C) and (D) of this section, the utility allowances proposed for reduction, and a justification of the proposed reduction.

(b) If additional notice under § 245.420(c) is required, the mortgagor must submit to HUD the changes to the materials required under this section when the notice required under § 245.420(c) is served on the tenants.

(Approved by the Office of Management and Budget under control number 2502-0310)

**§ 245.420 Rights of tenants to participate.**

(a) The tenants (including any legal or other representatives acting for tenants individually or as a group) must have the right to inspect and copy the materials that the mortgagor is required to submit to HUD pursuant to § 245.415(a), for a period of 30 days from the date on which the notice required under § 245.410 is served on the tenants. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed conversion to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant

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comment period in the materials submitted to HUD pursuant to § 245.415, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed conversion or reduction, before the mortgagor may submit its request to HUD for approval of the conversion or reduction.

**§ 245.425 Submission of request for approval to HUD.**

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

(a) The mortgagor's written request for HUD approval of a conversion from project-paid utilities to tenant-paid utilities, or of a reduction in tenant utility allowances;

(b) Copies of all written tenant comments;

(c) The mortgagor's evaluation of the tenant comments on the proposed conversion or reduction;

(d) A certification by the mortgagor that it has complied with all of the requirements of §§ 245.410, 245.415 and 245.420, and this section; and

(e) Such additional materials as HUD may have specified in writing.

(Approved by the Office of Management and Budget under control number 2502-0310)

**§ 245.430 Decision on request for approval.**

(a) After consideration of the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor in writing of its approval or disapproval of the proposed conversion or of its approval, adjustment upward or downward, or disapproval

of the proposed reduction, providing its reasons for such determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed conversion or a reduction (as originally proposed or as adjusted), the notice must state:

(1) The amount of the rent to be paid to the mortgagor and the utility allowance for each unit; and

(2) The effective date of the conversion or reduction (which must be at least 30 days from the date of service of the notice and in accordance with the terms of existing leases).

**§ 245.435 Non-insured projects.**

(a) In the case of a proposed conversion or reduction involving a project that is assisted under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965 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, 245.420, 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

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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 determination 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 § 254.15. 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).