

CHAPTER 3 SPECIAL CLAIMS FOR VACANCY LOSS AFTER RENT-UP (REGULAR VACANCY)

Section 3-1 CONCEPT

A special claim for vacancy loss after rent-up is compensation to the property owner for the loss of rental income of a unit that was previously occupied by an assisted tenant but has been vacant for circumstances beyond the owner's control.

Section 3-2 ELIGIBILITY REQUIREMENTS

A. Project/Contract types:

Section 8, Section 202/8, Section 202 PAC, Section 202 PRAC, Section 811 PRAC

B. The owner/agent is eligible to submit a special claim for vacancy loss after rent-up if:

1. Upon learning of a vacancy the owner/agent transmits the move-out data to TRACS.
2. The former tenant was receiving rental assistance at move-out; or if the rental assistance had been terminated prior to move-out, the assistance was terminated based upon the tenant's failure to comply with his/her responsibilities to fulfill program requirements, such as:
 - Failure to provide the needed information relating to family composition and income.
 - Failure to provide social security numbers.
 - Failure to sign consent forms and or verification forms.
 - Failure to sign the form HUD-50059.
 - Failure or inability to establish citizenship or eligible immigration status.
 - Failure to move to a different-sized unit within 30 days after the owner notifies him/her that the unit of the required size is available.

Note: Owners cannot submit a special claim for the unit when termination of rental assistance was based on the tenant's income increasing to where he/she no longer qualifies for assistance or for the period of occupancy by a police officer or security personnel.

3. In projects that are partially assisted, if a tenant's assistance is terminated tenant or moves out of a unit and the assistance is given to a tenant in a another unit effective the day after the termination or move out, the owner is not entitled to a special claim for a vacancy loss.

For example, in a partially assisted Section 236 project the tenant in Unit 26 who is receiving Section 8 assistance moves-out on July 26. The owner gives the Section 8 assistance to the tenant in Unit 30 effective July 27. The owner is not entitled to receive a special claim for vacancy loss for Unit 26.

4. The owner/agent is eligible to submit a special claim only for units that are in decent, safe and sanitary condition and are available for occupancy during the vacancy period in which the payments are claimed. Vacancy loss claims may not be paid for the days a unit is being prepared for re-occupancy.
1. The owner/agent has taken and continues to take all feasible actions to fill the vacancy, including contacting any applicants on the waiting list and/or advertising the availability of the unit in accordance with Fair Housing and Equal Opportunity requirements in HUD Handbook 4350.3 REV 1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapters 2 and 4.
2. The owner/agent has not rejected applicants, except for good cause in accordance with the owner's tenant selection plan.
7. By signing form HUD-52671-C, the owner/agent certifies they have not caused the vacancy by violating the lease, the contract, or any applicable law and that they have complied with all HUD requirements on termination of tenancy listed in HUD Handbook 4350.3 REV-1, Chapter 8.

Section 3-3 OWNER/AGENT CLAIM SUBMISSION REQUIREMENTS

The owner/agent must submit the following:

A. Claim forms:

HUD-52670-A Part 2, Schedule of Special Claims
HUD-52671-C Special Claims for Regular Vacancies

B. Submit claim forms to:

HUD or the CA

C. Supporting documentation:

1. Refer to Section 1-5 for the general requirements that are part of the claim process.
2. A copy of the signed form HUD-50059 completed at move-in for the former tenant which shows the amount of security deposit that was required.
3. Documentation that the appropriate security deposit was collected from the tenant: for example, a copy of the original lease, a copy of the tenant's rent ledger card, or a copy of the receipt(s) for security deposit.

Note: If the security deposit held by the owner met the rules in effect at the time the deposit was collected, or if the owner was not previously required to collect a security deposit under program requirements, the special claim will not be reduced because a security deposit wasn't collected or where the deposit does not match the current rules.

4. A copy of the security deposit disposition notice provided to the tenant indicating the move-out date, amount of security deposit collected, amount of security deposit returned and any charges withheld from the deposit for unpaid rent, tenant damages or other charges due under the lease.
5. Documentation that verifies the date the unit was ready for occupancy. Examples of such documentation could consist of the voucher adjustment page verifying the move-out date of the former tenant and the move-in date of the new tenant or the maintenance record or reconditioning log confirming the move-out date and the date the unit was ready for occupancy.
6. Copy of the waiting list from which the tenant was selected (i.e. unit transfer waiting list, one-bedroom waiting list, etc.) or information from previous waiting list describing contact with the applicant and the outcome of the contact.
7. If the unit was not filled from the waiting list(s), documentation of marketing efforts must be included such as copies of advertisements or invoices for advertising expenses that substantiate the date marketing occurred in accordance with the AFHMP.

D. Checklist:

A checklist of required documentation must be used and submitted with the claim forms. See Appendix 3B for a sample “Checklist -Special Claims for Regular Vacancies”.

E. TRACS requirements:

1. The move-out or unit transfer date of the former tenant must be viewable in TRACS.
2. If the unit was rented within the claim period, the move-in or unit transfer for the new tenant must be viewable in TRACS. If the unit is not re-occupied by a subsidized tenant, the move-in will not be viewable in TRACS; therefore, a hard copy of the form HUD-50059 for the market rent tenant must be submitted.

F. Claim amount:

1. A claim for a unit under a Section 8 contract, Section 202/8 or Section 202 PAC may not exceed 80% of the contract rent for up to 60 calendar days for each vacancy. A claim for a unit under Property Disposition Set-aside (PDSA/8) is an exception and may not exceed:
 - a. The housing assistance payment for the number of days elapsed between the date the tenant vacated the unit and the last day of the month, plus
 - b. 80% of contract cost for any days the unit remains vacant in the following month.
2. A claim for a unit under a Section 202 PRAC or Section 811 PRAC may not exceed 50% of the operating rent for up to 60 calendar days for each vacancy.
3. The claim must be reduced by any amounts the owner/agent has collected from other sources (i.e., security deposits, etc.)

Note: If the tenant failed to give proper notice to vacate as required under the lease, the security deposit may be included as an amount collected from other sources.

Section 3-4 OWNER/AGENT CLAIM TIMELINES

A. Submission deadline:

The completed claim form and documentation must be received by HUD or the CA within 180 calendar days from the date the unit is available for occupancy. See Section 1-4.B for requirements for submitting claims when a contract is terminated.

B. Start date:

The claim period begins the day the unit is available for occupancy by another tenant. Vacancy loss claims may not be paid for the days a unit was being prepared for occupancy.

Example: A unit was vacated May 5, cleaned May 5 through May 8, and available for occupancy on May 9. The claim period would begin on May 9.

C. Ending date:

The claim period ends on the day preceding the day on which the unit is re-rented, or 60 calendar days from the date the unit is available for occupancy (start date), whichever is earlier.

D. Length of claim period:

The claim period may not exceed 60 calendar days.

Section 3-5 HUD OR CA CLAIM REVIEW PROCESS

In addition to the general review requirements in Section 1-6, the reviewer must:

- A. Verify that the correct amount of security deposit was collected from the tenant at move-in.
- B. Review copies of the voucher adjustment page(s) to verify move-out date of the former tenant and move-in date of the new tenant and that appropriate move-in and move-out adjustments were made.
- C. Review the maintenance record or reconditioning log to confirm the move-out date and the date the unit was ready for occupancy.
- D. If the unit is not leased from the waiting list, review documentation of advertisements or invoices for advertising expenses that support that marketing

was undertaken and substantiates the date marketing occurred. If the waiting list is closed, it is not necessary to review the owner's/agent's marketing and outreach methods.

- E. Review the documentation describing the status of the waiting list for the past several months and the outcome of applicant contacts to determine whether or not the owner/agent is maintaining the waiting list and is processing applications in a timely fashion, including following up on initial contacts and applicant responses. Claims will be denied when owners/agents are in violation of the waiting list policy or Fair Housing laws.