§ 889.635 Termination of tenancy and modification of lease.

The provisions of part 247 of this title apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit.

§889.640 Security deposits.

- (a) Collection of security deposit. At the time of the initial execution of the lease, the Owner will require each family occupying a unit 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 other available public or private resources. The Owner may collect the security deposit on an installment basis.
- (b) Security deposit provisions applicable to units. (1) Administration of security deposit. The Owner must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner must comply with any applicable State and local laws concerning interest payments on security deposits.
- (2) Family notification requirement. In order to be considered for the refund of the security deposit, a family must provide the Owner with a forwarding address or arrange to pick up the refund.
- (3) Use of security deposit. The Owner, subject to State and local law and the requirements of paragraph (b)(3) of this section, may use the family's security deposit balance 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 under paragraph (b)(2) of this section the Owner must:
- (i) Refund to a family which does not owe any amount under the lease the full amount of the family's security deposit balance:
- (ii) Provide to a family owing amounts under the lease a list itemizing each amount, 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 family's security deposit balance, the Owner must refund the excess 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 family's security deposit balance.

- (4) Disagreements. If 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 HUD. The procedures of paragraph (b)(4) of this section do not preclude the 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 family, 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 family's security deposit balance is insufficient to reimburse the Owner for any amount which the family owes under the lease for a unit and the Owner has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of:
 - (1) The amount owed the Owner; or
- (2) One month's per unit operating cost, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment due under the lease. No reimbursement may be claimed for unpaid tenant payment for the period after termination of the tenancy. The Owner may be eligible for vacancy payments following a vacancy in accordance with the requirements of \$889,650.

§ 889.645 Adjustment of utility allowances.

The Owner must submit an analysis of any utility allowances applicable. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected families and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 889.650 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 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 for the first 60 days of vacancy, if the Owner:
- (1) Conducted marketing in accordance with § 889.600(a) and otherwise complied with § 889.600;
- (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 Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit 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 § 889.600(a)(2) and (3) and § 889.650(b)(2) and (3); and
- (4) For any vacancy resulting from the Owner's eviction of an eligible family, certifies that it has complied with § 889.635.
- (d) Prohibition of double compensation for vacancies. If the Owner collects payments for vacancies from other sources (tenant payments, security deposits, payments under § 889.640(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.

§ 889.655 HUD review.

HUD shall conduct periodic on-site management inspections and reviews of the Owner's compliance with the requirements of this part.

Henry G. Cisneros,

Secretary.

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