

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) *Distraint 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

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(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

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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