

(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 Covered Action

SOURCE: 61 FR 57962, Nov. 8, 1996, unless otherwise noted.

#### § 245.405 Applicability of subpart.

The requirements of this subpart apply to any request by a mortgagor, as provided by § 245.10, for HUD approval of one or more of the following covered actions:

(a) Conversion of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant utility allowances.

(b) Conversion of residential units in a multifamily housing project to a non-residential use or to condominiums, or the transfer of the project to a coopera-

tive housing mortgagor corporation or association. Conversion of a project to a cooperative or of a portion of a project to nonresidential use does not constitute a change of use requiring mortgagee approval.

(c) A partial release of mortgage security. The requirements of this subpart, however, do not apply to any release of property from a mortgage lien with respect to a utility easement or a public taking of such property by condemnation or eminent domain.

(d) Making major capital additions to the project. For the purposes of this subpart, the term "major capital additions" includes only those capital improvements that represent a substantial addition to the project. Upgrading or replacing existing capital components of the project does not constitute a major capital addition to the project.

#### § 245.410 Notice to tenants.

At least 30 days before submitting a request to HUD for approval of an action described in § 245.405, the mortgagor must serve notice of the proposed covered action on the project tenants, as provided in § 245.15. The notice shall state that—

(a) The mortgagor intends to submit a request to HUD for approval of the covered action or actions specified in the notice;

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

(c) Tenant comments on the proposed covered action may be sent to the mortgagor at a specified address or directly to the local HUD office, and comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD's approval is submitted;

(d) HUD will approve or disapprove the proposed action, based upon its review of the information submitted and all tenant comments received. In the case of a proposed reduction in tenant-paid utilities, the notice must also state that HUD may adjust the proposed reduction upward or downward;

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(e) In the case of a proposed conversion of residential units, partial release of mortgage security, or major capital additions to the project, the proposed action may require the owner to request HUD approval of a rent increase; and

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

### § 245.415 Submission of materials to HUD: Timing of submission.

(a) *Initial submission.* The mortgagor must submit the materials applicable to the covered action, as specified in §§ 245.416 through 245.419, to the local HUD office when the notice required under § 245.410 is served on the tenants.

(b) *Subsequent submission.* If additional notice under § 245.420(c) is required, the mortgagor must submit to HUD any changes to the materials required under §§ 245.416 through 245.419 when the notice required under § 245.420(c) is served on the tenants.

### § 245.416 Initial submission of materials to HUD: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

In the case of a conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances, the mortgagor must submit the following materials to the local HUD office:

- (a) A copy of the notice to tenants;
- (b) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities—
  - (1) A statement indicating:
    - (i) The type of utility or utilities involved;
    - (ii) The number of units in the project by type and size;
    - (iii) The average utility consumption data by unit type and size for comparable projects, and utility rate information, as obtained from the utility supplier;
    - (iv) 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 (b)(1)(iii) of this section;

(v) 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);

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

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

(viii) 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 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

(2) 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

(c) In the case of a proposed reduction in tenant utility allowances, a statement indicating the information described in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of this section, the utility allowances proposed for reduction, and a justification of the proposed reduction.

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

### § 245.417 Initial submission of materials to HUD: Conversion of residential units to a nonresidential use, or to cooperative housing or condominiums.

In the case of a conversion of residential units to a nonresidential use, or to cooperative housing or condominiums, the mortgagor must submit the following materials to the local HUD office in accordance with §§ 245.415 and 245.419:

(a) In the case of a proposed conversion of residential rental units to non-residential use:

- (1) A statement describing the proposed conversion;