

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).

**§ 891.440 Adjustment of utility allowances.**

This section shall apply to projects funded under the Section 202 Program, to independent living complexes funded under Section 811 Program, and to projects financed with loans under subpart E of this part. The Owner (or Borrower, as applicable) 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 (or Borrower) must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner (or Borrower) will promptly notify affected households (or families, as applicable) and make a corresponding adjustment of the tenant payment (or rent, as applicable) and the amount of the project rental assistance payment (or housing or project assistance payment, as applicable).

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

**§ 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.

**§ 891.450 HUD review.**

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

**Subpart E—Loans for Housing for the Elderly and Persons with Disabilities**

**§ 891.500 Purpose and policy.**

(a) *Purpose.* The program under subpart E of this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) for housing projects serving elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A loan made under subpart E of this part shall be used to