

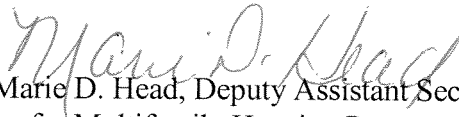


OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OCT 2 - 2012

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Multifamily Directors of Project Management

FROM: 
Marie D. Head, Deputy Assistant Secretary
for Multifamily Housing Programs, HT

SUBJECT: Clarifications of Housing Notice H 2012-14,
Use of "New Regulation" Section 8 Housing Assistance Payments
(HAP) Contracts Residual Receipts to Offset Project-Based Section 8
Housing Assistance Payments

On August 3, 2012, the Department issued Notice H-2012-14, Use of "New Regulation" Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts to Offset Project-Based Section 8 Housing Assistance Payments. The Notice sets forth the policies 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.

This memorandum responds to requests from Hub/Program Centers and industry partners to clarify certain provisions of this Notice. We have developed a Frequently Asked Questions (FAQ) document (attached) to provide clarification and address questions that have been submitted to Headquarters. As we are aware that your staff is currently processing residual receipts to offset housing assistance payments, it is imperative that you review the FAQ document with your staff as soon as possible.

We will also be posting the FAQ document on Multifamily's website for our industry partners at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh.

Due to the high volume of questions received on this topic, until further notice, any further questions must be submitted by Hub Directors by e-mail to Eric Ramsey, Director of the Policy and Participation Standards Division, at: Eric.Ramsey@hud.gov.

Thank you for your cooperation in this matter.

Attachment

Housing Notice H-2012-14

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

Frequently Asked Questions

October 1, 2012

Table of Contents

Applicability	3
Calculating Balance in Residual Receipts Account	4
Effective Date	6
Financial Statement Accounting	7
Flexible Subsidy	9
Grants	10
Mark-to-Market (M2M)	11
Miscellaneous	12
Offset Amount	13
Processing Steps	15
Refinancing	19
Retained Balance	20
Risk Sharing	22
Section 202 Projects	23
Service Coordinators	25
Vouchers and Form HUD-9250	26
Waivers	29

Applicability

1. I was on Friday's conference call regarding the highlights of the HUD Notice H-2012-14. Originally, I thought the notice would only apply to Section 8 New Construction, Substantial Rehabilitation projects, as well as, 202 Direct Loan and new regulation Section 8 HAP contracts. Since the call, our office received an email stating that the only excluded properties are the PRACs/PACS. After reading 24 CFR 880.205, 881.205, and 883.306, I did not interpret that this would apply the LMSA and Property Disposition projects. Is this correct?

Answer: The Notice does not pertain to projects with LMSA or PD Section 8 HAP contracts or to projects with PAC and PRAC contracts.

2. Reading the Notice, it appears that this just applies to non-profits and to Limited Distribution projects, but not to our profit-motivated properties since they are not restricted as to distributions – is this correct?

Answer: The Notice pertains to projects that are required to maintain a residual receipts account.

3. If a project should be subject to the revised Section 8 regulations per the AHAP dates, but the actual HAP Contract that was used was not the revised Section 8 contract, then are we to apply the procedures in Notice 2012-14? We have some projects where the HAP Contract that was used does not include the language regarding residual receipts being used for the reduction of HAP Payments or the language that the Residual Receipts comes back to HUD upon termination of the HAP Contract.

Answer: Yes. The date of the Agreement to Enter into a Housing Assistance Payments Contract (AHAP) prevails.

4. If the HAP contract does not include the language referenced in the Notice, is it safe to assume that the OA is not subject to these requirements?

Answer: No. The date of the AHAP prevails.

Calculating the Balance in Residual Receipts Account

1. You mention clarifying who will do the calculations for excess Residuals, we agree this is unclear. It doesn't list it as an owner responsibility, but not sure if it's implied that we have to do this to determine in order to do misc. payment request & 9250 submission?

Answer: The owner and HUD Project Manager must work together to determine the available balance in the residual receipts account and the amount that must be offset monthly until the account balance reaches the \$250 per unit retained balance.

2. Section VII. B. of the notice that states "prior to the first required offset of Residual Receipts, the HUD/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." Does that mean HUD is determining which accounts have excess funds (i.e., doing the calculations) and are we to await notification from HUD or the PBCA before submitting our first offset per the above?

Answer: As noted above, the owner and the HUD Project Manager must work together to determine amounts required to offset.

3. Can the local HUD Office provide a list of potential properties currently in our portfolio with residual receipts in excess of the allowed amounts?

Answer: The local HUD office cannot provide that information. Residual Receipts account balances are reported to HUD on the owner's annual financial statement submission and that amount may or may not reflect current account balances. Therefore, the owner and the HUD Project Manager must work together to verify current account balances and determine the amount required to offset.

4. With respect to the calculation of the retained balance under 2012-14, is the \$250 per unit applied to the number of units under the Section 8 contract or the number of units in the project?

Answer: It is applied to all of the revenue-producing units in the project.

5. Paragraph VII, C, requires the Hub/Program Center to keep track of the remaining balance in the residual receipts account. Does this have to be done monthly, for example, by requiring the property to submit Monthly Accounting Reports? Or can it be done yearly, using the annual financial statement?

Answer: The balance must be monitored monthly, but the submission of Monthly Accounting Reports is not necessary to track the balance. The balance can be tracked based upon the account balance at the time offsets begin, less monthly offsets and any other releases approved by HUD, such as service coordinator funds.

6. If the property is partially subsidized and the subsidy is “moveable” does the OA count the total number of units or only the number of units covered by the Section 8 contract? There is legal interpretation posted on your web site saying this could be an issue. For example: Property has a combination of 236 and Section 8 contracts. 100 units are covered under the 236 contract and, of those 100 units, 80 are also covered by the Section 8 contract. Do owner/agents count 100 units or 80 units?

Answer: Since the retained balance pertains to all of the units in the building, the owner/agent counts 100 units.

7. According to HUD Handbook 4366.2, Chapter 3, Lenders may charge a fee for managing the investment account in which Residual Receipts are deposited. Is this fee to be used to reduce the balance in the Residual Receipts account before calculating the Retained Balance?

Answer: The fee may not be used to reduce the balance in the Residual Receipts account before calculating the Retained Balance. It must be taken from the Retained Balance.

Effective Date

1. HUD says this is effective 60 days from the date of the notice but isn't the real effective data 45 days after HUD notifies the PBCA?

Answer: For issue date, Section III. in the Notice states that the Notice is effective with vouchers submitted 60 days after issuance of this Notice. The Notice was issued August 3, 2012. For implementation timeframes, Section VII.B.1. indicates that the Hub/PC will notify the CA at least 45 days in advance of the proposed effective date of the offset. Therefore, the first required RR offset will occur with the November 2012 vouchers.

2. The Notice says that HUD will alert owners/agents (OAs) 45 days in advance of how much the offset should be, since we are 58 days out, this will be within the next two weeks?

Answer: HUD should be notifying OAs prior to the end of September 2012 of the new regulation to offset HAP vouchers with residual receipts funds. Hubs/PCs may refer to the sample email sent to OAs by the San Francisco Hub.

3. According to the notice, this process will be implemented 60 days from the date of the notice. Does this mean that we will start receiving 9250's from HUD by October 2012 with the implementation being in December for January 2013 voucher? If not, what will be the earliest possible voucher where residual receipts will be used to offset HAP amounts?

Answer: Please see the response to question #1. The earliest voucher where the RR offset will be used to offset HAP will be on the November 2012 vouchers.

4. Are we in the field supposed to wait for the FAQs before we take any further action in connection with the Notice?

Answer: No. Hubs/PCs are to begin implementing the new residual receipts policy.

Financial Statement Accounting

1. Should the amounts approved to be withdrawn for subsidy be included on the SEFA (reporting of Federal Awards)?

Answer: No. It should not be reported on the Schedule of Expenditures of Federal Awards because it is not a new federal award. The residual receipts offset would have already been reported in prior years.

2. Should this amount be included on the supplemental schedule to the income statement as withdrawals expensed?

Answer: Yes. It would be shown on the Schedule of Residual Receipts as a withdrawal.

3. The offset is just a transfer of cash from residual receipts accounts to operating cash and not income to the property, how should the property record the subsidy income on its books and include such amount on its audited financial statements to be submitted to HUD electronically. The transfer will appear as a residual receipts account release on the statement of cash flow. If the owner records the subsidy to its HUD receivable account for subsidy payments this account will be overstated since it will not ever be reduced and the auditors may want to record a write to the income statement. I do not think this qualifies as a bad debt write off. Since the owner is not due the money for the subsidy offset which will not be paid by HUD, I do not think they will be able to record such amounts as income. This could cause havoc with the investment community and investors when making analysis and comparison of financial operating data or REAC analysis within HUD because if the subsidy is not recorded the property will appear to not have enough operating income to sustain operations. If the subsidy is recorded in the subsidy account within the income statement within operations, it is possible that an adjustment could be recorded through another income/ expense item or possibly record it as an adjustment in the owner's equity statement.

Answer: The Residual Receipts Account Offset should be reported as follows:

(1) On the Balance Sheet, there should be a credit to the Residual Receipts Account with an offsetting debit to Cash Operations (account 1120). (2) The release from the Residual Receipts Account would also appear on the Statement of Cash Flows as a source of operating cash (credit) in account S1200-260 – Net Deposits to Residual Receipts. In addition, (3) limited dividend owners should report the residual receipts offset in the Statement of Owner's Equity in account S1100-020 – Other Changes in Equity. This would allow the submitter to provide a detailed description of the

transaction. It would also completely remove the transaction from the Statement of Profit and Loss. Not-for-Profit submitters would need to report the offset in account S1100-065 – Other Changes in Unrestricted Net Assets.

4. I've spoken to two of our auditors, and we believe that the misc accounting request (use of residual for HAP payment) should be coded to 6250- Other rent expenses. Is this what HUD desires, or are there alternate instructions for recording this offset to revenue on the financial statements?

Answer: No. It's not new funds or an additional award coming into the property.

5. Is this an obligation that should be reported? For example, should we record the entire amount (RR -\$250/unit - SC approved) as expense and deferred revenue?

Answer: No. It's not new funds or an additional award coming into the property.

6. Will money used from residuals be allowed to be counted as "rents collected" for purposes of management fee calculation?

Answer: It would not be considered "rents collected." Instead, it would be considered a release from the residual receipts account to offset the Section 8 subsidy. Since the Department is authorizing the release to offset the Section 8 subsidy, a management fee may be collected on the funds released for that purpose. However, the owner should detail the transaction in the Notes to the Financial Statement under management fee.

Flexible Subsidy

- I. Notice H 2011-05 (extended by Notice H 2012-04) requires all Residual Receipts to be applied to the Flexible Subsidy Loan balance at the time of closing the project refinancing or sale. It would be prudent to retain adequate RR funds to reduce/payoff the Flexible Subsidy balance on loans that are now or will soon be due rather than offset the HAP.

Answer: Offsets must begin for all projects covered under the Notice with existing Residual Receipts accounts in excess of the \$250 per unit Retained Balance, irrespective of whether they have an outstanding Flexible Subsidy Loan.

Grants

1. In situations where we have HUD grants that use Residuals for all or part of a year's funding - Can HUD staff be required to put in writing all current approvals we have for Service Coordination funding using Residuals?

Answer: All requests and approvals for use of Residual Receipts must be documented by both the project owner and the HUD Project Manager.

Mark-to-Market

1. OAHP monitors properties that were refinanced under the mark-to-market program. Do we need to confer with OAHP on the use of the residual receipt account as called for by Notice H-2012-14?

Answer: Projects that have undergone a Mark-to-Market restructuring typically use all surplus cash to repay HUD note or notes and to pay Capital Recovery payments. The business agreements executed in conjunction with the Mark-to-Market restructuring must be reviewed by the HUD Project Manager to determine whether any residual receipts are accrued at the project and whether the balance exceeds \$250 per unit and is subject to offset.

Miscellaneous

1. Similarly how will HUD treat RR eligible items that have already accrued such as owner advances or operating deficits?

Answer: Items that have accrued will be paid from the Retained Balance.

2. Timing of approvals for withdraws from Residual Receipts for purposes of paying HAP (owners don't want delays, because this is required by HUD, the approval should be considered automatic). In other words, the funding from HAP and from Residuals should be simultaneous.

Answer: Yes, the release from residual receipts must be timed in order for the funds to be received by the owner simultaneously with the assistance payment.

Offset Amount

1. If a property has \$100,000 in residual receipts over \$250/tenant and monthly HAP of \$20,000, should the FORQ offset be \$20,000? In other words, is the goal to recapture the RR funds as promptly as possible?

Answer: If there is a 202 property mortgage offset, the FORQ offset would not be \$20,000. There must be remaining money on the voucher to pay the 202 mortgage offset and if there is not sufficient funds, then the RR offset must be adjusted accordingly.

2. If a property has \$100,000 in residual receipts over \$250/tenant and monthly HAP of \$20,000, and enters no FORQ or a FORQ of \$10,000, does the CA have authority to adjust the FORQ to \$20,000?

Answer: The CA may adjust the FORQ if the owner forgets to enter the FORQ amount on the voucher and if the CA makes voucher adjustments based on their voucher review. Also see response to question #1.

3. If a property doesn't submit their voucher with the RR Offset do we have the right to revise the voucher based on the approved amount provided by HUD?

Answer: Yes. See response to question #2.

4. Once the process starts, will the approved offsets be communicated to the PBCA by each HUD project manager or a single contact for the HUD office including approvals for all properties?

Answer: Each HUD office may have a variation on how they will communicate with the PBCA regarding the approved RR offsets. The PBCA should check with their CAOM on how the process will be handled.

5. We have several properties that have requested to use Residual Receipts in lieu of a rent increase. If the amount of the rent increase exceeds \$250/unit, is that the maximum offset we can approve? Maybe I'm not saying it correctly. Before the whole New Reg blow-up, we used to tell properties they couldn't have a rent increase if they had a significant amount of Residual Receipts even if the rent computation calculation supported the need for an increase. So what we'd do is make them take the amount of the rent increase (say it was an increase of \$10,000 annually) out of the RR (using a 9250) and those funds would be used in place of an actual increase in rents. Under the new Notice, it almost sounded like we would process a rent increase and approve it if the numbers supported one, and then use the RR funds in place of the amount of the monthly Section 8 --instead of allowing the project to voucher for Section 8, down to the

\$250/unit floor. It would be easier to just use the RR in place of the amount of the rent increase – but I don't think that's what the Notice says.

Answer: In instances where local offices are already using residual receipts to reduce rent increases, this practice may be continued in addition to the offset process required by the Notice until the account reaches the \$250 per unit balance.

Processing Steps

1. Also, can you provide a detailed example, from beginning to end, of how this process will be conducted?

Answer: The Housing Notice provides a general outline of the process, which provides flexibility for individual Hubs to implement the requirements of the Notice most efficiently in their jurisdictions. As an example, the San Francisco Hub developed the following guide for use in their jurisdiction. The San Francisco guide describes in detail how offsets can be implemented locally and may serve as a model for other Hubs.

San Francisco Multifamily Hub Guide for Paying HAP with Residual Receipts Funds

- *The HUD Project Manager (PM) and the Owner/Agent (O/A) will agree on the following: (Reference sample email from HUD to OA on page 17)*
 - *the property's current residual receipts (RR) balance (this may be the amount entered on the last annual financial statement)*
 - *the amount of the RR balance, if any, that is allocated for service coordinator expenses*
 - *the number of units under contract*
 - *the amount of the RR balance that will be reserved for the units (at \$250 per unit)*
 - *the amount of the RR balance that is available to offset vouchers*
 - *If the property has a 202 direct loan, the PM and O/A will also agree on the amount of the 202 offset, if any*
- *The PM will notify the Contract Administrator (CA) of the total dollar amount in a property's RR account that is available to offset vouchers and the amount of the 202 offset, if any.*
- *Each month the O/A will create a FORQ request for the total amount of the RR offset to be recaptured on the voucher for that month. The FORQ request will be a negative amount and will have "RR OFFSET" in the comment section. (When making an RR offset, the O/A of a property with a 202 direct loan must first leave enough money on the voucher to pay the mortgage (the 202 offset). The O/A will then transmit the voucher to the CA.*

- *The CA will make its normal adjustments to the voucher before applying the RR offset. These adjustments may require the CA to adjust the FORQ amount. (If the CA must adjust the FORQ amount, the CA must leave 202 properties with enough money on the voucher to pay its mortgage (the 202 offset). Example: If the adjusted voucher amount is \$28,000 and the 202 offset amount is \$10,000 (rounding upward to the nearest dollar), only \$18,000 is available to be offset by RR funds. If the O/A has created an FORQ request for greater than \$18,000, the CA must reduce it to \$18,000.)*
- *The CA will notify the O/A of any adjustments to the voucher and give the O/A opportunity to rectify any deficiencies (for example, by transmitting any missing 50059s or by correcting any incorrect 50059s).*
- *After reconciling the voucher, the CA will inform the HUD PM via email of the exact amount of the RR offset.*
- *The HUD PM will prepare a HUD-9250 for the lender and for the O/A. (The HUD-9250 should be created and saved electronically so that the PM need only input the monthly dollar amount and then print the form for signing by the Hub/PC Director.)*
- *The HUD PM will enter the date and amount approved on the Reserve Tracking screen of iREMS.*
- *The PM, the CA, and the O/A will track the total amount(s) withdrawn from a property's Residual Receipts account and the amount that is currently available to offset future vouchers (assuming no deposits to the account).*
- *When the funds available in the RR account that are available to offset vouchers are less than the vouchered amount, the O/A will create a FORQ request for the dollar amount needed to reduce the account to authorized levels.*
 - *Example: If the property's voucher is for \$25,000 and the property has only \$5,000 available from the Residual Receipts account to offset vouchers, the property will submit the voucher with a \$5,000 FORQ request with a comment of "RR OFFSET". If the CA makes no adjustments to the voucher, the property will be paid \$20,000 (\$25,000 less the \$5,000 RR offset) by the US Treasury.*

Notes:

- *If the O/A forgets to enter a FORQ request on the voucher, the CA will make a manual adjustment to the voucher using the RR balance given by the HUD PM and as reduced by prior RR offsets.*

- *The CA will transmit all vouchers to TRACS even if the amount to be paid to the property is zero.*
- *Form HUD-9250 will be prepared each month instead of one Form HUD-9250 for the entire RR balance.*

Sample email sent to O/As to verify the information requested from HUD
RE: Processing Step #1 of SF Guide (6 sub-bullets)

From: Name of HUD PM

Sent:

To: Owner/Agent

Cc: Subject: Residual Receipt Offset

Dear (name of Owner),

HUD Multifamily Housing has issued Housing Notice H2012-14 (attached) with the intent of using your Project's Residual Receipts to offset the payment of your monthly HAP voucher(s). Also attached is the guidance on Paying HAP with Residual Receipt Funds the (name of MF Hub) will be following to implement the Housing Notice. The process is a collaborative effort between the Property Owner/Agent, HUD, and the Performance-Based Contract Administrator (PBCA) assigned to your property.

The latest Annual Financial Statement for your property shows a Residual Receipt Balance as follows:

(NOTE: The data below should be entered from iREMS prior to sending the email to O/A as the intent to have the O/A verify the data and provide corrections if needed)

Staff Person:

Contract Number:

Property Name:

Section 8 Rule:

Residual Receipt Balance:

AFS Date:

Burn Rate:

Assisted Units:

RR Balance per Unit:

Months of RR:

Please confirm the information as shown above and as outlined in the first bullet of the Residual Receipt Procedure and respond to this message within two days of this message. HUD wants to implement this process as soon as possible consistent with the normal voucher submittal, review, and processing by the PBCA.

Thank you very much for your support on this initiative.

*Name of HUD PM
Contact Information*

Refinancing

1. How will HUD treat RR funds that have already been committed as a source in a refinancing transaction?

Answer: For transactions where HUD had granted approval to use residual receipts accounts in a forthcoming refinancing, such approvals will remain in place.

2. Some of our projects have a preservation transaction in progress in which they are prepaying their mortgages and refinancing. As part of these deals, they are using residual receipts to rehabilitate their properties. How does Notice H 2012-14 apply to these transactions, in particular, transactions that are already in process?

Answer: See #1 above. If approval has been granted, it remains in place. All other requests for use of residual receipts accounts in transactions that were structured prior to Notice publication, but where formal HUD approval has not yet been granted must be sent to HUD HQ, Office of Asset Management, for approval. Any requests made subsequent to Notice publication must be denied.

Retained Balance

1. Is there a minimum increase or does HUD want OAs to adjust for any balances that exceed the Retained Balance plus one dollar?

Answer: All amounts over \$250 per unit must be used to offset assistance payments.

2. Is there a threshold balance after calculating the retained balance amount that would trigger the use of a residual receipt balance to offset HAP? In other words if after calculating the retained balance amount of \$250 per unit we are left with an available balance of say \$5.00, are we still required to submit a 9250 to release 5 dollars from the RR account to offset HAP?

Answer: All amounts over \$250 per unit must be used to offset assistance payments.

3. For developments with scheduled capital repairs, \$250 per unit is inadequate. If a Capital Needs Assessment has found that the Replacement Reserve Account balance is or will be insufficient to fund major capital repairs, the R/R account is the traditional source of needed funding. It has been HUD's practice to approve R/R disbursements under such circumstances. The Notice does not provide the CA, owner, mortgagee or local HUD office the flexibility to address this situation.

Answer: If approval was granted by the HUD field office for issuance of the Notice, it remains in place. All other requests for use of residual receipts accounts in transactions that were structured prior to Notice publication, but where formal HUD approval has not yet been granted must be sent to HUD HQ, Office of Asset Management, for approval. Any requests made subsequent to Notice publication must be denied.

4. If use of funds from the Residual Receipts account was previously approved for some other purpose, is the OA allowed to retain those funds in addition to the Retained Balance referenced in the Notice? For example: Previous 9250 approved for \$50,000.00. Retained Balance = \$75,000.00. OA Keeps \$125,000.00 in the Residual Receipts account and follows process for HAP OFFSET with the remaining balance.

Answer: Yes. If funds were previously approved for another purpose, the OA may retain those funds in addition to the \$250 per unit in the Retained Balance.

5. If the OA is experiencing issues associated with bed bugs, is the OA still allowed to request use of funds in the Residual Receipts account to eradicate bed bugs? If yes, is the request limited to the Retained Balance?

Answer: The funds to eradicate bed bugs must come from the Retained Balance, unless HUD field staff approved use of Residual Receipts prior to issuance of the Notice.,

6. If an owner/agent wishes to request to use funds in the Residual Receipts account to pay for other expenses and those expenses are expected to exceed the Retained Balance, is the owner/agent allowed to suspend the prescribed voucher process to offset the HAP while waiting for response from HUD regarding the new request?

Answer: No. The owner may not suspend the offset process while waiting for a response from HUD.

7. If the OA scored poorly on the most recent REAC, should the OA consider use of the monies in the Residual Receipts account, as appropriate, before calculating the retained balance?

Answer: No. The OA must receive written approval from the HUD field office prior to considering use of monies in the Residual Receipts account.

8. What if the OA/HUD has executed a Residual Receipts Note?

Answer: Payments on the Residual Receipts Note must come from the Retained Balance.

Risk Sharing

Please advise how the new “new regulation” residual receipt HAP contract funding process will work for properties that have HAP contracts and “Risk Share” financing? Will “Risk Share” properties be exempted from this process? Currently, it is our understanding that requirements of the “Risk Share” program state that the HFA shall have full responsibility for administration, managing, and servicing of the “Risk Share” program with the exception of the items retained by HUD per 24 CFR 266.210 and 266.225(e). It is our understanding that reviewing residual receipts is not listed as one of those items retained by HUD.

Answer: Projects that are insured under the Risk Sharing Program that also have a Section 8 contract covered under the Notice must commence offsets and the HUD Project Manager assigned to the project must work with the owner to implement the requirement of the Notice. The underlying financing (eg, Risk Sharing) does not exempt a project.

Section 202 Projects

1. I've already received an inquiry from an owner who prepaid on 01-27-2010 the Section 202 mortgage in accordance with Notice H2002-16 (HUD). The main question is does Notice 2012-14 supersede the 202 prepayment notice?

Answer: Notice 2012-14 does not supersede Notice 2002-16. However, Section 202 projects must commence offsets according to the requirements in 2012-14.

Instructions for use of Residual Receipts contained in Section 202 refinancing Notices would be followed at the time of project refinancing. That is, Section 202 projects may not refrain from offsetting in anticipation of refinancing.

2. I had heard that the \$500/unit is a statutory requirement and during the last HQ conference call HQ acknowledged this during the discussion of the ECRP; however, this is the only direct mention I found doing a search in Google: Page 2 of Housing Notice H 94-5 (attached):

Uses of Residual Receipts Authorized By Section 602(e) of the Housing and Community Development Act of 1992. Section 602(e) of the Housing and Community Development Act of 1992 amended section 202(j) of the Housing Act of 1959 to authorize the owner of a section 202 project to use any Residual Receipts held for the project in excess of \$500 per unit (or in excess of such other amount prescribed by the Secretary based on the needs of the project) for activities under sections 802(d)(4) and 802(k), as described above.

Answer: Notice 2012-14 does not supersede any Section 202 refinancing instructions. However, Section 202 projects must commence offsets according to the requirements in 2012-14. Instruction for use of residual receipts contained in Section 202 refinancing Notices would be followed at the time of project refinancing. That is, Section 202 projects may not refrain from offsetting in anticipation of refinancing.

3. Is HUD going to provide OAs with information regarding how to make the mortgage payment? For certain programs, like the 202/8, this is taken care of as part of the HAP payment process from HUD. This process will have to be adjusted to allow for the OA to make the payment.

Answer: Answer: If the property has a 202 direct loan, the HUD Project Manager and O/A will also agree on the amount of the 202 offset, if any. The PM will notify the Contract Administrator (CA) of the total dollar amount in a property's RR account that is available to offset vouchers and the amount of the 202 offset, if any. When making an RR offset, the O/A of a property with a 202 direct loan must leave enough money on

the voucher to pay the mortgage (the 202 offset). For example: If the voucher amount is \$28,000 and the 202 mortgage offset amount is \$10,000, only \$18,000 is available to be offset by RR funds. If the O/A has created an FORQ request for greater than \$18,000, the CA must reduce it to \$18,000.

Service Coordinators

1. Paragraph V, B, states that Owners may use Residual Receipts to fund a Service Coordinator program. Are we correct in assuming that this apply to properties without Service Coordinator Grants? Or does it mean that properties with Service Coordinator Grants should use residual receipts in lieu of grant money?

Answer: Service Coordinator programs that are now funded from residual receipts may continue to use Residual Receipts to fund those programs. Service Coordinator programs that are funded with Grants also continue under that funding stream and Residual Receipts are used to offset assistance payments according to the requirements of the Notice.

2. Re: service coordinators, there is concern that projects can't properly plan, perhaps some funds for service coordinators can be set aside or a year's worth of such funding reserved?

Answer: In order to facilitate owners' ability to plan for Service Coordinator funding, one year of required service coordinator funding may be allocated for this purpose. The funding required for one year of Service Coordinator activities should be subtracted from the residual receipts balance prior to determining whether the retained balance level of \$250 per unit has been reached.

3. A particular concern, will HUD approve residual receipt usage beyond current (existing) one-year agreements? Will they continue to be supportive of building SCs into project budgets (if they have previously been grant funded)?

Answer: Residual Receipts may continue to be used to fund Service Coordinators for one year terms after expiration of any existing one year agreements. HUD will continue to permit Service Coordinators to be funded from project budget in accordance with outstanding instructions.

4. If we have approval to fund SC through residuals, are we at risk of losing this after approval period, how do we keep those funds from being used that are needed for future years SC?

Answer: Residual Receipts may continue to be used to fund Service Coordinators for one year terms after expiration of any existing one year agreements. HUD will continue to permit Service Coordinators to be funded from project budget in accordance with outstanding instructions.

Vouchers and Form 9250

1. If the O/A places a FORQ on the voucher but HUD has not yet approved the 9250, does the PBCA: a) Hold the voucher, b) match the adjustment, or c) write it off?

Answer: The Hub/PC staff must date-stamp Owners' submissions upon receipt and must process the HUD-9250 within 10 business days which provides adequate time for the voucher to be processed as usual.

2. What if the O/A does not place a FORQ on the voucher, but the PBCA receives the notice from HUD instructing us to begin the offset?

Answer: If the owner does not place a FORQ on the voucher, HUD may instruct the PBCA to adjust the voucher with an RR offset.

3. If the O/A misses one month FORQ on the voucher, does the PBCA double the adjustments the following month?

Answer: No. As stated in response to #2 above, if the owner forgets to place a FORQ on the voucher, the PBCA should make the RR offset on the voucher.

4. Paragraph VII, B.5., states that the Hub/PC shall submit form HUD-9250 to the project's Contract Administrator but doesn't explain how the Contract Administrator is supposed to handle it. Are we right in assuming that any negative adjustments that the Contract Administrator may have from previous months' voucher are to be applied to the voucher **after** the residual receipt offset? (If the adjustments are made **before** the residual receipt offset, there may not be enough money left to satisfy the offset, and so the amount of the offset that was entered and approved on form HUD-9250 and entered in TRACS would be incorrect.)

Answer: The actual process may vary among HUD offices; however, the important point to keep in mind is that the RR offset must be made after the CA makes its normal adjustments to the voucher and the CA must ensure enough money is left on the voucher to pay the 202 property mortgage offset.

5. How are the offsets that exist on the current vouchers going to be handled? When we send a voucher to TRACS, HUD sends a payment amount back that is the voucher amount – the mortgage amount. If we send the voucher as \$0 to TRACS how will the mortgages be applied?

Answer: Enough money must remain on the voucher, to include the RR offset, in order to pay a property with a 202 direct loan. Also see answer to #4.

6. Because the owner's voucher request will likely be higher or lower than the amount approved by the CA, the owner will receive an incorrect amount from the R/R. Current CA, owner and HUD Accounting system software does not incorporate this additional variable. Further, it appears that the mortgagee will send the entire offset amount to the owner without regard to the voucher amount approved by the CA. As noted above, this amount may be higher than necessary, i.e. \$50,000 approved offset vs. \$40,000 approved voucher payment. Who is responsible for accounting and tracking these surplus funds? There is no provision in the Notice to do so.

Answer: HUD, the CA and OA are responsible for tracking the Residual Receipts account balance and withdrawn amounts. CAs should refer to their respective HUD office for specific processes and procedures in place.

7. Is there a way to submit an electronic version of the 9250 with a "read receipt" to ensure that it was received?

Answer: No. OA may, however, scan the 9250, submit it by email, and later mail a hardcopy with a wet signature.

8. Is HUD allowing for the change in the mortgage payment process since HUD will no longer be handling the disbursement of the HAP to the mortgagee?

Answer: The policy and procedures of the Notice for Residual Receipts to offset HAPs will not change the mortgage payment process. Also see the response to questions #5 in this section regarding Section 202 projects.

9. What happens when the CA adjusts the HAP and the new HAP amount is less than or greater than the original HAP request? If HUD 9250 is submitted at the same time, the amounts will not balance.

Answer: Refer to "Offset Amount" section question #2. Also refer to the San Francisco Guide processing procedures. The HUD PM will prepare the form HUD-9250 based on the exact amount of the RR offset provided by the C once they have completed their voucher review.

10. Are there any timing differences depending on whether a PBCA, Traditional CA or HUD is the voucher reviewer?

Answer: No.

11. What happens if a CA or HUD fails to respond timely per the notice?

Answer: Owners and CAs are required to comply with the requirements of the Notice. Their failure to comply may result in late or interrupted HAP payments.

Waivers

1. Is there any ability for owners to request waiver of the \$250 retention amount (maybe there is a scheduled major repair, new roof, etc?)

Answer: If approval to use Residual Receipts for a specific purpose has been granted, it remains in place. All other requests for use of Residual Receipts accounts for purposes that were in the planning stage prior to Notice publication, but where formal HUD approval has not yet been granted, must be sent to HUD HQ, Office of Asset Management for approval. Any requests made subsequent to Notice publication to use Residual Receipts above the Retained Balance for any purpose other than Service Coordinator funding or to offset assistance payments must be denied.