

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 247, 880, and 884**

[Docket No. FR-3472-F-02]

RIN 2502-AG12

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Termination of Tenancy for Criminal Activity**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

**EFFECTIVE DATE:** October 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barbara D. Hunter, Director, Program Management Division, Office of Multifamily Asset Management and Disposition, Room 6180, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-8000; telephone, (voice) (202) 708-3944; (TTY) (202) 708-4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:****The Proposed Rule**

On February 3, 1994, the Department published in the Federal Register a proposed rule (59 FR 5155) that would provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control would be grounds for termination of tenancy.

The deadline for public comments on the proposed rule was April 4, 1994. By that date, the Department received 130 comments. Most of these comments (111 out of 130) came from individuals or entities responsible for managing subsidized housing. The Department also received comments from several housing authorities and housing finance agencies, as well as from several public interest and legal aid associations.

The majority of the public commenters (121 out of 130) supported the proposed rule. These commenters typically reported that criminal activity, particularly drug-related criminal activity, is the biggest problem faced by managers of subsidized housing. Many of these commenters stated that the provisions of the proposed rule will provide them legal strength in eviction proceedings; they asserted that judges often place more weight on Federal regulations than on the lease or other rules. Several commenters added that the provisions of the proposed rule would help them provide decent and safe housing to their tenants, and that such provisions are long overdue.

Several commenters suggested revisions to the proposed rule. For instance, several commenters suggested that the Department define phrases such as "on or near such premises," "criminal activity," and "any guest or other person under the tenant's control." These commenters asserted that these phrases are subject to differing interpretations, and they provide little guidance to a landlord trying to decide whether to pursue a termination of tenancy. Other commenters suggested that the Department broaden the provisions of the proposed rule to protect the health and safety of any on-site property management staff, because these individuals are often endangered by criminal activity.

Six commenters expressed serious legal and policy concerns with the proposed rule. These commenters argued that the Department would violate several State and Federal statutes and the U.S. Constitution if it permitted the eviction of a tenant who did not commit, had no knowledge of, nor had means to stop the criminal activity. While the proposed rule echoes statutory language (42 U.S.C. 1437f(d)(1)(B)(iii)), one commenter presented evidence that Congress intended to protect innocent tenants. These commenters argued further that the proposed rule should more closely track the public housing regulations, which provide that in the case of an eviction for criminal activity, the PHA shall have discretion to consider all the

circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity (24 CFR 966.4).

**The Final Rule**

In response to public comments, this final rule represents two changes to the provisions of the proposed rule. First, the Department decided to include in this final rule criminal activity against on-site property management staff as grounds for termination of tenancy. Second, this final rule provides a definition for "drug-related criminal activity."

While some of the commenters requested additional definitions, the Department has determined that such definitions would not, on balance, further the goals of this rule. Providing concrete definitions would be contrary to the recommendations of the national Occupancy Task Force. The Occupancy Task Force was convened under Congressional mandate, and it consisted of representatives of both housing providers and tenant advocacy/legal aid organizations. The Task Force was charged with issuing a final report to Congress and to HUD on occupancy and management recommendations in public and assisted housing. The members of the Occupancy Task Force observed in their Final Report, which was issued in April 1994, that they had considered defining related terms such as "criminal activity that threatens," but they "agreed that from a practical standpoint, it would be impossible to define this term since it turns on the facts in every given situation" (page 3-7). (Notice of the availability of the final report was published in the Federal Register on July 21, 1994, 59 FR 37255). Furthermore, in accordance with several of the commenters, the Department intended that the provisions of this rule would parallel the public housing regulations; none of the terms suggested by the commenters are defined in the comparable public housing regulations.

The Department has decided, however, to include the definition of "drug-related criminal activity" in this final rule, because this definition is provided in section 8(f)(5) of the United States Housing Act of 1937. Accordingly, this final rule provides that "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)).

With regard to the concerns raised by several commenters that the proposed rule could result in the eviction of an innocent tenant, the Department would like to emphasize that an owner may not evict any tenant except by judicial action pursuant to State or local law, and in accordance with the Department's due process procedures. This final rule applies uniformly to all assisted housing tenants. Furthermore, the Department adopted similar termination language (excluding the reference to project management employees) for the HUD Model Form of Lease (used for all subsidized multifamily housing programs) by Handbook 4350.3, Change 22 of June 1992.

The Department believes that promulgation of this rule is consistent with sound program administration, is balanced and fair, and provides a valuable tool for fighting crime and drugs in assisted housing communities while maintaining requisite due process protections for the residents. Establishing criminal activity of a threatening nature and drug-related crime on or near the premises as clear grounds for termination of tenancy is supported by the recommendation (#58, page 3-7) of the Occupancy Task Force Final Report.

This final rule revises 24 CFR parts 247, 880, and 884 by adding a definition of "drug-related criminal activity" and by revising the management provisions. Since the Department removed the management provisions of parts 881 and 883 in a final rule published on March 27, 1996 (61 FR 13586), and replaced them with a cross-reference to the identical management provisions in part 880, it is unnecessary for the Department to amend parts 881 and 883 in this final rule.

For purposes of existing housing under the section 8 loan management and property disposition programs (24 CFR part 886, subparts A and C), this final rule implements section 8(d)(1)(B)(iii) of the United States Housing Act of 1937 (42 U.S.C. 1437f), as that section was amended by the Cranston-Gonzalez National Affordable Housing Act and the Housing and Community Development Act of 1992. These two programs rely upon part 247 for termination of tenancy provisions. In addition, this final rule covers the following subsidized projects subject to the regulations in 24 CFR part 247: multifamily housing projects that receive the benefit of subsidy in the form of below-market interest rates under sections 221(d) (3) and (5); interest reduction payments under section 236 of the National Housing Act,

including Rental Assistance Payments (RAP); below-market interest rate direct loans under section 202 of the Housing Act of 1959; rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; and section 8 in connection with section 202 Loans for Housing for the Elderly or Handicapped (24 CFR part 891); the Supportive Housing for the Elderly program and the Supportive Housing for Persons with Disabilities program (24 CFR part 891). (By final rule published on March 22, 1996 (61 FR 11948), the regulations governing (1) Loans for Housing for the Elderly or Handicapped, formerly found in 24 CFR part 885, (2) Supportive Housing for the Elderly, formerly found in 24 CFR part 889, and (3) Supportive Housing for Persons with Disabilities, formerly found in 24 CFR part 890, were consolidated into a new part 24 CFR part 891.) Finally, this rule also applies to evictions under the section 8 new construction and substantial rehabilitation programs.

#### Other Matters

##### *Environmental Impact*

A Finding of No significant Impact (FONSI) with respect to the environment was made at the time of the development of the proposed rule, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* That FONSI remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

##### *Regulatory Flexibility Act*

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule prohibits any criminal activity or drug-related criminal activity on or near premises where law-abiding tenants live.

##### *Family Impact*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule has the potential for a significant impact on family formation, maintenance, and general well-being; this rule should increase the safety and security of families living in assisted housing.

Since the impact of this rule on the family is beneficial, no further review is considered necessary.

#### *Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have significant federalism implications and thus, are not subject to review under the order. This final rule will not interfere with or preempt State or local government functions.

#### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC.

#### List of Subjects

##### *24 CFR Part 247*

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

##### *24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 884*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 24 CFR parts 247, 880, and 884 are amended as follows:

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

1. The authority citation for 24 CFR part 247 is revised to read as follows:

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

2. Section 247.2 is amended by removing the paragraph designation for each definition, and by adding a definition "Drug-related criminal activity" in alphabetical order, to read as follows:

**§ 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.

\* \* \* \* \*

3. Section 247.3 is amended by removing the word "or" from paragraph (a)(2); by redesignating paragraph (a)(3) as paragraph (a)(4); by amending paragraph (b) by removing the reference to "§ 247.3(a)(3)" and adding in its place "§ 247.3(a)(4)"; and by adding a new paragraph (a)(3); to read as follows:

**§ 247.3 Entitlement of tenants to occupancy.**

(a) \* \* \*

(3) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

\* \* \* \* \*

**§ 247.4 [Amended]**

4. In § 247.4, paragraph (c) is amended by removing the reference to "§ 247.3(a)(3)" and by adding in its place "§ 247.3(a)(4)."

**PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION**

5. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d), and 13611–13619.

6. Section 880.201 is amended by adding the definition "*Drug-related criminal activity*" in alphabetical order, to read as follows:

**§ 880.201 Definitions.**

\* \* \* \* \*

*Drug-related criminal activity.* 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.

\* \* \* \* \*

7. Section 880.607 is amended by removing the word "or" from paragraph (b)(1)(ii); by redesignating paragraph (b)(1)(iii) as (b)(1)(iv); by amending paragraphs (b)(2) and (c)(2) by removing the references to "(b)(1)(iii)" and by adding in their places "(b)(1)(iv)"; and by adding a new paragraph (b)(1)(iii); to read as follows:

**§ 880.607 Termination of tenancy and modification of leases.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

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**PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS**

8. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d), and 13611–13619.

9. Section 884.102 is amended by adding, in alphabetical order, a definition of "*Drug-related criminal activity*", to read as follows:

**§ 884.102 Definitions.**

\* \* \* \* \*

*Drug-related criminal activity.* 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.

\* \* \* \* \*

10. Section 884.216 is amended by designating the current paragraph as paragraph (a), and by adding a new paragraph (b), to read as follows:

**§ 884.216 Termination of tenancy.**

\* \* \* \* \*

(b) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

Dated: May 31, 1996.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96-22775 Filed 9-5-96; 8:45 am]

BILLING CODE 4210-27-P