

provide the Borrower with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Borrower, 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 Borrower 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 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 Borrower claims is owed by the family is less than the amount of the family's security deposit balance, the Borrower must refund the excess balance to the family. If the Borrower 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 Borrower in an informal meeting. The Borrower 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 Borrower for any unpaid amount which the family owes under the lease for an assisted unit and the Borrower has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Borrower may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Borrower; or
 (2) One month's contract rent, minus the amount of the family's security deposit balance. 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. The Borrower may be eligible for

vacancy payments following a vacancy in accordance with the requirements of § 885.650.

(Approved by the Office of Management and Budget under control number 2502-0371).

§ 885.640 Adjustment of rents.

(a) *Contract rents.*—(1) *Adjustment based on approved budget.* If the HAP contract provides, or has been amended to provide, that contract rents will be adjusted based upon a HUD-approved budget, HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's non-rental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form acceptable to the Secretary. The automatic adjustment factor described in part 888 of this chapter is not used to adjust contract rents under paragraph (a)(1) of this section, except to the extent that the amount of the replacement reserve deposit is adjusted under § 880.602 of this chapter.

(2) *Annual and special adjustments.* If the HAP contract provides that contract rents will be adjusted based on the application of an automatic adjustment factor and by special additional adjustments:

(i) Consistent with the HAP contract, contract rents may be adjusted in accordance with part 888 of this chapter;

(ii) Special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates or similar costs (i.e., assessments and utilities not covered by regulated rates), and which are not adequately compensated for by an annual adjustment. The Borrower must submit to HUD required supporting data, financial statements and certifications for the special additional adjustment.

(b) *Rent for unassisted units.* The rent payable by families occupying units that are not assisted under the HAP contract shall be equal to the contract rent computed under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 2502-0371).

§ 885.645 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 885.640(a), the Borrower must submit an analysis of any project's utility

allowances. 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 approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Borrower must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Borrower will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment.

(Approved by the Office of Management and Budget under control number 2502-0371).

§ 885.650 Conditions for receipt of vacancy payments for assisted units.

(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) Conducted marketing in accordance with § 885.600(a) and otherwise complied with § 885.600;
- (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 § 885.600(a) (2) and (3) and § 885.650(b) (2) and (3); and
- (4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 885.630.

(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