

## Code of Federal Regulations

### Title 24: Housing and Urban Development

#### § 236.1 Applicability, cross-reference, and savings clause.

(a) *Applicability.* This section implements the eligibility requirements for mortgage insurance under the Rental and Cooperative Housing For Lower Income Families Program contained in section 236 of the National Housing Act (12 U.S.C. 1701), as amended. The program authorized the Secretary to insure mortgages to support new construction or rehabilitation of real property to be used primarily for residential rental purposes. A moratorium against issuance of commitments to insure new mortgages under section 236 was imposed January 5, 1973. Section 236(n) prohibits the insurance of mortgages under section 236 after November 30, 1983, except to permit the refinance of a mortgage insured under section 236, or to finance pursuant to section 236(j)(3), the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236.

(b) The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

(c) *Savings provision.* Any mortgage approved by the Commissioner for insurance pursuant to sections 236(j) or 236(n) of the National Housing Act is governed by subpart A of this part as in effect immediately before May 1, 1996, contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499, and by subparts B through E of this part, except as otherwise provided in this subpart.

[61 FR 14407, Apr. 1, 1996, as amended at 63 FR 46592, Sept. 1, 1998; 65 FR 61074, Oct. 13, 2000]

#### § 236.2 Increased distributions to certain limited distribution mortgagors.

(a) *Increased distributions.* The Commissioner may permit increased distributions of surplus cash in excess of the amounts otherwise permitted by subpart A of this part to limited distribution mortgagors who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the mortgagor is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the mortgagor.

(b) *Pre-emption.* Any State or local law or regulation that restricts distributions to an amount lower than permitted by subpart A of this part as in effect immediately before May 1, 1996, contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499, or permitted by the Commissioner under this section is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[65 FR 61074, Oct. 13, 2000]

#### § 236.3 Annual income exclusions.

The exclusions to annual income described in 24 CFR 5.609(c) apply to those program participants governed by the regulations at subpart A of 24 CFR part 236 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499), in lieu of the annual income exclusions described in 236.3(c) (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499).

[61 FR 54503, Oct. 18, 1996]

#### § 236.60 Excess Income.

(a) *Definition.* Excess Income consists of cash collected as rent from the residents by the mortgagor, on a unit-by-unit basis, that is in excess of the HUD-approved unassisted Basic Rent. The unit-by-unit requirement necessitates that, if a unit has Excess Income, the Excess Income must be returned to HUD. It is not permissible to do an aggregate

calculation of the Excess Income for all occupied rent-paying units, and then to offset or subtract from that figure any unpaid rent from occupied or vacant units, before remitting Excess Income to HUD.

(b) *General requirement to return Excess Income.* Except as otherwise provided in this section, or as agreed to by HUD pursuant to a plan of action approved under 24 CFR part 248 or in connection with an adjustment of contract rents under section 8 of the United States Housing Act of 1937 Act (1937 Act) (42 U.S.C. 1437f), the mortgagor shall agree to pay monthly to HUD the total of all Excess Income in accordance with procedures prescribed by HUD.

(c) *Retention of Excess Income for project use—(1) Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement.

(2) *Eligible uses.* Excess Income retained by a mortgagor for project use may be used for any necessary and reasonable operating expense of the project. Examples of necessary and reasonable operating expenses are:

(i) Project operating shortfalls, including repair costs;

(ii) Repair costs identified in the Comprehensive Needs Assessment, including increasing deposits to the Reserve Fund for Replacements to a limit necessary to adequately fund the reserve;

(iii) Service coordinators;

(iv) Neighborhood networks located at the project for project residents; and

(v) Enhanced supportive services for the residents.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested;

(ii) The period from which Excess Income is being requested; and

(iii) The proposed use of the requested Excess Income.

(d) *Retention of Excess Income for non-project use—(1) Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for non-project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement or the mortgagor falls within any of the following categories:

(i) The mortgagor's Reserve for Replacement is not fully funded;

(ii) The mortgagor's project is not well maintained housing in good condition, as evidenced by:

(A) Failure to maintain the project in decent, safe, and sanitary condition and in good repair in accordance with HUD's Uniform Physical Condition Standards and Inspection Requirements in 24 CFR part 5, subpart G;

(B) A score below 60 on the physical inspection conducted by HUD's Real Estate Assessment Center (REAC);

(C) The existence of uncorrected Exigent Health and Safety (EHS) deficiencies identified by REAC; or

(D) A Comprehensive Needs Assessment that finds there are significant repair or maintenance needs, and those repair or maintenance needs are still outstanding;

(iii) The mortgagor has engaged in any one of the following material adverse financial or managerial actions or omissions:

(A) Materially violating any federal, state, or local law or regulation with regard to the project or any other federally assisted project, including any applicable civil rights law or regulation, after receipt of notice and an opportunity to cure;

(B) Materially breaching a contract for assistance under section 8 of the 1937 Act, after receipt of notice and an opportunity to cure;

(C) Materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, after receipt of notice and an opportunity to cure;

(D) Repeatedly and materially violating any federal, state, or local law or regulation, including any applicable civil rights law or regulation, with regard to the project or any other federally assisted project;

(E) Repeatedly and materially breaching a contract for assistance under section 8 of the 1937 Act;

(F) Repeatedly and materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, including failure to submit audited financial statements or required tenant data;

(G) Repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the project;

(H) Materially failing to maintain the project in decent, safe, and sanitary condition and in good repair after receipt of notice and a reasonable opportunity to cure; or

(I) Committing any actions or omissions that would warrant suspension or debarment by HUD.

(2) *Eligible uses.* Excess Income retained by a mortgagor for non-project use may be used for any purpose, except that the non-project use of Excess Income by a nonprofit entity mortgagor is limited to activities that carry out the entity's nonprofit purpose.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for non-project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested; and

(ii) The period from which Excess Income is being requested.

(e) *Timing of request to retain Excess Income—(1) In general.* Except as provided in paragraph (e)(2) of this section, a mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year before any other date during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year.

(2) *Specific ongoing purpose.* A mortgagor requesting approval to retain Excess Income for a specific, ongoing purpose where the purpose extends beyond the current fiscal year may submit a request that describes the proposed use of Excess Income and advises that the intended use will extend beyond the current fiscal year. If HUD approves the request, following review of the request in accordance with paragraph (f) of this section, the mortgagor will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same. The mortgagor will still be required to submit the Monthly Report of Excess Income and the end of year narrative under paragraph (g) of this section. If the use of Excess Income changes, the mortgagor must notify HUD of the change and submit a new request to retain Excess Income 90 days prior to the date the mortgagor intends to begin retaining Excess Income for the new purpose.

(f) *HUD review and response procedure.* HUD will review a mortgagor's request to retain Excess Income and issue a letter of approval or denial as follows:

(1) *Approval letter.* The approval letter from HUD permitting the mortgagor to retain Excess Income must, at a minimum, assert:

(i) Retention rights are for the time specified in the approval letter, but cannot extend beyond the current fiscal year except as provided in paragraph (e)(2) of this section;

(ii) Failure of the mortgagor to maintain the Reserve for Replacement account in a fully funded amount at all times is grounds for HUD to rescind the approval;

(iii) Failure of the mortgagor to maintain the project in a decent, safe, and sanitary condition and in good repair at all times is grounds for HUD to rescind the approval;

(iv) If the Excess Income requested for project use is not used for the proposed purpose described in the mortgagor's request, the income must be returned to HUD, unless the mortgagor has obtained prior HUD approval for the alternate use; and

(v) The failure of a mortgagor to return retained Excess Income to HUD for not complying with applicable requirements is a violation of the Regulatory Agreement for which there are enforcement remedies that HUD may take.

(2) *Denial letter.* A letter from HUD denying a mortgagor's request to retain Excess Income must cite the specific reasons for denial and state what requirements the mortgagor must meet to receive HUD's approval to retain Excess Income.

(3) *Environmental review.* Before approving a request to retain Excess Income for project use, HUD will perform an environmental review to the extent required under 24 CFR part 50 for activities that are not excluded under 24 CFR 50.19(b).

(g) *Post-approval requirements.*—(1) *Monthly report.* A mortgagor approved to retain Excess Income must continue to prepare and submit to HUD a revised Form HUD-93104, Monthly Report of Excess Income, or successor form.

(2) *Other reporting requirements.* A mortgagor that retains Excess Income for project use must provide HUD, on an annual basis, two copies of a narrative description of the amount and the uses made of Excess Income during the prior fiscal year of the project. The calendar year or HUD's fiscal year is not relevant to this requirement unless the fiscal year of the project coincides with the calendar year or HUD's fiscal year. HUD may request additional follow-up information on a case-by-case basis. The report must contain the following certification: "I certify that (1) the amount of Excess Income retained and used was for the purposes approved by HUD; (2) all eligibility requirements for retaining Excess Income were satisfied for the entire reporting period; and (3) all the facts and data on which this report is based are true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal or civil penalties, or both (18 U.S.C. 1001, 1010, 1012; and 31 U.S.C. 3729 and 3802)."

(h) *Return of remitted Excess Income*—(1) *For project use.* A mortgagor that is eligible to retain Excess Income for project use under paragraph (c)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998, in accordance with the procedures of paragraph (c)(3) of this section. A mortgagor that is eligible to retain Excess Income for project use may not apply for the return of Excess Income that was:

(i) Repaid in accordance with a Workout or Repayment Agreement with HUD; or

(ii) Generated between October 1, 2000, and October 27, 2000, by projects with state agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages

(2) *For non-project use.* A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998, in accordance

with paragraph (d)(3) of this section. A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section may not apply to retain Excess Income that was:

(i) Repaid in accordance with a Workout or Repayment Agreement with HUD; or

(ii) Generated between October 1, 2000, and October 27, 2000, by projects with state agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages.

(3) *Reporting requirement.* A mortgagor that receives returned Excess Income requested for project use is subject to the reporting requirements of paragraph (g)(2) of this section with respect to the returned Excess Income.

(4) *Time limit.* After September 1, 2005, a mortgagor may no longer apply for the return of any Excess Income remitted to HUD.

(i) *HUD withdrawal of approval to retain Excess Income.—(1) Bases for withdrawal of approval.* HUD may withdraw approval for any of the following reasons:

(i) If, at any time after approval, a mortgagor fails to meet the eligibility requirements of paragraph (c)(1) or (d)(1) of this section, as applicable;

(ii) If the mortgagor does not use the Excess Income requested for project use for purposes and activities as approved by HUD; or

(iii) If at any time during the fiscal year that such approval is in effect, mortgagor, approved to retain Excess Income for non-project use, fails to maintain the project in decent, safe, and sanitary condition and in good repair, or maintain the Reserve for Replacement account in a fully funded amount.

(2) *Notification of withdrawal of approval.* HUD will notify the mortgagor by certified mail that the authorization to retain Excess Income is withdrawn. The notification will state:

(i) Specific reasons for HUD's withdrawal of approval;

(ii) The effective termination date, which may be the date of the violation resulting in the withdrawal or the date of HUD's determination that the mortgagor was out of compliance;

(iii) The amount of retained Excess Income improperly retained that must be returned to HUD; and

(iv) The actions that the mortgagor must take to restore the authorization to retain Excess Income.

(3) *Mortgagor's request for reconsideration.—(i) Letter of reconsideration.* A mortgagor may request that HUD reconsider its decision by submitting, to the Hub/Field Office Director or other party identified by HUD in the notification, within 30 days of receipt of the notification of withdrawal, a letter stating the basis for reconsideration. The letter must include documentation supporting a review of the withdrawal.

(ii) *HUD response.* Within 30 days of HUD's receipt of the mortgagor's request for reconsideration, HUD will make a final determination and respond in writing to the mortgagor. HUD's response may:

(A) Affirm the withdrawal of authority to retain Excess Income;

(B) Reverse the withdrawal of authority to retain Excess Income; or

(C) Request additional information from the mortgagor before affirming or reversing the withdrawal of authority to retain Excess Income.

## **Subpart B—Contract Rights and Obligations for Mortgage Insurance**

### **§ 236.251 Cross-reference.**

All of the provisions of subpart B, part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 236 of the National Housing Act except the following provisions:

Sec.

207.252 First, second, and third premiums.

207.252a Premiums—operating loss loans.

207.259 Insurance benefits.

207.262 No vested right in fund.

[37 FR 8664, Apr. 29, 1972, as amended at 42 FR 59675, Nov. 18, 1977]

### **§ 236.252 First, second, and third mortgage insurance premiums.**

All of the provisions of §207.252 of this chapter governing the first, second, and third mortgage insurance premiums shall apply to mortgages insured under this subpart, except:

(a) Where an application for a loan under section 202 of the Housing Act of 1959 has been filed previously in connection with the project, but it is being financed with a mortgage insured under this part because funds are not available to make the section 202 loan, the mortgage insurance premium due and payable between the dates of initial and final insurance endorsement shall be at the rate of one-fourth of one percent per annum of the average outstanding principal obligation of the mortgage and such premiums shall be prorated for any fractional part of a year. Following final endorsement, the mortgage insurance premium shall be increased to one-half of one percent and shall be paid as provided in §207.252.

(b) Where a mortgage has been insured under this subpart pursuant to section 238(c) of the Act, the mortgage insurance premiums due in accordance with §207.252 shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

### **§ 236.253 Premiums—operating loss loans.**

All of the provisions of §207.252a of this chapter relating to mortgage insurance premiums on operating loss loans shall apply to mortgages insured under this subpart, except that for mortgages insured pursuant to Section 238(c) of the Act the mortgage insurance premiums due in accordance with §207.252a shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

### **§ 236.254 Termination of mortgage insurance.**

In addition to the provisions of §207.253a, the following requirements apply to multifamily mortgages insured under section 236 of the National Housing Act:

(a) For those projects qualifying as eligible low income housing under §248.201, the contract of insurance may be terminated only as provided in part 248.

(b) For those projects subject to section 250(a) of the National Housing Act, the contract of insurance may be terminated only if the Commissioner determines that the requirements of section 250(a) are met.

[55 FR 38958, Sept. 21, 1990]

#### **§ 236.255 Forbearance relief.**

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of the mortgagor's regular mortgage payments for a specified period of time, if the Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time. Such determination shall be evidenced by the Commissioner's written approval of the forbearance agreement.

(b) The time specified in §207.258(a) of this chapter, within which a mortgagee shall give the Commissioner written notice of its intention to file an insurance claim, shall be suspended for the period of time specified in the forbearance agreement as long as the mortgagor complies with the requirements of such agreement.

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its election to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in §236.265(b) shall be applicable.

#### **§ 236.260 Request by Commissioner for assignment of mortgage.**

The mortgagee shall, when requested by the Commissioner, assign to the Commissioner a mortgage on which interest reduction payments are being made pursuant to the provisions of §236.501 *et seq.* If the mortgage is not in default when the Commissioner requests its assignment, the first day of the month following the Commissioner's request shall be considered the date of default.

#### **§ 236.265 Payment of insurance benefits.**

All of the provisions of §207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except as follows:

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures.

(b) When the mortgage is assigned to the Commissioner pursuant to §236.260 or is assigned in a case where the mortgagor fails to comply with the requirements of a forbearance agreement approved by the Commissioner in accordance with the requirements of §236.255 or is assigned in a case where the mortgagor fails to cure the default at the expiration of the forbearance period, the insurance benefits shall be paid in cash and shall be computed in accordance with §207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in §207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, an amount shall be included equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§207.256, 207.258(b), and 236.255(c) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such amount shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(c) Where the assignment of the mortgage is made pursuant to §236.260 and the mortgage is not in default at the time of such assignment, the one percent deduction prescribed in §207.259(b)(2)(iv) of this chapter shall not be applicable.

[36 FR 24643, Dec. 22, 1971, as amended at 59 FR 49817, Sept. 30, 1994]

## **Subpart C—Interest Reduction Payments**

### **§ 236.501 Interest reduction payments contract.**

This subpart shall constitute the interest reduction payment contract between the mortgagee and the Commissioner with respect to a mortgage insured under section 236 of the National Housing Act. The endorsement of the mortgage for insurance shall constitute the execution of the interest reduction payment contract with respect to the mortgage being insured.

### **§ 236.505 Eligible mortgages.**

Interest reduction payments pursuant to this subpart shall be made only in connection with a mortgage which is insured under subparts A and B of this part.

### **§ 236.510 Term of payments.**

(a) The term for which interest reduction payments shall be made shall begin on the following dates:

(1) With respect to a mortgage involving insurance of advances, on the date the Commissioner finally endorses the mortgage not for insurance or such earlier date as may be established by the Commissioner.

(2) With respect to a mortgage insured upon completion, the date on which the Commissioner endorses the mortgage note for insurance.

(b) The term of the interest reduction payments shall end upon the occurrence of one of the following events:

(1) The termination of the contract of insurance, except where the mortgage has been assigned to the Commissioner.

(2) The Commissioner's receipt of the mortgagee's notice of intention to file an insurance claim and to acquire and convey title to the Commissioner pursuant to §207.258(c) of this chapter. In the event the mortgagee fails to provide the Commissioner with such notice of intention within the time specified in §207.258(a) of this chapter, the last day on which the Commissioner should have received the mortgagor's notice shall be deemed the date the Commissioner receives such notice.

(3) At the discretion of the Commissioner, the mortgagor's failure to meet its obligations under the regulatory agreement it has entered into with the Commissioner.

(c) Upon termination of the interest reduction payments contract, the payment due on the first of the month in which the termination occurs shall be the last payment to which the mortgagee shall be entitled.

(d) Where the term of interest reduction payments is ended pursuant to paragraph (b) (2) or (3) of this section, such interest reduction payment contract may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, interest reduction payments will be made to the mortgagee for those months during which such payments were suspended.

### **§ 236.515 Time of payments.**

The interest reduction payments shall be due on the first day of each month following the beginning of the term, and shall be paid upon the receipt of a billing (on a form prescribed by the Commissioner) from the mortgagee or its authorized agent.

### **§ 236.520 Amount of payments.**



(a) The interest reduction payment to the mortgagee shall be in an amount not exceeding the difference between the following:

(1) The monthly installment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage; and

(2) The monthly payment for principal and interest the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 percent per annum.

(b) Where individual family units in the project are sold, subject to a plan approved by the Commissioner, and as the principal amount of the mortgage is reduced by payment of the portion of the mortgage attributable to the sold units and as the amount of the mortgage payments which the mortgagor is obligated to pay is reduced, proportionate reductions will be made in the interest reduction payments.

(c) In addition to the interest reduction payment referred to in paragraph (a) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the mortgagee for its expenses in servicing the mortgage.

#### **§ 236.525 Application of payments.**

The mortgagee shall apply each monthly interest reduction payment, together with the mortgagor's monthly payment, to the items and in the order set out in the mortgage.

#### **§ 236.530 Mortgagee records.**

The mortgagee shall maintain such records as the Commissioner may require with respect to the mortgagor's payments and the interest reduction payments received from the Commissioner. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or the Comptroller General of the United States.

#### **§ 236.535 Effect of assignment of mortgage.**

In the event a mortgage subject to interest reduction payments is assigned to another approved mortgagee, the assignee shall thereupon succeed to all the rights and obligations of the assignor under the interest reduction contract.

#### **§ 236.599 Effect of amendments.**

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but no such amendment shall adversely affect the interests of a mortgagee under a contract for interest reduction payments already in effect or to be put into effect pursuant to the Commissioner's commitment to enter into such contract.

### **Subpart D—Rental Assistance Payments**

**Source:** 40 FR 31872, July 29, 1975, unless otherwise noted.

#### **§ 236.701 Scope of rental assistance.**

The Secretary shall enter into Rental Assistance Contracts with the owners of section 236 projects which:

(a) Had received a commitment for mortgage insurance under this part on or before August 22, 1974, but are reprocessed before final endorsement with rental assistance pursuant to an agreement between the sponsor and the Secretary;

(b) Had not received a commitment for mortgage insurance under this part on or before August 22, 1974, but did so subsequently;

(c) Had received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance and to be financed under a State or local government aided program pursuant to section 236(b) of the National Housing Act) on or before August 22, 1974, but are reprocessed with rental assistance pursuant to an Agreement between the sponsor, the State or local agency providing additional aid to the project, and the Secretary. Projects in this category which are converted from Rent Supplement shall have Rental Assistance Contracts with terms which do not exceed the unexpired terms of the Rent Supplement Contracts. Projects in this category which have no Rent Supplement Contract shall have Rental Assistance Contracts with terms which do not exceed the unexpired terms of Agreement for Interest Reduction Payments or equivalent documents or 40 years whichever is less; or

(d) Had not received a reservation of section 236 contract authority (in the case of projects processed without HUD mortgage insurance) on or before August 22, 1974, but did so subsequently.

Projects may not receive the benefit of rent supplement payments under part 215 of this Title and rental assistance payments at the same time. (Notwithstanding the provisions of this subpart, it shall be a matter of the Secretary's discretion whether he enters into contracts for such benefits in connection with the sale of HUD-owned projects.) The conditions of eligibility for a Rental Assistance Contract and its terms are specified in this subpart D.

[40 FR 31872, July 29, 1975, as amended at 45 FR 50734, July 31, 1980]

#### **§ 236.705 Projects eligible for benefits.**

(a) Rental assistance payments may be made with respect to section 236 projects with Rental Assistance Contracts pursuant to this subpart.

(b) Rental assistance payments to owners of projects pursuant to paragraph (a) of this section will normally be made available to 20 percent of the dwelling units, except that the Secretary may:

(1) Reduce that percentage in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(2) Increase that percentage in the case of any project if he determines: (i) That such action is necessary and feasible, after taking into account the objective of assuring, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or (ii) that such action is to be taken to meet the housing needs of elderly or handicapped families.

#### **§ 236.710 Qualified tenant.**

(a) The benefits of rental assistance payments are available only to an individual or a family who is renting a dwelling unit in a project that is subject to a contract entered into under the requirements of this subpart or who is occupying such a dwelling unit as a cooperative member. To qualify for the benefits of rental assistance payments, the individual or family must satisfy the definition of Qualified Tenant found in §236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at §236.1(c)).

(b) To receive rental assistance under this subpart, the income of the individual or family must be determined to be too low to permit the individual or family to pay the approved Gross Rent with 30 percent of the individual's or family's Adjusted Monthly Income, as defined in §236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499). Determination of the Adjusted Monthly Income must include the deductions required for adjusted income in 24 CFR 5.611(a) in lieu of the deductions provided in the definition of "adjusted income" in 24 CFR 236.2 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at §236.1(c)).

(c) For requirements concerning the disclosure and certification of Social Security Numbers, see 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and

claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5, subpart E.

(d) The definition of "persons with disabilities" in paragraph (d) of this section replaces the terms "disabled person" and "handicapped person" used in the regulations in 24 CFR part 236, subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at §236.1(c)). *Person with disabilities*, as used in this part, has the same meaning as provided in 24 CFR 891.305.

[66 FR 6224, Jan. 19, 2001]

### **§ 236.715 Determination of eligibility.**

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 5 govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

(b) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(1) First: Applicants eligible for Rental Assistance Payments;

(2) Second: Applicants eligible to pay a below market rent under section 236;

(3) Third: Applicants who can pay the Market Rent.

(c) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the section 236 program are already occupied by tenants paying Market Rent.

(d) Before admitting an applicant who will not receive the benefit of Rental Assistance Payments, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the Rental Assistance Payments contract are already occupied by tenants receiving such assistance.

(e) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (b) through (d) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(Approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

[51 FR 21862, June 16, 1986, as amended at 60 FR 14833, Mar. 20, 1995; 61 FR 13624, Mar. 27, 1996]

### **§ 236.720 Provisions applicable to cooperative members.**

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rental assistance payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rental assistance payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Secretary.

(b) The term *tenant* as used in this subpart shall include a member of a cooperative, and the term *rental payment* shall include the carrying charges under the occupancy agreement between the members of the cooperative and the cooperative housing owner.

### **§ 236.725 Term of contract.**

The rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

**§ 236.730 Maximum annual rental assistance contract amount.**

The rental assistance contract shall specify the maximum amount of the rental assistance payments for the project for the rent-up period, or for any such other period of time as the Secretary may prescribe, based upon the Secretary's estimate of probable demand and tenant income, including a 10 percent contingency allowance. At the end of such period of time, and annually thereafter, appropriate adjustments, as the Secretary may prescribe, shall be made in the maximum annual rental assistance contract amount, to reflect the actual requirements of the eligible tenants and a 10 percent contingency allowance.

**§ 236.735 Rental assistance payments and rental charges.**

(a) *Amount of rental assistance payments.* The rental assistance contract shall provide that the payment on behalf of a Qualified Tenant shall not exceed the difference between the Gross Rent and the Total Tenant Payment.

(b) *Total tenant payment for qualified tenants who first receive rental assistance on or after May 1, 1983.* Notwithstanding §236.55(b), the Total Tenant Payment payable for these Qualified Tenants shall be the highest of the following amounts, rounded to the nearest dollar:

- (1) 30 percent of Adjusted Monthly Income as defined in subpart A;
- (2) 10 percent of one-twelfth of Annual Income as defined in subpart A;
- (3) If the family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b) (3) shall be the amount resulting from one application of the percentage.

(c) *Total tenant payment for qualified tenants who were receiving rental assistance on April 30, 1983 and whose assistance has been continuous thereafter.* Notwithstanding §236.55(b), the Total Tenant Payment for these Qualified Tenants shall be calculated in accordance with paragraph (b) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special conditions.* (1) For the purposes of this section, a Qualified Tenant whose initial lease was effective before May 1, 1983 includes the following: A Qualified Tenant that resided in a unit assisted under the Rental Assistance Programs or Rent Supplement Program on April 30, 1983, and whose assistance under those programs has been continuous thereafter; and a family that resided in a unit with the benefit of section 8 Housing Assistance Payments on July 31, 1982 and whose participation in the section 8, Rent Supplement or the Rental Assistance Payment Program has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit in the same project. For these purposes, units in buildings located on adjacent

sites and managed as one project will be considered part of the same project even if they have separate project numbers and separate mortgages.

(2) Notwithstanding paragraphs (b) and (c) of this section, the Total Tenant Payment payable by a Qualified Tenant who continues to receive assistance in the same project shall not be increased by more than 10 percent during any 12-month period as a result of application of the percentages in paragraph (c) of this section, and application of the revised definitions in §§236.2 and 236.3. However, this 10 percent limit does not apply to Families subject to paragraph (b)(3) of this section, provided that the welfare agency includes as the housing component of the Family's grant an amount equal to their entire rent payment, without reduction. The Total Tenant Payment may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributable to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in this paragraph (d)(2).

(e) *Utility reimbursement.* Where applicable, the Utility Reimbursement shall be paid to the Qualified Tenant. If the tenant and the utility company consent, the owner may pay the Utility Reimbursement jointly to the Qualified Tenant and the utility company, or directly to the utility company.

[51 FR 21862, June 16, 1986]

#### **§ 236.740 Time of payment under contract.**

The rental assistance contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility.

#### **§ 236.745 Tenant occupancy limitations.**

Eligible tenants shall not be permitted to occupy units larger than the Secretary determines necessary for their family needs, except on a temporary basis with the approval of the Secretary.

#### **§ 236.750 Form of lease.**

(a) *Lease form.* Eligible tenants shall be required to execute a lease in a form approved by the Commissioner.

(b) *Prohibited lease provisions.* Lease clauses of the nature described below shall not be included in new leases or occupancy agreements covered by paragraphs (a) and (b) of this section and shall be deleted from existing leases and agreements either by amendment thereto or by execution of a new lease or agreement.

(1) *Confession of judgment.* Prior consent by the tenant:

(i) To any lawsuit the landlord may bring against the tenant in connection with the lease; and

(ii) To a judgment in favor of the landlord.

(2) *Distrain for rent or other charges.* Agreement by the tenant that the landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs an obligation which the landlord has determined that tenant has failed to perform.

(3) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or the landlord's agents liable for any acts or omissions, whether intentional or negligent, on the part of the landlord or the landlord's authorized representatives or agents.

(4) *Waiver of legal notice by tenant before actions for eviction or money judgment.* Agreement by the tenant that the landlord may institute suit without notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court on behalf of the tenant and waive the right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the tenant's right:

(i) To appeal for judicial error in any suit brought against the tenant by the landlord or the landlord's agents; or

(ii) To file suit to prevent the execution of a judgment.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs if the landlord brings legal action against the tenant even if the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant, as a party to lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

[51 FR 21863, June 16, 1986]

#### **§ 236.755 Housing owner's obligation under contract to report tenant income increase.**

The rental assistance contract shall contain a provision obligating the housing owner to notify the Secretary upon receiving a report from a tenant of an increase in the tenant's income resulting in the tenant's ability to pay the approved basic monthly rental (plus, where applicable, the utility allowance established for utility charges paid by the tenant) with the amount the tenant is required to pay for rent in accordance with §236.735. The contract shall also obligate the housing owner, upon failing to notify the Secretary when a report of such increases in income is received from a tenant, to reimburse the Secretary for any rental assistance payments made during the period following receipt of such report when the tenant is receiving the increased income.

[48 FR 13982, Apr. 1, 1983]

#### **§ 236.760 Change in tenant income status.**

Appropriate adjustments will be made in rental assistance payments to reflect changes in income or other circumstances which are reported by a tenant and verified or are shown by the annual tenant income recertification, as required by §236.80. Rental assistance payments will be discontinued when it is determined by the Secretary that the amount the tenant is required to pay for rent, in accordance with §236.735, is sufficient to pay the approved basic monthly rental (plus, where applicable, the established utility allowance) for the unit occupied by the tenant. Where a tenant is no longer entitled to rental assistance payments, he/she may continue to occupy the unit. The rents charged for the unit shall not exceed those specified in subpart A.

[48 FR 13982, Apr. 1, 1983]

#### **§ 236.765 Determination of eligible immigration status of applicants and tenants; protection from liability.**

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of 24 CFR part 5.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in 24 CFR part 5.

[61 FR 13624, Mar. 27, 1996]

## **Subpart E—Audits**

### **§ 236.901 Audit.**

Where a State or local government receives interest reduction payments under section 236(b) of the National Housing Act or is the mortgagor of a mortgage insured or held by the Commissioner under this part, it shall conduct audits in accordance with HUD audit requirements at 24 CFR part 44.

[58 FR 37813, July 13, 1993]

## **Subpart F—Uniform Relocation Assistance**

### **§ 236.1001 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, mortgagors shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for the assisted project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A “displaced person” (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A “displaced person” shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the mortgagor's determination concerning whether the person qualifies as a “displaced person,” or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the mortgagor. A person who is dissatisfied with the mortgagor's determination on his or her appeal may submit a written request for review of the determination to the HUD Field Office.

(f) *Responsibility of mortgagor.* (1) The mortgagor shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this

section. The mortgagor shall ensure such compliance notwithstanding any third party's contractual obligation to the mortgagor to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The mortgagor shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The mortgagor shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the mortgagor executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the mortgagor's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the mortgagor or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or



(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The mortgagor may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the mortgagor's execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

[59 FR 29331, June 6, 1994]

### **§ 5.506 General provisions.**

(a) *Restrictions on assistance.* Financial assistance under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in §§5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in §§5.516 and 5.518.

(c) *Preferences.* Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

[61 FR 5202, Feb. 9, 1996, as amended at 67 FR 65273, Oct. 23, 2002]

### **§ 880.608 Security deposits.**

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's Total Tenant Payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State, or local law) after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may claim reimbursement from the contract administrator, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13591, Mar. 27, 1996]

### **§ 880.611 Conditions for receipt of vacancy payments.**

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with §880.601(a) and otherwise complied with §880.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in §880.601(a) (2) and (3) and paragraph (b) (2) and (3) of this section; and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with §880.607.

(d) *Vacancies for longer than 60 days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The owner has (for 24 CFR part 883 projects, the owner and the Agency have) demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under §880.608(f), and governmental payments under other programs).

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

#### **§ 884.106 Housing assistance payments to owners.**

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the utility reimbursement jointly to the Family and the utility company or directly to the utility company. No Section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing, rather than Owner-occupied housing, for this purpose.

(b) *Vacancies during rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, in accordance with the procedure set forth in §884.213(b): *Provided*, That the Owner: (1) Commenced marketing and otherwise complied with §884.211(e), (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD or the PHA, as the case may be.

(c) *Vacancies after rent-up.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; provided, however, That if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or

as HUD may direct. (See also §884.115). The Owner shall not be entitled to any payment under this paragraph (c)(1) unless he: (i) Immediately upon learning of the vacancy, has notified HUD or the PHA, as the case may be, of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs (b) (2) and (3) of this section.

(2) If the Owner evicts an Eligible Family, he shall not be entitled to any payment under paragraph (c)(1) of this section unless the request for such payment is supported by a certification that: (i) He gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

(d) *Debt-service vacancy payments.* (1) If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may submit a claim to receive additional housing assistance payments on a semiannual basis with respect to the vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether the vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (d) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed.

(ii) The Owner has taken and is continuing to take the actions specified in paragraphs (b) (1), (2) and (3) or paragraphs (c)(1) (i) and (ii) and (c)(2) of this section, as appropriate.

(iii) The owner has demonstrated, in connection with the semiannual claim on a form and in accordance with the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the owner with revenues at least equal to the project costs incurred by the owner and that the amount of the payments requested is not in excess of the amount needed to make up the deficiency.

(iv) The owner has submitted to HUD or the PHA, as appropriate, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD or the PHA, as appropriate, may deny any claim for additional payments or suspend or terminate payments if it determines that, based on the owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under §884.115).

[41 FR 47168, Oct. 27, 1976, as amended at 42 FR 12983, Mar. 7, 1977; 43 FR 33880, Aug. 1, 1978. Redesignated at 45 FR 6909, Jan. 30, 1980; 49 FR 19947, May 10, 1984]

### **§ 884.109 Rent adjustments.**

(a) *Funding of adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this paragraph, up to the maximum amount authorized under the Contract. (See §§884.104 and 884.105).

(b) *Automatic annual adjustments.* (1) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their

determination will be published in the Federal Register. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract.

(c) *Special additional adjustments.* Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(d) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD: *Provided, however,* That this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial Contract Rents.

#### **§ 884.115 Security and utility deposits.**

(a) An Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD or the PHA, as appropriate, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

#### **§ 886.116 Security and utility deposits.**

(a) An Owner may require Families to pay a security deposit in an amount up to, but not more than, one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources

### **§ 886.309 Housing assistance payment to owners.**

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible Families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

(b) *No assistance for owners.* No Section 8 assistance may be provided for any unit occupied by an owner. However, cooperatives are considered rental housing rather than owner-occupied housing under this subpart.

(c) *Payments for vacancies from execution of contract to initial occupancy.* If a Contract unit which is decent, safe and sanitary and has been accepted by HUD as available as of the effective date of the Contract is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract provided that the Owner (1) has submitted a list of units leased as of the effective date and a list of the units not so leased; (2) 60 days prior to the completion of the rehabilitation or the date the agreement was executed, whichever is later, had notified the PHA of any units which the owner anticipated would be vacant on the anticipated effective date of the contract; (3) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contracting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units in a manner specifically designed to reach low-income families; and (4) has not rejected any eligible applicant except for good cause acceptable to HUD.

(d) *Payments for vacancies after initial occupancy.* If an eligible family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of Contract Rent for a vacancy period not exceeding an additional month. However, if the owner collects any of the family's share of the rent for this period, the payment must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. (See also §886.315.) The owner shall not be entitled to any payment under this paragraph unless he or she: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) has made and continues to make a good faith effort to fill the vacancy, including but not limited to, contacting applicants on the waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD.

(e) *Payments for units where family is evicted.* If the owner evicts a family, the owner shall not be entitled to any payments pursuant to paragraph (d) of this section unless the request for such payment is supported by a certification that the provisions of §886.327 and part 247 of this title have been followed.

(f) *Prohibition for double compensation for vacancies.* The owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he or she is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under §886.315).

(g) *Debt service payments.* (1) If a contract unit continues to be vacant after the 60-day period specified in paragraph (c) or (d) of this section, the Owner may submit a claim and receive additional housing assistance payments on a semiannual basis with respect to such a vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether such vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (g) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

- (i) The unit is not in a project insured under the National Housing Act except pursuant to section 244 of that Act.
  - (ii) The unit was in decent, safe, and sanitary condition during the vacancy period for which payments are claimed.
  - (iii) The owner has taken and is continuing to take the actions specified in paragraphs (c)(1), (2) and (3) or paragraphs (d)(1) and (2) of this section, as appropriate.
  - (iv) The Owner has demonstrated in connection with the semiannual claim on a form and in accordance with the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the Owner with revenues at least equal to the project costs incurred by the Owner, and that the amount of the payments requested is not in excess of that portion of the deficiency which is attributable to the vacant units for the period of the vacancies.
  - (v) The Owner has submitted, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.
- (3) HUD may deny any claim for additional payments or suspend or terminate payments if it determines that based on the Owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 53 FR 3369, Feb. 5, 1988; 58 FR 43722, Aug. 17, 1993]

### **§ 886.315 Security and utility deposits.**

- (a) *Amount of deposits.* If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Gross Family Contribution or \$50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family is expected to pay security deposits and utility deposits from its resources and/or other public or private sources.
- (b) *When a Family vacates.* If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Family Contribution or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.
- (c) *Interest payable on deposits.* In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.
- (d) *Insufficient deposits.* If the security deposit is insufficient to reimburse the Owner for the unpaid Family Contribution or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of: (1) The amount owed the Owner, (2) two months' Contract Rent, minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Family Contribution due under the Lease and then to any other amounts owed. No reimbursement shall be claimed for unpaid rent for the period after the family vacates.

### **§ 891.105 Definitions.**

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§891.205, 891.305, and 891.505, as applicable.

*Adjusted income* as defined in part 5, subpart F of subtitle A of this title.

*Affiliated entities* means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors (or of a single Borrower or of Borrowers, as applicable) that have any identity of interest themselves or their principals.

*Annual income* as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

*Household (eligible household)* means an elderly or disabled household (as defined in §§891.205 or 891.305, respectively), as applicable, that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income requirements described in §813.102 of this chapter, as modified by the definition of annual income in this section.

*Housing and related facilities* means rental housing structures constructed, rehabilitated, or acquired as permanent residences for use by elderly or disabled households, as applicable. The term includes necessary community space. Except for intermediate care facilities for individuals with developmental disabilities, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities. For the Loans for the Elderly and Persons with Disabilities Program, see §891.505.

*Low-income families* shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

*National Sponsor* means a Sponsor that has one or more Section 202 or one or more Section 811 project(s) under reservation, construction, or management in two or more different HUD geographical regions.

*Operating costs* means HUD-approved expenses related to the provision of housing and includes:

- (1) Administrative expenses, including salary and management expenses related to the provision of shelter and, in the case of the Section 202 Program, the coordination of services;
- (2) Maintenance expenses, including routine and minor repairs and groundskeeping;
- (3) Security expenses;
- (4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. The term "operating costs" excludes telephone services for households;
- (5) Taxes and insurance;
- (6) Allowances for reserves; and
- (7) Allowances for services (in the Section 202 Program only).

*Project rental assistance contract (PRAC)* means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

*Project rental assistance payment* means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating



expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a “vacancy payment,” may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC.

*Rehabilitation* means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration, or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

*Replacement reserve account* means a project account into which funds are deposited, which may be used only with the approval of the Secretary for repairs, replacement, capital improvements to the section 202 or section 811 units, and retrofitting to reduce the number of units as provided by 24 CFR 891.405(d).

*Section 202* means section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended, or the Supportive Housing for the Elderly Program authorized by that section.

*Section 811* means section 811 of the National Affordable Housing Act (42 U.S.C. 8013), as amended, or the Supportive Housing for Persons with Disabilities Program authorized by that section.

*Start-up expenses* mean necessary costs (to plan a Section 202 or Section 811 project, as applicable) incurred by the Sponsor or Owner prior to initial closing.

*Tenant payment to Owner* equals total tenant payment less utility allowance, if any.

*Total tenant payment* means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

*Utility allowance* is defined in part 5, subpart F of this subtitle A of this title and is determined or approved by HUD.

*Very low-income families* shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

[61 FR 11956, Mar. 22, 1996, as amended at 66 FR 6225, Jan. 19, 2001; 66 FR 8175, Jan. 30, 2001; 68 FR 67320, Dec. 1, 2003; 70 FR 54209, Sept. 13, 2005]

### **§ 891.435 Security deposits.**

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as loans financed under subpart E of this part. For loans financed under subpart E of this part, the requirements in §891.635 also apply.

(a) *Collection of security deposits.* At the time of the initial execution of the lease, the Owner (or Borrower, as applicable) will require each household (or family, as applicable) occupying an assisted unit or residential space in a group home to pay a security deposit in an amount equal to one month's tenant payment or \$50, whichever is greater. The household (or family) is expected to pay the security deposit from its own resources and other available public or private resources. The Owner (or Borrower) may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to units—(1) Administration of security deposit.* The Owner (or Borrower, as applicable) must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner (or Borrower) must at all times equal the total amount collected from the households (or families, as applicable) then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner (or Borrower) must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Household (or family, as applicable) notification requirement.* In order to be considered for the refund of the security deposit, a household (or family) must provide the Owner (or Borrower, as applicable) with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Owner (or Borrower, as applicable), subject to State and local law and the requirements of paragraphs (b)(1) and (b)(3) of this section, may use the household's (or family's, as applicable) security deposit balance as reimbursement for any unpaid amounts that the household (or family) owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b) (2) of this section, the Owner (or Borrower) must:

(i) Refund to a household (or family) that does not owe any amount under the lease the full amount of the household's (or family's) security deposit balance;

(ii) Provide to a household (or family) owing amounts under the lease a list itemizing each amount, along with a statement of the household's (or family's) rights under State and local law. If the amount that the Owner (or Borrower) claims is owed by the household (or family) is less than the amount of the household's (or family's) security deposit balance, the Owner (or Borrower) must refund the excess balance to the household (or family). If the Owner (or Borrower) fails to provide the list, the household (or family) will be entitled to the refund of the full amount of the household's (or family's) security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the household (or family, if applicable) will have the right to present objections to the Owner (or Borrower, if applicable) in an informal meeting. The Owner (or Borrower) must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of this paragraph do not preclude the household (or family) from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a household (or family, as applicable), the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the household's (or family's, if applicable) security deposit balance is insufficient to reimburse the Owner (or Borrower, if applicable) for any amount that the household (or family) owes under the lease for an assisted unit or residential space, and the Owner (or Borrower) has provided the household (or family) with the list required by paragraph (b)(3)(ii) of this section, the Owner (or Borrower) may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Owner (or Borrower); or

(2) One month's per unit operating cost (or contract rent, if applicable), minus the amount of the household's (or family's) security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment (or rent, if applicable) due under the lease. No reimbursement may be claimed for any unpaid tenant payment (or rent) for the period after termination of the tenancy. The Owner (or Borrower) may be eligible for vacancy payments following a vacancy in accordance with the requirements of §891.445 (or §§891.650 or 891.790, as applicable).

#### **§ 891.445 Conditions for receipt of vacancy payments for assisted units.**

(a) *General.* Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner:

(1) Conducted marketing in accordance with §891.400(a) and otherwise complied with §891.400;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in §891.400(a) (2) and (3) and §891.445(b) (2) and (3); and

(4) For any vacancy resulting from the Owner's eviction of an eligible household, certifies that it has complied with §891.430.

(d) *Prohibition of double compensation for vacancies.* If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under §891.435(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

#### **§ 891.635 Security deposits.**

The general requirements for security deposits on assisted units are provided in §891.435. For purposes of subpart E of this part, the additional requirements apply:

(a) The Borrower may require each family occupying an unassisted unit (or residential space in a group home) to pay a security deposit equal to one month's rent payable by the family.

(b) The Borrower shall maintain a record of the amount in the segregated interest-bearing account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under §891.435(b)(3), the Borrower shall allocate to the family's balance the interest accrued on the balance during the year. Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year.

#### **§ 891.650 Conditions for receipt of vacancy payments for assisted units.**

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(a) *General.* Vacancy payments under the HAP contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit that is not leased as of the effective date of the HAP contract, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy, if the Borrower:

(1) Complied with §891.600;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates a unit, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the HAP contract, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in §891.600(a)(2) and (3), and in paragraphs (b)(2) and (3) of this section; and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with §891.630.

(d) *Vacancies for longer than 60 days.* If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the Borrower may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under §891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

### **§ 891.775 Security deposits.**

The general requirements for security deposits on assisted units are provided in §891.435. For purposes of subpart E of this part, the additional requirements in §891.635 apply.