

## **CHAPTER 4 SPECIAL CLAIMS FOR DEBT SERVICE VACANCY PAYMENTS**

### **Section 4-1 CONCEPT**

Special claims for debt service vacancy payments are compensation to a property owner for units that have been vacant beyond the 60 calendar day limit for regular vacancy (either during or after initial rent-up) in order to avoid mortgage default.

### **Section 4-2 ELIGIBILITY REQUIREMENTS**

#### **A. Project/Contract types:**

Section 8 NC/SR (New Regulation contracts), Section 202/8, Section 202 PAC, RHS 515/8, PDSA/8.

The following are not eligible for debt service payments: NC/SR Old Regulation contracts, Section 8 Loan Management Set aside (LMSA), Section 202 PRAC, Section 811 PRAC and projects that have prepaid their mortgage (uninsured projects). Debt service payments may not be applied towards management fees and/or owner distribution payments. Debt service payments must be placed in the operating budget for the project.

Note: Section 8 new construction and substantial rehabilitation new regulation contracts:

In general projects eligible to receive debt service vacancy payments are assisted under HAP contracts with the date "8-80" or later printed next to the form number. These form versions will contain a paragraph, typically located in section 2.4(e), concerning debt service vacancy payments. If there is a question regarding whether a project is eligible for a debt service vacancy claim (i.e. falls under the old or new regulations) contact HUD Field Office staff.

#### **B. Other requirements:**

1. Units must have been vacant and ready for occupancy for more than 60 calendar days. Owners may not receive payment for special claims for vacancy loss and debt service at the same time. Therefore, a unit is not eligible for mortgage debt service payments until the 60 calendar day vacancy loss period has ended.

2. Payments may not exceed the amortized principal and interest payments due for that unit on the project's first mortgage, or the net operating loss on an un-audited financial statement.
3. Units must be in decent, safe and sanitary condition and available for occupancy during the vacancy period in which the payments are claimed.
4. By signing form HUD-52671-D, the owner/agent certifies that they have followed their HUD approved Affirmative Fair Housing Marketing Plan when marketing available units.
5. Documentation of marketing activities, such as copies of advertisements or invoices for advertising expenses that support that marketing was undertaken and substantiates the date marketing occurred if applicable.
6. Projects must show a net operating loss on an unaudited financial statement. Depreciation and owner expenses cannot be included in this statement.
7. HUD must determine if the project can achieve financial soundness within a reasonable period of time.

### **Section 4-3 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-D, Special Claims for Debt Service

B. Submit claim forms to:

HUD field office only, except in the case where the Traditional Contract Administrator is a State Housing Finance Agency and the property was financed by that agency. In that case the CA will review all debt service claims.

C. Supporting Documentation:

1. Refer to Section 1-5 for the general requirements that are part of the claim process.
2. Unaudited financial statement, covering a six-month period for which claims are made.

3. Written narratives detailing the items below:

- a. Cause(s) of the vacancies.
- b. Cause(s) of financial problems.
  - a. Actions taken to correct the financial condition and to prevent recurrence.
  - b. Sources of funds and time frames for paying off delinquent mortgage and excessive accounts.
  - c. Evidence of marketing activities indicating an attempt to fill the vacancy if applicable.

D. Checklist:

A checklist of required documentation must be used and submitted with the claim forms. See Appendix 4B for a sample “Checklist – Special Claims for Debt Service”.

E. TRACS requirements:

- 1. If the unit was previously occupied, the move-out or unit transfer for 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:

The owner may request a claim for the lesser of:

- 1. The amount of the amortized principal and interest payments attributable to the vacant unit(s). Form HUD-52671-D must be used to calculate this amount. Daily debt service is found in Exhibit 2 of the Housing Assistance Payments (HAP) contract, or

2. The amount of the operating loss attributable to the unit, exclusive of depreciation and any owner expenses. This amount is calculated on an un-audited financial statement.

#### **Section 4-4 OWNER/AGENT CLAIM TIMELINES**

A. Submission deadline:

The claim form must be filed semi-annually, starting 6 months after the “regular vacancy” claim period (60 calendar days). The HUD field office may authorize a more frequent submission schedule if the semi-annual schedule threatens the project’s performance.

B. Start date:

The day following the 60 calendar-day vacancy loss period.

Example: Initial 60 calendar-day vacancy loss ends January 31. Submit claims for the two six-month periods ending July 31 and January 31.

C. Ending date:

The date on which the unit is rented, or 12 months after the start date, whichever is earlier.

D. Length of claim period:

The claim period may not exceed 12 months.

#### **Section 4-5 HUD FIELD OFFICE CLAIM REVIEW PROCESS**

A. HUD has the responsibility for the review and approval of debt service special claims except in the case where the Traditional Contract Administrator is a State Housing Finance Agency and the property was financed by that agency. In that case the CA will review all debt service claims.

B. PBCAs may not review or approve special claims for debt service.

1. HUD will forward the results of its review to the PBCA.

2. If the claim has been approved, the PBCA will be instructed to issue an approved special claims ID number to the owner for submission with the next monthly HAP billing.

C. In addition to the general review requirements of Section 1-6, the reviewer must:

1. Confirm that all required documentation is submitted with the claim, and that the claim is properly signed.
2. Review all calculations on form HUD-52671-D for accuracy. The reviewer will need to determine the debt service (amortized principal and interest payment) attributable to the unit(s) through prorating. The debt service can be found in Exhibit 2 of the HAP contract. The claim payment must be the lesser of the calculated debt service and the net operating loss.
3. Review documentation of advertisements or invoices for advertising expenses that support that marketing was undertaken and substantiates the date marketing occurred.
4. Review financial statement to confirm that the project has not provided the owner with sufficient revenue to cover expenses less depreciation (i.e., the project shows a net operating loss).
5. Review the narratives provided and available financial information to determine whether the project is likely to achieve financial soundness in a reasonable period of time.