

amount of the housing assistance payment for the unit.

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§ 884.221 Continued family participation.

A Family must continue to occupy its approved unit to remain eligible for participation in the Housing Assistance Payments Program except that if the Family (a) wishes to vacate its unit at the end of the Lease term (or prior thereto but in accordance with the provisions of the Lease), or (b) is required to move for reasons other than violation of the Lease on the part of the Family, and if the Family wishes to receive the benefit of housing assistance payments in another approvable unit, the Family should give reasonable notice of the circumstances to HUD or to the PHA, as appropriate, so that HUD or the PHA may have the opportunity to consider the Family's request.

§ 884.222 Inapplicability of low-rent public housing model lease and grievance procedures.

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are applicable only to PHA-Owner Projects under the Section 8 Housing Assistance Payments Program.

§ 884.223 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 884.214; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). If the owner is

temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate), after consultation with the Farmers Home Administration, may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

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

(2) Notwithstanding any prior approval by HUD (or the PHA at the direction of HUD, as appropriate) to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) 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 ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

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

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are 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) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.

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§ 884.223a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families—(1) Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an “eligible project”) may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an “elderly project.” “Elderly families” refers to families whose heads of household, their spouses or sole members are 62 years or older.

(iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:

(A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as “non-elderly disabled families”) is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or

(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

(iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project’s waiting list solely on the basis of having made the election.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project’s eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families—(1) Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is