

(1) Resolution of any security deposit disputes must be handled in accordance with state and local law.

(2) Any interest earned on security deposits will accrue in accordance with state law.

(f) *Unclaimed security deposits.* Any funds in the housing project's security deposit account unclaimed by a tenant must be deposited into the housing project's general operating account.

§ 3560.205 Rent and utility allowance changes.

(a) *General.* Borrowers must fully document that changes to rents and utility allowances are necessary to cover housing or utility costs allowed under the approved budget for the housing. Any changes must apply to all similar units in the housing project.

(b) *Agency approval.* Borrowers must submit a fully documented request to the Agency to effect any rent or utility allowance change.

(1) Borrowers must obtain written consent or approval from the Agency as specified in paragraph (e) of this section before implementing any changes in the rents or utility allowances.

(2) If a borrower implements an unauthorized rent or utility allowance charge, the Agency will require the borrower to roll back rents to the last authorized rent charge, and the borrower must reimburse tenants for any unauthorized rents collected.

(c) *Timing of request for changes.* Borrowers must submit rent and utility allowance change requests in conjunction with the annual budget submission as required under § 3560.303(d). The effective dates of any approved changes will coincide with the start of the housing project's fiscal year or the start of the season for seasonally occupied farm labor housing. However, the Agency will accept borrower requests for rent or utility allowance changes anytime during the year if a change is necessary to preserve the financial integrity of the housing complex and the financial distress is due to circumstances beyond the borrower's control.

(d) *Tenant notification.* Borrowers must notify tenants and solicit their comments to proposed rent or utility allowance change requests that are submitted to the Agency at the same time that the initial request is made to the Agency.

(1) Tenants will be given 20 calendar days to provide their comments to the borrower or to the Agency.

(2) Borrowers must deliver the proposed rent or utility allowance change request notice to each tenant and post at least one copy of the notice at

the housing project site in a visible location frequented by tenants.

(3) Within 5 calendar days following the end of the 20-day tenant comment period, the borrower must send the Agency a summary of the tenant comments received by the borrower along with any changes the borrower proposes to make to the initial request for a rent change.

(e) *Approval.* If the Agency approves a rent or utility allowance increase request on which the comments were solicited, the borrower will deliver a notice announcing the rent or utility allowance change to the tenants to be effective 30 calendar days from the date of the notification.

(f) *Denial of change request.* The Agency may deny a rent or utility allowance increase request in the following circumstances.

(1) The Agency determines that housing operating costs in the proposed budget exceed reasonable costs.

(2) The borrower is out of compliance with Agency requirements including any corrective action requirements agreed to in a workout agreement developed according to subpart J of this part.

(3) Sufficient funds are being collected under existing rents to meet approved expenses.

(4) Basic rents in Plan II housing or note rate rents in Plan I or full profit housing would exceed conventional rents for comparable units in the area or a similar area.

(g) *Notice of denial.* If the rent change will not be approved as requested, the Agency will notify the borrower of the denial in accordance with § 3560.303(d).

§ 3560.206 Conversion to Plan II (Interest Credit).

The Agency encourages any borrower not on Plan II to convert to Plan II to provide more favorable rent costs to very-low, low, and moderate-income households.

§ 3560.207 Annual adjustment factors for Section 8 units.

(a) *General.* For rental units receiving project-based Section 8 assistance, the Agency will review rents annually without regard to HUD's automatic annual adjustment.

(b) *Establishing rents in housing with HUD rent assistance.* Borrowers will set note and basic rents for housing receiving HUD project based Section 8 assistance, as specified in § 3560.202(c)(3).

(1) Borrowers must notify the Agency of any HUD rent changes.

(2) If allowed by the interest credit agreement, the borrower will remit the

amount collected in excess of the basic rent up to the note rent to the Agency as overage.

(3) When HUD contract rents exceed note rents, borrowers must deposit HUD funds equal to the difference between the Agency approved note rent and the HUD approved rent into the reserve account for the housing project.

(c) *Excess HUD rents.* When permitted by the Agency interest credit agreement, the Agency may reduce or cancel the interest credit on the housing, if excess HUD rents deposited in the reserve account result in the reserve account being funded beyond the fully funded level approved by the Agency.

§ 3560.208 Rents during eviction or failure to recertify.

(a) *Rents during eviction.* Tenants being evicted for lease violation must pay the rent established in their lease until their lease is terminated. If the tenant is appealing the eviction and the borrower refuses to accept rent payment during the appeal of the eviction, the tenant must escrow required rent payments to safeguard their occupancy.

(b) *Rents when tenants fail to recertify.* If a borrower can document that a tenant received a notice specifying a tenant recertification date and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, shall give the tenant and the Agency written notification that:

(1) Eviction proceedings are being initiated;

(2) Rental assistance and interest credit benefits being suspended; and

(3) The tenant will be charged note rent until their lease is terminated.

(c) *Unauthorized assistance due to tenant recertification failure.* Any unauthorized assistance received because of the tenant's failure to be recertified will be collected in accordance with the provisions of subpart O of this part.

(d) *Rents when borrowers fail to recertify tenants.* If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants shall continue to make net tenant contributions to rent based on their most recent tenant certification and the borrower must remit to the Agency full overage as if the tenant was paying the note rent until the tenant is recertified.