

number of units under the HAP contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the HAP contract.* HUD may reduce the number of units covered by the HAP contract to the number of units available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the HAP contract to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the HAP contract; and

(3) Contract and budget authority is available.

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Occupancy by families that are not elderly or handicapped.* HUD may permit units in the project to be leased to other than elderly or handicapped families if:

(1) The Borrower has made reasonable efforts to lease assisted and unassisted units to eligible families;

(2) The Borrower has been granted HUD approval under paragraph (a) of this section; and

(3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the Section 202 loan documents. HUD approval under paragraph (e)(3) of this

section will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the Section 202 loan.

**§ 891.580 HAP contract administration.**

HUD is responsible for the administration of the HAP contract.

**§ 891.585 Default by Borrower.**

(a) *HAP contract provisions.* The HAP contract will provide:

(1) That if HUD determines that the Borrower is in default under the HAP contract, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the HAP contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the HAP contract or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents.

**§ 891.590 Notice upon HAP contract expiration.**

(a) *Notice required.* The HAP contract will provide that the Borrower will, at least one year before the end of the HAP contract term, notify each family leasing an assisted unit of any increase in the amount the family will be required to pay as rent as a result of the expiration.

(b) *Service requirements.* The notice under paragraph (a) of this section shall be accomplished by sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be

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considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the Borrower mails the first class letter provided for in paragraph (b) of this section, or the date on which the notice provided for in paragraph (b) of this section is properly given, whichever is later.

(c) *Contents of notice.* The notice shall advise each affected family that, after the expiration date of the HAP contract, the family will be required to bear the entire cost of the rent and that the Borrower may, subject to requirements and restrictions contained in the regulatory agreement, the lease, and State or local law, change the rent. The notice also shall state:

(1) The actual (if known) or the estimated rent that will be charged following the expiration of the HAP contract;

(2) The difference between the new rent and the total tenant payment toward rent under the HAP contract; and

(3) The date the HAP contract will expire.

(d) *Certification to HUD.* The Borrower shall give HUD a certification that families have been notified in accordance with this section and shall attach to the certification an example of the text of the notice.

(e) *Applicability.* This section applies to all HAP contracts entered into under an agreement to enter into a housing assistance payments contract executed on or after October 1, 1981, or entered into under such an agreement executed before October 1, 1981 but renewed or amended after February 9, 1995.

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

**§ 891.595 HAP contract extension or renewal.**

Upon expiration of the term of the HAP contract, HUD and the Borrower may agree (subject to available funds) to extend the term of the HAP contract or to renew the HAP contract. The number of assisted units under the extended or renewed HAP contract shall equal the number of assisted units

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under the original HAP contract, except that:

(a) HUD and the Borrower may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal; and

(b) HUD and the Borrower may agree to permit reductions in the number of assisted units during the term of the extended or renewed HAP contract as assisted units are vacated by eligible families. Nothing in this section shall prohibit HUD from reducing the number of units covered under the extended or renewed HAP contract in accordance with § 891.575(b).

**§ 891.600 Responsibilities of Borrower.**

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the first unit of the project. Market activities shall include the provision of notices of availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State, or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations, such as their race, color, creed, religion, familial status, disability, sex or national origin. Marketing must also be done in accordance with the communication and notice requirements of Section 504 at 24 CFR 8.6 and 24 CFR 8.54.

(3) At the time of HAP contract execution, the Borrower must submit to HUD a list of leased and unleased assisted units, with a justification for the unleased units, in order to qualify for vacancy payments for the unleased units.