

Special Attention of:

Notice H-2012-14

All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Directors of Project Management
All Field Counsel
All Multifamily Housing Owners
All HUD-Approved Multifamily Mortgagees
All Housing Finance Agencies
All Contract Administrators

Issued: August 3, 2012

Expires: This notice remains in effect until amended, revoked, or superseded

Cross References:
Handbook 4350.1—REV.1

SUBJECT: Use of “New Regulation” Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts to Offset Project-Based Section 8 Housing Assistance Payments

I. Purpose

When Owner distributions of surplus cash are limited or prohibited and when HUD determines that project funds are more than the amount needed for project operations, reserve requirements, and any permitted distributions, the excess income is typically required under the applicable new regulation¹ and/or the Section 8 Housing Assistance Payments (HAP) contract to which the project is subject to be deposited into an interest-bearing account, often called the Residual Receipts account, to be used for project purposes.² This account (or accounts in cases where these monies are deposited in multiple accounts), however titled or designated, is referred to throughout this Notice as the “Residual Receipts” account. The contents of this account, however titled or designated, are referred to throughout this Notice as “Residual Receipts.” The new regulation and/or the various HAP contract forms used for new regulation projects

¹ The new regulations are as follows: 24 C.F.R. Part 880, in effect as of November 5, 1979; 24 C.F.R. Part 881, in effect as of February 20, 1980; and 24 C.F.R. Part 883, in effect as of February 29, 1980. Section 202/8 projects that are subject to a new regulation Section 8 HAP contract (i.e., one that permits HUD or a State Housing Agency to require that excess project funds be deposited into an interest-bearing account to be used to reduce housing assistance payments or for other project purposes) are also subject to this Notice despite the absence of a provision in 24 C.F.R. Part 891 (formerly Part 885), which governs such projects, that corresponds to 24 C.F.R. 880.205(e), 881.205(e), or 883.306(e). See Section IV. B. of this Notice, which identifies the relevant language regarding the use of Residual Receipts to reduce housing assistance payments that typically appears in new regulation HAP contracts.

² For projects subject to 24 C.F.R. Part 883, in effect as of February 29, 1980, the State Housing Agency, rather than HUD, is entitled to make the determination that project funds are more than the amount needed and to require that the excess be deposited into an interest-bearing account to be used for project purposes. See 24 C.F.R. §883.306(e).

explicitly permit HUD to use Residual Receipts to reduce housing assistance payments. (See 24 CFR §§ 880.205(e), 881.205(e), and 883.306(e)).

This Notice sets forth the policy and procedures for the Department's use of new regulation Residual Receipts to offset housing assistance payments for projects subject to a new regulation Project-Based Section 8 HAP contract and outlines the obligations and duties of Owners and the responsibilities of HUD Field staff in processing and monitoring the use of this project resource.

II. Background

Although Section 8 Project-Based Rental Assistance (PBRA) was funded in the Fiscal Year 2012 budget at levels sufficient for the Department to continue full funding of all contracts, the Department is committed to achieving savings in order to slow the growth of PBRA expenditures and to effectively manage the account within appropriated levels. This policy change will produce PBRA savings, constrain future expenditures, and ensure the long-term stability and availability of PBRA for all program participants.

III. Applicability and Implementation

- A. This Notice applies to all projects that are subject to a new regulation Project-Based Section 8 HAP contract.³ Applicability includes Section 8 New Construction/Substantial Rehabilitation projects subject to 24 CFR §§ 880.205, 881.205, or 883.306, and projects that are subject to both a Section 202 Direct Loan and a new regulation Section 8 HAP contract.
- B. This Notice does not apply to Section 202 and Section 811 projects with Project Rental Assistance Contracts (PRACs) and Project Assistance Contracts (PACs).
- C. This Notice will be effective with vouchers submitted 60 days after issuance of this Notice.

IV. Authority

As stated above, authority for the Department to use new regulation Residual Receipts to offset Section 8 HAP payments is found in the new regulations and/or in new regulation HAP contracts.

- A. There is regulatory authority in 24 CFR §§ 880.205(e), 881.205(e), and 883.306(e).

³The regulatory schemes codified in 24 C.F.R. §§ 880.104(a), 881.104(a), and 883.105(a) establish the universe of projects to which the applicable new regulation applies. As noted in footnote #1, however, Section 202/8 projects that are subject to a new regulation Section 8 HAP contract (i.e., one that permits HUD or a State Housing Agency to require that excess project funds be deposited into an interest-bearing account to be used to reduce housing assistance payments or for other project purposes) are also part of this universe, despite the absence of a regulation in 24 C.F.R. Part 891 (formerly Part 885) that corresponds to 24 C.F.R. 880.205(e), 881 C.F.R. 881.205(e), or 883.306(e).

1. 24 CFR § 880.205(e): If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution[s], HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.
 2. 24 CFR § 881.205(e): If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution[s], HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.
 3. 24 CFR § 883.306(e): If the Housing Finance Agency (HFA) determines at any time that surplus project funds are more than the amount needed for project operations, reserve requirements and permitted distributions, the HFA may require the excess to be placed in a separate account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess project funds must be remitted to HUD.
- B. There is corresponding authority in the HAP contracts for new regulation Part 880, Part 881, Part 883 projects, and for Section 202/8 projects that are subject to a new regulation Section 8 HAP contract (i.e., usually in section 2.6 of such contracts). The contract provisions are typically phrased as follows: “Withdrawals from this [residual receipts] account will be made only with the approval of HUD [for Part 883 projects of the HFA] and for project purposes, including the reduction of housing assistance payments.”

V. Programmatic Summary

- A. To the extent that Residual Receipts are available at a new regulation project, Owners are allowed an initial reserve (“Retained Balance”) in an amount equivalent to \$250 per unit to use for project purposes. HUD will consider approving requests for releases from the account in accordance with the outstanding procedures found in HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, Chapter 25, “Residual Receipts,” paragraph 25-9.
- B. To the extent Residual Receipts are available at a new regulation project, Owners may use Residual Receipts to fund a Service Coordinator program, subject to HUD approval. The \$250 per unit Retained Balance is net of the Residual Receipts necessary to fund a Service Coordinator program. That is, Residual Receipts funds in excess of the Retained Balance may be used to fund a Service Coordinator Program prior to offsetting Section 8 HAP payments.

- C. Residual Receipts account balances in excess of \$250 per unit must be applied on a monthly basis to offset Section 8 HAP payments up to the full amount of the monthly subsidy request, depending upon the amount of Residual Receipts available for the offset. Monthly offsets must continue until the Residual Receipts account reaches the Retained Balance level of \$250 per unit.
- D. Owners must follow the instructions in Section VI to voucher for offset of Section 8 HAP payments.
- E. Owners of projects with Residual Receipts account balances at or below the Retained Balance shall voucher for full monthly HAP payments through the Tenant Rental Assistance Certification System (TRACS) in accordance with existing procedures.
- F. At the end of the project's fiscal year, all surplus cash remaining after payment of any permissible distributions must be deposited into the project's Residual Receipts account.
- G. If, after all Residual Receipts have been applied to offset Section 8 HAP payments and the Residual Receipts account balance again exceeds the Retained Balance level of \$250 per unit due to an annual deposit of surplus cash, offsets of Section 8 HAP payments must be re-initiated.

VI. Owner Requirements

- A. In order to accomplish the Offset Process, project Owners must submit a miscellaneous payment request through the Contract Administrator along with their electronic monthly HAP voucher. The request must include: (a) the amount of the offset, expressed as a negative amount and (b) the text phrase "RR OFFSET" in the comment field, along with the actual offset amount inserted.⁴
 - 1. The miscellaneous payment request must be sent to "Field Office Initiated Accounting Adjustment," with a code of "FORQ." TRACS will automatically deduct the offset amount from the total voucher amount approved, thus assuring that the proper amount will be paid via TRACS.
 - 2. When making the miscellaneous payment request, Owners must simultaneously submit form HUD-9250, *Funds Authorizations for Use of Reserve for Replacement or Residual Receipts*, to the HUD Field Office as documentation of the offset.
 - 3. Incomplete submissions will delay processing. Field Offices will return incomplete submissions to Owners with a letter detailing the deficiencies.

⁴ For example, if the project is using \$1,000.00 of Residual Receipts each month, the entry would be: "RR OFFSET- \$1,000.00."

- B. Owners shall submit Annual Financial Statements, which include surplus cash computation sheets, in the form and to the entity currently required by the Department, within 90 days of the end of the annual fiscal period. Owners who are not required to file annual financial statements shall submit a year-end certified statement to their local HUD Office, providing total disbursements as well as the beginning and year-end balance in the Residual Receipts account.
- C. At the end of the project's fiscal year, all surplus cash remaining after payment of any permissible distributions must be deposited into the project's Residual Receipts account and shall be used to offset Section 8 HAP payments based on the requirements and procedures established in this Notice.

VII. Hub/Program Center Responsibilities

A. Owner Submissions of HUD-9250

- 1. Hub/PC staff shall date-stamp Owners' submissions upon receipt and process them within 10 business days.
- 2. Hub/PC staff shall return incomplete submissions to Owners immediately with a formal letter listing the deficiencies in the submission.

B. Reviews and Approvals

- 1. Prior to the first required offset of Residual Receipts, the Hub/PC shall notify the PBCA or TCA at least 45 days in advance of the proposed effective date of the offset. The effective date of the offset will be the first day of the month which follows the conclusion of the 45-day notification period.
 - a. Example #1: If the Hub/PC notifies the PBCA or TCA that HUD has directed the offset on June 15th, the offset will be made effective on August 1st.
 - b. Example #2: If notification of offset is given on May 1st the offset may be made effective on July 1st.
- 2. The Field Office Project Manager shall review and assure that the offset amount is correct, and notify the PBCA regarding the amount of the offset.
- 3. The Hub/PC Director or designee shall sign the request.
- 4. The Hub/PC shall maintain copies of all approved releases in accordance with the document retention regulations (HB 2225.6 – HUD Records Disposition Schedules, Appendix 10).
- 5. The Hub/PC shall submit form HUD-9250 authorizing releases to the

project's Contract Administrator (if appropriate) and to the mortgagee or, in the case of a Section 202/8 project, to the private bank that maintains the project's Residual Receipts account.

C. Monitoring

The Hub/Program Center shall:

1. Keep track of the remaining balance in the Residual Receipts account available for offsetting Section 8 HAP payments.
2. Ensure that Owners are using Residual Receipts to offset Section 8 HAP payments when the account is in excess of the Retained Balance.
3. For those for which they are responsible, review Owners' annual financial statements to assure proper accounting of withdrawals from the Residual Receipts account.
4. After each release, enter comments into the "Servicing" screen of the Integrated Real Estate Management System (iREMS) stating the:
 - Date approval was given to use Residual Receipts to offset Section 8 HAP payments, and
 - Amount approved.

(See Attachment #1 for example.)

VIII. Headquarters Responsibilities

The Office of Asset Management shall process Owners' appeals of decisions that cannot be resolved at the Hub or Program Center level. Owners must submit a letter describing the issue, along with supporting documentation, to the Hub or Program Center. The Hub in turn, will forward the Owner's appeal to the Director of Asset Management for response.

If you have questions, please contact the Project Manager in the Hub/Program Center with jurisdiction over the subject project or the Desk Officer in the Office of Asset Management, Headquarters.

Carol J. Galante
Acting Assistant Secretary for Housing –
Federal Housing Commissioner

Attachment #1

“Servicing” Screen of the Integrated Real Estate Management System (iREMS)

The screenshot displays the 'Servicing' screen of the iREMS. On the left is a vertical navigation menu with the following items: Portfolio/Dashboard, DEC Referrals, DEC Report & Narratives, Financial Statements, Financing, Management Reviews, Occupancy, Physical Inspections, Property Attributes, Property Participants, Risk Management, Servicing (highlighted), Summaries, Workload Management, Security Administration, DEC Portfolio Reviews, DEC Workload Queues, Secure Systems, and Logout. The main content area features a top navigation bar with buttons for 'Associations to Property', 'Reserve Tracking', 'Use Restriction List', 'IRP List', and 'Other Public Subsidies List'. Below this is the title 'Request for Release of Funds Detail - Add'. The form contains the following fields: 'Type of Request' (Residual Receipts), 'Date Received' (05/29/2012), 'Amount Requested' (12560), 'Date Approved' (06/01/2012), and 'Amount Approved' (12560). A 'Comments' section contains the text: 'Releasing Residual Receipts to offset the June 2012 Section 8 voucher.'