

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 246 and 891**

[Docket No. FR-4346-F-01]

RIN 2502-AH21

Rent Control Preemption for Supportive Housing for the Elderly and Persons With Disabilities

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

ACTION: Final rule.

SUMMARY: HUD's rules regarding preemption of local rent control for assisted housing projects have not been updated to reflect the statutory replacement of the section 202 direct loan program with the section 202 and section 811 programs for capital advances and project rental assistance for projects for the elderly and persons with disabilities. This final rule accomplishes the necessary updating through revision of 24 CFR part 246 concerning rent control and 24 CFR part 891 concerning the current section 202 and section 811 programs. There is no change in HUD's policy of preempting local rent control for assisted housing programs.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410-0500. Telephone (202) 708-2866. For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: HUD's regulations at 24 CFR part 246 set forth the circumstances under which local rent control laws are preempted by HUD regulations from applying to housing projects which are owned by HUD or which are involved in HUD mortgage insurance or subsidy programs. In § 246.20, HUD identifies the projects that are subject to subpart C of the rule regarding subsidized projects, including "all projects with mortgages held by HUD that receive a subsidy in the form of * * * direct loans at below-market interest rates under section 202 of the Housing Act of 1959 * * *". In § 246.21, HUD states: "* * * it is in the national interest to preempt, and it (HUD) 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." Section 246.22 sets forth procedures for project owners to seek HUD approval of increases in HUD-approved rental levels.

Section 246.20 is outdated because it does not reflect subsequent legislation affecting the section 202 program. At the time § 246.20 was issued, and until October 1, 1991, the section 202 program involved direct below-market interest mortgage loans from HUD to owners of projects for the elderly or persons with disabilities. After that date, section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended section 202 to provide a new Supportive Housing for the Elderly Program with capital advances and project rental assistance instead of direct loans. Existing section 202 projects continued to be subject to the "old" section 202 program. Section 811 of NAHA established a new program of Supportive Housing for Persons with Disabilities with capital advances and project rental assistance instead of direct loans. This program replaces the section 202 program for direct loans for projects for persons with disabilities. The regulations for the amended section 202 program and the section 811 program are in 24 CFR part 891.

The Department regards the section 202/811 programs as successors to the old section 202 direct loan program for purposes of rent control preemption. HUD controls the rents in section 202/811 projects through the Regulatory Agreement without regard to local rent control that would otherwise apply. However, HUD did not previously make a technical correction to § 246.20 to reflect the statutory development. In this final rule, HUD therefore amends § 246.20 to refer to section 202 as it existed prior to October 1, 1991. Rather than amend § 246.20 to also specifically refer to the successor section 202/811 programs, HUD instead has chosen to keep intact in part 891 all of the rules applicable to those programs, and therefore has provided a parallel rent control preemption in new § 891.185.

HUD is also updating the heading of Chapter VIII of 24 CFR to recognize that the chapter includes the regulations for the section 202 and section 811 Supportive Housing Programs.

Other Matters*Justification for Final Rulemaking*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does

provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest". (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and contrary to the public interest. Public procedure is unnecessary because no change in policy is involved. HUD is simply making a technical correction to its rent control regulations applicable to subsidized projects on which HUD holds a mortgage to reflect the legislative division of former section 202 into two sections of law, which collectively continue to provide for subsidy to the same classes of projects as the previous section 202, through a modified subsidy mechanism under which HUD will continue to hold a mortgage on the project. The public policy reasons for the rent control preemption stated in § 246.20 apply equally to the current section 202/811 programs. HUD considers that a change in policy necessitating public comment would be involved if HUD abandoned rent control preemption, rather than retaining it.

HUD also considers that prior public procedure would be contrary to the public interest because it could raise doubts as to whether HUD's preemption of rental control currently applies to section 202/811 projects with capital advances.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim 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 merely clarifies the application of existing regulations to the section 202/811 programs. The rule will have no disproportionate economic impact on small businesses.

Environmental Impact

This final rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rulemaking simply continues without substantial change the existing HUD policy of preempting local rent

control in connection with subsidized projects for the elderly or persons with disabilities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments. Although the rule involves preemption of local rent control laws, it continues rather than initiates preemption in the area involved.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.157 (section 202) and 14.181 (section 811).

List of Subjects

24 CFR Part 246

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community

development, Low and moderate income housing, Rent subsidies.

24 CFR Part 891

Aged, Capital advance programs, Grant programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 246—[AMENDED]

1. The authority citation for part 246 continues to read as follows:

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

2. Section 246.20 is revised to read as follows:

§ 246.20 Applicability.

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

(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.

CHAPTER VIII—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (SECTION 8 HOUSING ASSISTANCE PROGRAMS, SECTION 202 DIRECT LOAN PROGRAM, SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM AND SECTION 811 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES PROGRAM)

3. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1436f, 3535(d), and 8013.

4. The heading of Chapter VIII is revised to read as set forth above.

5. Part 891 is amended by adding a new § 891.185 to read as follows:

§ 891.185 Preemption of rent control laws.

The Department finds that it is necessary and desirable to assist project owners to preserve the continued viability of each project assisted under this part (except subpart E) as a housing resource for very low-income elderly persons or persons with disabilities. The Department also finds that it is necessary 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 or other authority acting pursuant to state or local law as it affects those projects. Part 246 of this title applies to projects covered by subpart E of this part.

Dated: October 22, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98-31106 Filed 11-20-98; 8:45 am]

BILLING CODE 4210-27-P