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Special Attention of:

**Office of Affordable Housing Preservation  
All Multifamily Hub Directors  
All Multifamily Program Center Directors  
All Multifamily Mortgagors  
All Multifamily Mortgagees  
All States Agencies**

**Notice H 2013-25**

Issued: August 23, 2013

Expires: This notice remains in effect until amended, revoked, or superseded.

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Cross References: H 00-8; H 2011-31;

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**SUBJECT:** Updated Guidelines for Continuation of Interest Reduction Payments after Refinancing: "Decoupling," as allowed by the National Housing Act, under Section 236(e)(2).

**1. APPLICABILITY AND PURPOSE**

This Notice establishes updated procedures for the optional continuation of Interest Reduction Payment (IRP) assistance when projects assisted under Section 236 are refinanced. Under Section 236(e)(2) the IRP subsidy may continue provided the Owner enters into a new Agreement for IRP and Use Agreement to maintain the project as a low-income housing resource. For implementation of Section 236(e)(2), the Department has chosen to use the word, "Decoupling," to refer to continued IRP that may be paid after a project is refinanced because the IRP assistance is severed or "decoupled" from the original Section 236 mortgage.

This Notice supersedes Notice H 2000-08 except with regard to Section 236(b) transactions. The use of Section 236(b) has decreased significantly with the implementation of Section 236(e)(2) although statutorily that option remains available. Readers seeking guidance on Section 236(b) transactions should refer to Notice H 2000-08.

This Notice applies to multifamily projects currently receiving IRP pursuant to Section 236, including all projects with mortgages insured or held by HUD and all State Agency non-insured projects. This Notice does not apply to any former Section 236 project owned by HUD or sold by HUD from the HUD-owned inventory. This Notice is also applicable to Section 236 Basic and Market rent computations during the term of the Decoupling Use Agreement and allowable distributions during the term of the Agreement for IRP.

This Notice provides updated policy on requirements for Section 236(e)(2) Decouplings, including minor changes to the process for HUD reviews of such transactions. It also describes requirements related to the refinance of formerly Decoupled projects. Many Owners have completed Decouplings and are now seeking to refinance these Decoupled projects for the purpose of making additional project repairs or improvements. This Notice provides the necessary guidance for those types of transactions.

The Owner and property must be and remain in compliance with all current requirements, including Fair Housing, accessibility, marketing, occupancy, waiting list, physical and

financial requirements.

## 2. BACKGROUND

Section 532 of the Department of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000 (Public Law 106-74, approved October 20, 1999) (“Appropriations Act”) established Section 236(e)(2) of the National Housing Act (NHA) that authorized the Secretary, under certain terms and conditions, to continue the payment of IRP after the prepayment of a Section 236 mortgage.

Section 532 of this Appropriations Act states:

*"SECTION 532 SECTION 236 ASSISTANCE.*

*(a) CONTINUED RECEIPT OF SUBSIDIES UPON REFINANCING.- Section 236(e) of the National Housing Act (12 U.S.C. 1715z-1(e)) is amended-*

*A project for which interest reduction payments are made under this section and for which the mortgage on the project has been refinanced shall continue to receive the interest reduction payments under this section under the terms of the contract for such payments, but only if the project owner enters into such binding commitments as the Secretary may require (which shall be applicable to any subsequent owner) to ensure that the owner will continue to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the term for which such interest reduction payments are made plus an additional 5 years."*

## 3. GENERAL

- a. **IRP assistance may be suspended:** The Department considers continued IRP paid on behalf of the mortgagor, after the mortgage is refinanced, to be general project-based assistance that is conditioned upon the multifamily project Owner’s agreeing to meet certain restrictions. The Department reserves the right to suspend or terminate IRP assistance if the project Owner fails to meet the conditions of the IRP assistance. Mortgagees who underwrite new loans for these projects should be aware that the continuation of the IRP assistance is conditioned on the project being maintained as an affordable housing resource, pursuant to the conditions of the Department’s Decoupling Agreement for IRP and Use Agreement (Attachments).
- b. **Amount and term of the IRP assistance:** Under a Decoupling, the continuation of the IRP subsidy may not exceed the total amount that was established for the original Section 236 mortgage, either on a monthly or annual basis or for more than is remaining in the IRP account for the project. However, if the new IRP schedule provides for lower monthly payments than in the original IRP schedule, or if payments are suspended during the rehabilitation period, then the term of the new Agreement for IRP and IRP may be for a longer period than the original Agreement for IRP (i.e., if the new monthly schedule of payments is less than the old monthly payment, the total amount of remaining IRP subsidy would support a longer term of IRP than the original IRP schedule which would

be capped by the remaining amount of IRP subsidy that is obligated for the project). The extension of the IRP term through reduced monthly IRP would be at the option of the project Owner with HUD and the new Decoupling mortgagee's approval.

- c. **Low-income use period:** Based on statutory requirements, in return for the continuation of IRP assistance, an Owner must enter into a Use Agreement for the continued provision of low-income housing use at least 5 years beyond the term of the IRP assistance. If the IRP assistance is extended beyond the term of the existing (old) IRP term, because of lower monthly usage, then the 5-year extended use restriction period would commence at the expiration of the new IRP term.
- d. **Assistance paid to mortgagee:** By statute, IRP assistance is paid to mortgagees on behalf of mortgagors to assist in the debt service payments of the project. IRP are not and may not be paid directly to project Owners. The Department must ensure that IRP assistance is paid for projects that provide habitable, low-income housing; therefore, an acceptable public agency must provide the regulatory oversight of these projects. If there is no acceptable agency, then HUD will perform this function.
- e. **Basic structure of an after transaction Section 236 project:** In a Decoupling transaction, the Section 236 mortgage may be prepaid and the IRP subsidy will continue and may be used for debt service. Nonetheless, the original Section 236 requirements must be maintained for the establishment of Basic and Market Rent schedules, occupancy and habitability standards, income limits, financial reporting requirements and payment of any Excess Income to HUD. The Owner must demonstrate to HUD how the project will be financially feasible under the continued Section 236 regime.
- f. **Rent structure:** Projects must maintain the requirements of the Section 236 program after the completion of the Decoupling. Basic and Market Rent are mandatory rent payment standards for Section 236 units in Decoupling transactions. The Section 236 rents and the Section 8 rents may be different because of the differences in calculating rent increases for Basic Rents (which are based on a budget-based rent increase methodology only) and rent increase policies and procedures for Section 8 rent adjustments. The tenant may pay a rent below the Basic Rent only if a subsidy is paid on the tenant's behalf that ensures the Owner's receipt of the approved basic rent (minimum acceptable rent level). An Owner may provide such a subsidy, or the subsidy may be provided from Section 8 rental assistance, or other rental assistance such as Rent Supplement or Rental Assistance Payments (RAP). Overall, a combination of the Basic Rent and Section 8 rent must be sufficient to operate the project and pay debt service for the project with the assistance of the IRP subsidy (with the exception of projects that have an existing Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) or Emergency Low-Income Housing Preservation Act (ELIPHA) Use Agreement. These projects must continue to comply with the requirements outlined in these Agreements).
- g. **Renewal of HAP contract:** If there is a Section 8 project-based HAP contract in place at the property, the Hub/Program Center Director must ensure that the Owner executes a Renewal Contract with a 20-year term. The Owner and the Multifamily Hub/Program

Center Director must mutually agree to terminate the existing HAP contract and execute a 20-year Renewal Contract, which includes the “Preservation Exhibit” (Attachment). The term of the Renewal Contract must be equal to 20 years. The Preservation Exhibit must be completed to provide that upon expiration, the 20-year Renewal Contract shall automatically renew for an additional term at least equal to the number of years remaining on the existing HAP contract that is being terminated by mutual agreement of HUD and the Owner. The Owner will execute the Renewal Contract at or before the closing of the prepayment/decoupling transaction. Section 2-8 of the Section 8 Renewal Guide that requires a Use Agreement be extended to the term of the Section 8 HAP contract is not applicable in these transactions.

#### **4. ELIGIBLE MORTGAGEES**

A project may be financed by any corporate mortgagee entity which is not suspended or debarred from doing business with the Department. However, a public agency (which executes the Decoupling Agreement for IRP) or HUD must provide oversight of the project to ensure compliance with the requirements of the Agreement for IRP regarding occupancy, habitability, and financial reporting.

#### **5. ELIGIBLE MORTGAGORS**

Owners who participate in Decoupling transactions must be mortgagor entities that are eligible to own multifamily properties and meet HUD’s requirements for acceptable ownership and management of these low-income housing resources. Such entities may be: nonprofit mortgagors; builder-seller mortgagors; limited distribution mortgagors; or cooperative and investor sponsor mortgagors. The most likely mortgagors under these transactions will be nonprofit, limited distribution and possibly, cooperative mortgagors. The mortgagor will be required to accept a limitation on distributions (return on equity) during the term of the Agreement for IRP.

#### **6. ELIGIBLE PROJECTS**

Any insured, non-insured or HUD-held Section 236 project is eligible for consideration under the Decoupling program. Preservation Projects (processed under the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) and Emergency Low-Income Housing Preservation Act (ELIHPA) programs) may only participate provided there is no rent increase required or caused by the Decoupling transaction. Rent setting requirements and procedures for these properties are enumerated under a Plan of Action.

#### **7. TENANT PARTICIPATION**

Any transaction approved pursuant to this Notice is subject to the requirements of HUD's Tenant Participation in Multifamily Housing Project Regulations at 24 CFR 245. The Owner must include a copy of the posting in the Decoupling application submitted to the Office of Affordable Housing Preservation (OAHP).

## **8. CHANGE IN OWNERSHIP**

Any proposal submitted under this Notice that contemplates a change in ownership shall have the proposed Owner entity processed and approved under HUD's Active Partners Performance System (APPS) (HUD-2530) procedures. For transactions that will utilize Low-Income Housing Tax Credits as a source of funding, the Limited Liability Corporate Investor (LLCI) may elect to submit Previous Participation Certification for all qualified LLCI entities. The prospective Owner/Managing General Partner must also satisfy the OAHP that they have sufficient experience to operate the particular project which they intend to purchase. The Owner must submit a Transfer of Physical Assets (TPA) application with the Decoupling proposal, although duplicative documents and processing for the TPA and decoupling should be avoided. A change in ownership will also require the new Owner to have an approved management plan, management agent (if applicable) and an Affirmative Fair Housing Marketing Plan (AFHMP).

Nonprofit Sales Transactions: A nonprofit Owner of either an insured or a non-insured Section 236 project is eligible to participate in the Decoupling program. Housing Notice H-2011-31, "Policy for Release of Proceeds from the Sale of a Multifamily Project by a Nonprofit-Owner," has been issued to allow nonprofit Owners to receive proceeds from the sale of a project to accomplish a preservation transaction. When the Decoupling application includes a sale of a project from a nonprofit organization, the treatment of sales proceeds, rent increases, Section 8 contract renewals and Use Agreement terms will be governed by Notice H 2011-31. All other terms of the transaction will be processed under the procedures within this Notice.

## **9. PROPERTIES BEING RESTRUCTURED BY THE OFFICE OF AFFORDABLE HOUSING PRESERVATION (OAHP)**

- a. If a Decoupling transaction is part of a Mark-to-Market restructuring plan, the Decoupling proposal must be reviewed and approved by the OAHP staff, and the Agreement for IRP must be executed by OAHP.
- b. In a Decoupling transaction, the Capital Recovery Payment (CRP) may not be included as a line item in a budget-based rent increase for Basic Rent calculation at the time of the Decoupling or during the term of the Decoupling Use Agreement. The CRP may be included in the calculation for the post-Decoupling potential annual distribution from surplus cash.
- c. Under a Decoupling transaction, the post-Decoupling Basic Rents may not be established above comparable market rents.

## **10. APPLICATION PROCEDURES AND PROPOSAL**

Effective July 1, 2013, HUD's Office of Multifamily Housing launched a centralized processing model for the majority of Section 236 preservation activities through the Office of Affordable Housing Preservation (OAHP) in HUD Headquarters. Section 236 Owners will

no longer submit applications to the Multifamily Hub or Program Center. However, as has been the practice under the Mark-to-Market Program and the centralized processing of Partial Payment of Claims, OAHP will continue to coordinate with the local Multifamily Hubs and Program Centers recognizing that they have established relationships with local industry members and have significant knowledge about the properties in their portfolios.

Under Multifamily Housing's revised Section 236 processing procedures, OAHP will intake, review process Section 236 IRP Decoupling requests, as well as re-Decoupling requests for projects that have previously participated in a Section 236 IRP Decoupling, pursuant to the guidance under this Notice. This includes insured, HUD-Held and State Agency Section 236 projects.

The project's mortgagor or prospective mortgagor, with the consent of the existing mortgagor, may submit a Decoupling proposal to OAHP. The proposal may involve a refinancing of the existing debt by the current mortgagor or a sale and refinancing of the existing debt by a prospective mortgagor. Based on the age of the properties that are eligible to participate in Decoupling transactions, the overall objective and goal of the Decoupling proposal should be, to the greatest extent possible, the full long-term rehabilitation of the project to assure its continued use as a viable low-income housing resource for the foreseeable future. In addition to the information required by the Proposal section set forth below, the proposal must have a letter of support from the proposed mortgagee.

The OAHP Associate Deputy Assistant Secretary (ADAS) has the authority to approve Decoupling transactions under the parameters of this Notice. The proposal must provide all the information necessary for HUD to make an informed decision that there is good cause to continue IRP assistance because the proposal presents an acceptable plan for the long-term preservation of the project as a viable low-income housing resource.

The proposal must contain the following information:

- a. **Sponsor:** A substantive description of the sponsor's demonstrated experience in the development, management and maintenance of multifamily low-income housing, and identification of the proposed ownership entity.
- b. **General Project Description:** The proposal must include the size, location, age of the project, current holder of the mortgage, original mortgage amount, current unpaid principal balance, mortgage maturity date and mortgage interest rate, and the name of the current Owner. The proposal should identify the number of units receiving project-based Section 8 assistance or any other type of assistance, i.e., tenant-based Section 8 vouchers, Rent Supplement, Rental Assistance Payments (RAP), etc.
- c. **Financing/Leveraging Public Dollars:** Full details of the financing for the project, including all sources and uses of funding, i.e., any new FHA insurance, State or local bond financing, Low-Income Housing Tax Credits (LIHTC), HOME funds, CDBG funds, other State or local funds. The proposal must also include an explanation of how (financially and legally) the project will be maintained as a low-income housing resource

for the remaining term of the existing mortgage or the new IRP term plus five years at a minimum.

- d. **Continuing the IRP Assistance and Authority of Mortgagee:** Where the new mortgagee is not a HUD-approved multifamily mortgagee, approval of a public agency to perform oversight functions (i.e., willing to be a party to the Agreement for IRP) will be permitted. If there is no public agency oversight, then HUD will perform the oversight functions.
- e. **Regulatory Oversight:** Discussion of the experience and capability of the public agency that will monitor the project after termination of FHA insurance and will otherwise discharge its responsibilities under the Agreement for IRP.
- f. **Physical Improvements:** Discussion of the physical condition of the project and the cost and nature of the proposed physical improvements that will be undertaken to address all repair needs and place project in good condition for the foreseeable future. The proposal must provide a detailed list of all repairs, cost breakdown and a complete schedule. If the addition or rehabilitation of the Section 236 project results in substantial alterations as defined by 24 CFR 8.23 of the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973, then the accessibility requirements of Section 504 apply.
- g. **Affordability:** Discussion of how the project will be maintained as a long-term, low-income housing resource for the term of the Decoupling Use Agreement.
- h. **Tenant Protections:** Provide a narrative of how tenants will be protected from any unreasonable rent increase or involuntary displacement due to the proposed transaction. Involuntary displacement of existing residents for the length of the revised use agreement is prohibited as a result of a Decoupling transaction, regardless of the program under which the housing will be administered.

Because projects undertaking Decoupling transactions will have existing tenants, special care must be given to the use of other subsidies such as Section 8 project-based or tenant-based, LIHTC equity, bond financing with lower interest rates, HOME funds, CDBG funds, etc. The income limitations of the other subsidy programs might cause involuntary displacement unless extra care is taken to avoid this situation. No form of current or future financing may lead to involuntary displacement of existing tenants regardless of the program under which the housing will be administered. For example, projects that will use LIHTC must meet use requirements under the LIHTC program. Owners must complete a detailed tenant income survey to evaluate the impact of the proposed transaction on existing tenants. This survey must identify all units, household size, income, existing subsidy, current rent, proposed rent and LIHTC rent (if applicable). If there are tenants that are over the tax credit income limits, the proposal must identify what percentage of units will be tax credit units to ensure no involuntary tenant displacement at the time the units are placed in service. If the proposal had originally anticipated 100 percent of the units as tax credit units and the number of LIHTC units is reduced because of over income tenants, the sources and uses of funds must be revised

accordingly.

- i. **HUD Approvals Requested:** Proposals must describe what approvals HUD needs to provide to permit the proposal to proceed to closure: i.e., management plan and management certifications; Affirmative Fair Housing Marketing Plan (AFHMP); acceptance of public agency's claim that it is authorized to be the Section 236 non-insured mortgagee; transfer of IRP assistance to the new mortgage lender; APPS HUD-2530 approval for the Owner (streamlined TPA approval since FHA insurance must be terminated under transaction); transfer of Section 8 HAP Contract to new Owner; increase in Basic/Market/Section 8 rents, if necessary; issuance of Enhanced Vouchers for eligible tenants not residing in project-based Section 8 assisted units in Preservation Eligible Projects; Subsidy Layering review/approval; Risk Sharing loan approval or new FHA insurance processing, if applicable; and other actions as necessary.

These approvals will be evaluated by OAHF as part of a consolidated Section 236 prepayment transaction process described under Section 25, "HUD Processing," below. The Section 236 online Consolidated Application tool can be accessed at the following URL: <http://www.hudmfpreservation.net/>. Only registered users are able to utilize the tool. Registration information can be found here: <http://www.hudmfpreservation.net/register.cfm>.

- j. **Sources and Uses Statement:** The proposal must present a detailed Sources and Uses Statement that fully delineates all of the costs associated with the transaction, including fees, escrows, reserve accounts and developer fees.
- k. **Disclosure of other Federal/State/local assistance:** The proposal must identify all other Federal/State or local assistance that will be used in the transaction and specifically state the existence and length of any use restriction(s) associated with any of the assistance. All parties should understand that the longest and most restrictive use restriction will apply. These restrictions must be disclosed to HUD, other applicable federal, state and local entities and any purchaser and must be accounted for in the application.
- l. **Active Partners Performance System (APPS) procedures:** Submission of form HUD-2530 (Previous Participation Certification) for all required post-Decoupling ownership individuals must be reviewed and approved under the APPS procedures for all Decoupling transactions.
- m. **Additional information regarding Section 236 projects:** Any Preservation-eligible project that has its FHA insurance terminated or mortgage prepaid is eligible for Enhanced Vouchers for those unassisted tenants not receiving Section 8 rental assistance or other project-based assistance (see PIH Notice 01-41 and Notice H-12-03). OAHF will review and verify the applicability of the issuance of Enhanced Vouchers in each such case. Additionally, Title 5 of HUD's FY 2000 Appropriations Act (Public Law 106-74) expanded Preservation eligible projects to include projects that either receive or have received Flexible Subsidy Assistance as eligible projects for Enhanced Voucher assistance if the Office of Housing determines that the project is the subject of a

preservation transaction. Requests for enhanced vouchers for the unassisted residents in projects that received Flexible Subsidy Assistance must be submitted to OAHF for review and approval.

## **11. OTHER OUTSTANDING HUD DEBT AT TIME OF REFINANCING**

To the extent that it is financially feasible and consistent with the long-term preservation of the affordable housing resource, all outstanding HUD debt, such as Excess Income, Flexible Subsidy loans, Section 241 loans, and/or Section 106(b) loans owed the Department, must be repaid under the proposed transaction. Multifamily Hubs may not approve proposals that propose the deferral of HUD debt listed above. Any requests for deferral of eligible outstanding HUD debt must be referred to OAHF for review and consideration. When requesting to defer repayment of an Operating Assistance Flexible Subsidy Loan as part of the proposed transaction, the request must be submitted to OAHF pursuant to all Departmental requirements in Housing Notice H 2011-05, "Policies and Procedures for the Deferred Repayment of Operating Assistance Flexible Subsidy Loans."

## **12. ESTABLISHING BASIC RENTS**

This Notice is applicable to Section 236 Basic and Section 236 Market rent computations. For guidance on rent setting for project-based Section 8 units, please refer to the *Section 8 Renewal Policy Guidebook* (Section 8 Renewal Guide).

Post-decoupled projects must have both a Basic Rent and Market Rent established and maintained until the expiration of the Decoupling Use Agreement. Section 236 Basic and Market Rents must be established and maintained pursuant to budget based rent increase procedures. Basic Rent increase approvals must follow the requirements of Chapter 7 of HUD Handbook 4350.1. At the time of the processing of a Decoupling transaction, Basic Rent increases are limited to not greater than market (street) comparable rent less the IRP subsidy. If necessary to preserve the low-income housing resource, HUD may permit a project to increase its rents up to market, without subtracting the IRP subsidy, as long as the calculation is based on a budget-based rent calculation, there is no equity takeout and the sale/purchase price is not above market for the sale of comparable properties. Basic Rents, at the time of a transaction, must not exceed comparable market rents. The approved post-Decoupling Basic and Market rents shall be established as an attachment to the Agreement for IRP.

The after-transaction rent standard for residents will be the formula for the Section 236 program that utilizes both a Basic and Market Rent. Under the Section 236 program, the rent may not be lower than the Basic Rent. A tenant can pay less than the Basic Rent in cases where there is subsidy available to make up the difference, such as Section 8 assistance, a Section 236 Rental Assistance Payment contract, or a Rent Supplement contract. However, no tenant shall pay less than 30 percent of their income.

OAHF will carefully analyze the restructuring proposal to assure that all costs of the transaction are reasonable and necessary. Any cost saving in the operating expenses due to

the proposed rehabilitation should be reflected in the after-repair operating budget. The results of the analysis should be reflected in the final rent for the project. Any rent increase for acquisition, repair and restructuring costs should have some offset savings due to lower operating expenses. The new documented debt service and debt service coverage requirements resulting from the refinancing may be included in the post-Decoupling Basic Rent calculation.

In transactions involving the use of LIHTC, allowed project expenses may include only those usual and customary fees and expenses for operating a tax credit project, including payment of the equity syndicator's asset management fees, State allocating agency's compliance and asset monitoring fees, mandatory interest payments of up to one percent due on subordinate debt provided by a governmental lender, and deferred developer's fees plus interest accrued at the applicable federal rate, which may be deferred for no more than 12 years. The deferred developer's fee may be included as an operating budget line item but may only be paid from surplus cash. At the end of the 12-year fee deferment period, the project rents must be reassessed, since the deferred fee should have been fully paid.

### **13. ALLOWABLE DISTRIBUTIONS**

Decoupling proposals may request a potential annual distribution that is greater than the current, original distribution for limited dividend mortgagors. In cases where there is new equity brought into the transaction, the new post-Decoupling distribution will be based on a six (6) percent return on newly calculated equity that will be provided for the redevelopment of the project, less any developer fee that is expected to be taken at the time of the Decoupling transaction closing or shortly thereafter. Long-term deferred developer fees that are expected to be paid back from surplus cash over the term of the tax credit compliance period may be included in new equity calculation. The basis for the new equity calculation may be developer equity, tax credit equity, or Exchange Funds. Grants or other soft loans such as HOME funds, CDBG funds, etc., will not be recognized as equity for distribution calculation purposes.

In transactions where there will be new FHA insurance, or conventional financing, or where there is a transfer or sale from a non-profit entity to a for profit entity, and there is no equity brought in as described above, the new post-Decoupling distribution will be based on a ten (10) percent return on ten (10) percent of the amount of the new mortgage debt on the project after the Section 236(e)(2) Decoupling.

The new potential annual distribution shall not be used to calculate or recalculate the Basic Rents during the processing of the Decoupling transaction or during the term of the Decoupling Use Agreement. The potential distribution may only be taken from surplus cash. The Decoupling Agreement for IRP in these cases shall have the following language inserted regarding potential annual distributions into the "Now therefore" section of the Agreement: "The maximum annual distribution under this Agreement for IRP is \$\_\_\_\_\_. This distribution shall not be used to calculate or recalculate the Basic Rents during the term of the Decoupling Use Agreement."

In the event there is Section 8 project-based subsidy at the project and the mortgagor is a

limited dividend mortgagor, the Agreement for IRP will be the controlling document for the amount of maximum annual allowable distribution. When the Agreement for IRP terminates, the distribution may be recalculated based on the Section 8 regulations for the type of Housing Assistance Payments (HAP) contract at the project. If there is no Section 8 project-based subsidy at the project, then upon termination of the Agreement for IRP, distributions will be recalculated based on the terms of the underlying mortgage.

If prior to the Section 236(e)(2) transaction, the mortgagor was a limited dividend mortgagor with a Section 236 state agency, non-insured mortgage, then the extent of any limitation on distributions is not controlled by the Section 236 regulation, but rather, is controlled by state or local law.

#### **14. ADDITIONAL RENT ISSUES**

- a. **Rents with a new FHA loan:** If the transaction includes an FHA-insured mortgage, OAHP will ensure that the income and expenses on the budget are the same as on the mortgage application, form HUD-92013, which may be amended to match the final income and expenses on the FHA Firm Commitment. The proposal should include a rent schedule that clearly shows rents and utility allowances (if applicable) that are being requested for both the Decoupling and underwriting transaction for all units.
- b. **Utilities:** If the project has tenant paid utilities or the Decoupling proposal proposes tenant paid utilities, OAHP will ensure that the post-Decoupling utility allowance(s) is/are adequate using current utility usage data. If the utility allowance will be imposed post-Decoupling, OAHP will ensure that the implementation of the utility allowance by the Owner is conducted in accordance with all policies and procedures for the conversion from Owner-paid to tenant-paid utilities. See HUD Handbook 4350.1, Chapter 12.
- c. **Changes in Real Estate Taxes:** If the pre-Decoupling project Owner is a nonprofit Owner and the ownership is changing to a limited-dividend or profit-motivated ownership, then the project may no longer be eligible for a real estate tax exemption. This may be the case even for a limited partnership that has a nonprofit general partner. For transactions where the ownership will no longer be a nonprofit corporation, the proposal must include documentation of whether the real estate tax exemption/abatement will continue. If the exemption will not continue, then the real estate tax amount must be included in the budget.
- d. **Timing of Rental Increase:** In many Decoupling transactions, the rent comparability study is based on post-rehabilitation rents. In transactions where the post-Decoupling rents are based on post-rehabilitation comparable market rents, the rent increase should not be implemented until the rehabilitation is complete. The timing of Section 8 rent increases must be in compliance with the Section 8 Renewal Guide.
- e. **IRP:** IRP may only be paid to a mortgagee for current debt service payments, therefore, it may be necessary to suspend IRP until full amortization of the new financing begins. The IRP to the post-Decoupling mortgagee may be suspended until such time as the post-Decoupling permanent financing begins full amortization. When IRP are resumed, the

payments will start from the time of the last payment to the old mortgagee and the project will not lose any of the IRP subsidy due to the suspension in payments.

- f. **ELIHPA and LIHPRHA:** Projects that have ELIHPA and LIHPRHA Use Agreements may not receive a rent increase based on a decoupling transaction. Project rent-setting must be in accordance with the applicable Plan of Action, and pursuant to all applicable requirements and guidance promulgated under the Section 8 Renewal Policy Guidebook.
- g. When the Agreement for IRP terminates by prepayment of the Section 236(e)(2) mortgage or termination of IRP assistance, and the project continues to be encumbered by the 236 use restrictions for five years, the Owner must execute and record an Amended and Restated Section 236(e)(2) or Section 236(b) Use Agreement Following Termination of Section 236(e)(2) or Section 236 (b) Agreement for Interest Reduction Payments (Attachments). Basic and Market rents will be set using the previous year's IRP factor until the Use Agreement expires. The Owner must demonstrate the ability to meet these requirements when IRP subsidy is no longer provided.

#### **15. AS-IS APPRAISAL/RENT COMPARABILITY STUDIES (RCS)**

If a sale is proposed or the current Owner is requesting equity takeout, the Owner/purchaser shall be required to submit an appraisal based on the subject's current condition and current market value to verify that the sales price is reasonable, based on the as-is condition of the subject project and recent transactions and/or comparable values of other properties. If a rent increase is proposed, a RCS must also be submitted using the after rehabilitation condition of the subject project as the basis for the maximum post-Decoupling Basic Rent. The appraisal and RCS must be completed by a general certified appraiser, licensed and in good standing in the state where the project is located. A list of appraisers who meet the HUD standards can be found at [www.asc.gov](http://www.asc.gov) or obtained from the state regulatory agency. The appraiser must use the rent grid, form HUD 92273-S8, for each primary unit. The appraiser should document both the characteristics of the subject, the comparable properties in that market area, and the adjustments made for differences between a comparable and the subject. Owners/prospective Owners should check with their OAHF before selecting their appraiser. The developer shall be responsible for the submission of the RCS under the Section 8 Renewal Guide's requirements and standards. In addition, for projects using state or local financing in conjunction with the Decoupling, the state or local agency may provide HUD written acknowledgment of their review and acceptance of the proposed market value and comparable properties used in the RCS to facilitate the Decoupling review.

#### **16. TRANSFER OF SECTION 236 INTEREST REDUCTION PAYMENTS**

The execution of the new Agreement for IRP gives the new mortgagee the right to receive IRP on behalf of the mortgagor. The IRP assistance shall be used to help make debt service payments for the project. Generally, IRP are paid in accordance with the original schedule. The payments may not exceed the existing monthly or total payments under the existing Agreement for IRP. "Lump sum" payments of the total remaining IRP are not permitted, since a lump sum payment of the remaining IRP assistance would be greater than current

monthly payments. Additionally, the overall Decoupling IRP may not exceed the total amount of IRP funds remaining for a project.

The post-Decoupling term of IRP generally do not exceed the current term/schedule of IRP. However, upon a request from the proposed mortgagor/mortgagee, the IRP may be paid over a longer period if the monthly payments are reduced accordingly and the maximum amount of payments are no greater than the remaining amount of IRP funds at the time of the Decoupling.

## **17. IRP**

IRP are paid in arrears. Payment of the monthly IRP is based on an electronic invoice submitted by the mortgagee using the Internet version of the Line of Credit Control System (*e*LOCCS). The files are submitted electronically via access to the *e*LOCCS system by the mortgagee. Payments requested will be paid electronically to banking institutions identified by each mortgagee. The system provides real-time approval of payment requests, access to payment schedules and history, and e-mail notifications of anticipated deposit dates and other *e*LOCCS actions. An “*e*LOCCS Section 236 IRP Getting Started Guide” can be located at: <http://www.hud.gov/offices/cfo/finsys.cfm>. This guide provides an overview of required security components necessary for Section 236 *e*LOCCS access, with a description of how the components work together and how a user may request access to the security components. It also explains and depicts through user screens, the Section 236 IRP-specific program functionality within *e*LOCCS.

## **18. SECTION 8 ENHANCED VOUCHERS**

In Decoupling transactions where the project is a Preservation Eligible project, Enhanced Vouchers will be provided for eligible families not living in project-based Section 8 assisted units at the time of closing of the Decoupling transaction pursuant to HUD Notice PIH 01-41.

*In general, Preservation Eligible projects are properties that do not require HUD permission to prepay.* Owners may not increase the rents for at least 60 days after prepayment. If an eligible family chooses to stay at the project, the PHA administering the voucher cannot make any voucher assistance available until the effective date of a rent increase. The minimum rent law requires that a family receiving enhanced voucher assistance must pay rent no less than the family was paying prior to the prepayment. Please refer to Notice H-2012-03 for additional details. In addition, the Owner must work with the designated PHA to assure that all tenant protection procedures are adhered to in the event where vouchers are not issued until the effective date of a rent increase (post rehab rents) and an eligible tenant voluntarily elects to move from the project prior to issuance of voucher subsidy. The Owner is required to advise the tenant of the procedures to obtain the appropriate subsidy.

## **19. EXISTING RAP AND RENT SUPPLEMENT(R/S) CONTRACTS**

Generally, the RAP and Rent Supplement contracts terminate upon prepayment or maturation of the mortgage. On a case-by-case basis (generally non-insured state agency Section 236

projects), a waiver request may be submitted to the Director of OAHP for the RAP or Rent Supplement contracts to remain in place for the original term. Waivers to continue the RAP or Rent Supplement contracts will only be considered if the RAP or Rent Supplement rents/subsidy will not be increased presently or in the future due to the Decoupling transaction. If a waiver is not granted, eligible tenants in Preservation Eligible properties will be provided Enhanced Vouchers. HUD strongly encourages owners to pursue a conversion of assistance under the Department's Rental Assistance Demonstration (RAD) while the demonstration period is still operational. Under RAD, owners may request project based assistance in lieu of Enhanced Vouchers at the time of the Section 236 prepayment and IRP Decoupling application. Please see PIH Notice 2012-32 REV. 1 and Housing Notice 2012-03 for more details. The RAD home page can be found on HUD's web site at the following URL: <http://portal.hud.gov/hudportal/HUD?src=/RAD>.

## **20. USE AGREEMENT**

A Decoupling transaction will require the execution and recordation of a Use Agreement that requires the project to be maintained and operated as a Section 236 low-income housing resource until the maturity date of the existing Section 236 mortgage plus an additional five (5) years (or an additional five (5) years from the termination of the IRP subsidy if the remaining IRP subsidy supports a longer term of IRP due to lower monthly IRP payments than in the original IRP schedule). The Use Agreement must be recorded in a first security position. Further, the Use Agreement, based on statutory requirements, will require the project to maintain any use restrictions imposed by other Federal assistance (i.e., LIHTC, HOME, CDBG, etc.) for at least as long as HUD's Decoupling Use Agreement. The Use Agreement shall also require the Owner to accept prospective tenants, who are otherwise eligible for occupancy, who have the assistance of tenant-based Section 8 vouchers.

If the project has project-based Section 8 rental assistance, the Use Agreement shall require the project to accept project-based Section 8 rental assistance (or any successor program) for as long as HUD offers such assistance during the term of the Use Agreement. Further, the Use Agreement will require that in the event the Section 8 project-based assistance is terminated or not renewed, the project shall continue to be maintained as low-income housing under the terms of the Section 236 Agreement for IRP.

## **21. HAP CONTRACT RENEWAL**

If there is a Section 8 project-based HAP contract in place at the property, OAHP will ensure that the Owner executes a Renewal Contract with a 20-year term. The Owner and OAHP must mutually agree to terminate the existing HAP contract and execute a 20-year Renewal Contract, which includes the "Preservation Exhibit." The term of the Renewal Contract must be equal to 20 years. The Preservation Exhibit must be completed to provide that upon expiration, the 20-year Renewal Contract shall automatically renew for an additional term at least equal to the number of years remaining on the existing HAP contract that is being terminated by mutual agreement of HUD and the Owner. The Owner will execute the Renewal Contract at or before the closing of the prepayment/decoupling transaction. Section 2-8 of the Section 8 Renewal Guide that requires a Use Agreement be extended to the term of

the Section 8 HAP contract is not applicable in these transactions.

## **22. EFFICIENCY UNITS**

There are some Section 236 properties that have efficiency or studio units which are not rentable in their market. If the project wishes to combine studios or efficiencies to make larger units, the requirements of the current unit conversion policy must be followed. The current unit conversion policy is in Notice H-2011-03 "Policies and Procedures for the Conversion of Efficiency Units to One-Bedroom Units."

## **23. RELOCATION/DISPLACEMENT**

There shall be no involuntary displacement caused by the approval of a transaction under this Notice. Any temporary relocation costs, due to repairs, shall be at no expense to any tenant and shall be fully borne by the project. If temporary relocation is anticipated, a tenant relocation plan shall be provided to HUD for review and approval. In a case where an Owner is using LIHTC, all occupancy guidelines must be adhered to in accordance with the Section 236 regulations. Residents cannot be forced to move involuntarily from the project because they do not meet the tax credit guidelines. In cases where a developer is proposing to use tax credits and the project is fully occupied, it is strongly recommended that the developer request tax credit funding based on less than 100 percent of the units to prevent issues with tax credit ineligible families.

To permit rehabilitation to proceed, an Owner may temporarily relocate a tenant or permanently relocate a tenant within the same building or complex. However, there may be no permanent displacement (i.e., permanent moves from the real property) of any tenant as a result of the proposed transaction.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) prescribes that relocation assistance be offered to persons that move from real property as a direct result of a federally funded program or project involving acquisition, rehabilitation or demolition.

In the event that the conversion will involve the temporary relocation of tenants, a relocation plan must be submitted that identifies the affected units and tenants, estimates the relocation costs and provides a timetable for the relocation. The Owner must also indicate what steps will be taken to minimize the temporary relocation of the tenants. OAHP will coordinate with the Hub Tenant Relocation Specialist. If necessary, the Tenant Relocation Specialist must review and approve any relocation plans.

NOTE: Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. Should a residential tenant be temporarily relocated for a period beyond one year, the Owner must contact the person and offer all permanent relocation assistance in accordance with the URA. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

For tenants that must relocate temporarily, the owner must provide:

1. Reimbursement for all actual reasonable expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent or utility costs.
2. Appropriate advisory services, including reasonable advance written notice of:
  - (a) The date and approximate duration of the temporary relocation;
  - (b) The suitable, decent, safe, and sanitary housing to be made available for the temporary period;
  - (c) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and
  - (d) The right to the financial assistance described in paragraph 1 above.
3. All other conditions of the temporary relocation that the tenant undergoes must be reasonable.
4. Permanent move within building/complex. A tenant who is required to move to another unit in the same building/complex must be offered reimbursement for all out-of-pocket expenses incurred in connection with the move. All other conditions of the relocation that the tenant undergoes must be reasonable. Relocating an elderly person with a disability requires locating a unit that is appropriate to their physical needs. A temporary relocation must be to an accessible unit that provides equal or greater accessibility as the current unit.
5. A relocated tenant will be given the first right of refusal to the rehabilitated unit even if the tenant has received full permanent relocation benefits. Further, the notification to tenants should be provided in languages common in population as necessary to meet the needs of all including persons with limited English proficiency and in alternative formats for persons who are visually or hearing impaired.

## **24. SUBSIDY LAYERING**

Any Decoupling transaction that has any combination of the following assistance must be reviewed and certified as to meeting HUD's current Subsidy Layering requirements: IRP subsidy, project-based Section 8 rental assistance, HOME funds, CDBG funds, LIHTC or any other State or local assistance. Where there is a Memorandum of Understanding (MOU) between the State or Local Agency and HUD, the designated agency shall conduct the review in accordance with Section 911 of the Housing and Community Development Act of 1992. Where there is no MOU in place, HUD shall conduct the required review and provide the Owner with a copy of the 102(d) certification.

## **25. HUD PROCESSING**

Effective July 1, 2013, HUD's Office of Multifamily Housing launched a centralized processing model for the majority of Section 236 preservation activities through the Office of Affordable Housing Preservation (OAHP) in HUD Headquarters. Section 236 Owners will no longer submit applications to the Multifamily Hub or Program Center. However, as has been the practice under the Mark-to-Market Program and the centralized processing of Partial Payment of Claims, OAHP will continue to coordinate with the local Multifamily Hubs and Program Centers recognizing that they have established relationships with local industry members and have significant knowledge about the properties in their portfolios.

Under Multifamily Housing's revised Section 236 processing procedures, OAHP will intake, review and process Section 236 IRP Decoupling requests, as well as re-Decoupling requests for projects that have previously participated in a Section 236 IRP Decoupling, pursuant to the guidance under this Notice. This includes insured, HUD-Held and State Agency Section 236 projects.

OAHP will provide a copy of the Decoupling Notice to the developer and the management agent in order to assist in answering any questions regarding the process and project eligibility. OAHP will also request a copy of the property's existing amortization schedule from the Accounting Monitoring and Analysis Division in the Office of the Chief Financial Officer, HUD Headquarters.

With the prior written approval of the mortgagee, the mortgagor or proposed purchaser may submit an application for the approval of an IRP Decoupling using the Section 236 Consolidated Application Tool (<http://www.hudmfpreservation.net/>). The Decoupling process may require a review that is similar to the underwriting process conducted on a new FHA insured loan. During the review process, OAHP will evaluate the following items in order to determine whether the proposed transaction will result in the preservation of affordability, the completion of critical repairs and rehabilitation, and sound financial and project management:

- Sources and Uses Statement including reasonableness of transaction costs;
- Rehabilitation scope, cost and schedule of completion;
- Acquisition/market value;
- Income/Expenses (underwriting of new loan versus Asset Management budget) and final approval of the rents for the transaction;
- Rent Comparability Study review and final determination of market rents;
- Subsidy Layering review, if applicable;
- Post Decoupling operating pro forma

OAHP will also review other related approvals that may be concurrently sought. See Section 10.i, HUD Approvals Requested, above.

Upon receipt of a proposal from the Owner/developer, OAHP will review the proposal, to make a determination whether:

- The transaction is financially feasible;
- The proposal demonstrates the project will be maintained as long-term, low-income housing for the term of the IRP assistance plus five years;
- Existing tenants are protected from inordinate rent increases required to make the transaction feasible;
- The proposal is otherwise consistent with the requirements of this Section 236(e)(2) Decoupling Notice.

OAHP will advise the Owner/purchaser to have the existing lender submit a request for prepayment approval to HUD Headquarters, once it is determined that the Decoupling will proceed. OAHP will review the Decoupling request and complete a prepayment checklist. The current mortgagee (if the mortgage is not HUD Held) will submit form HUD-9807 to the Insured Operations Branch (IOB) at HUD Headquarters.

As a part of the prepayment/Decoupling review, OAHP may consult with the applicable Multifamily Hub or Program Center to verify that the following requirements are being, or will be met:

- If applicable, any change in ownership documents including form HUD-2530 and relevant documentation.
- If applicable, any management agent change documents including form HUD 9832, Management Entity Profile, Management Certification, and Management Plan.
- If applicable, Assignment, Assumption and Modification of the HAP contract.
- If applicable, Consent for Assignment of HAP contract as Security.
- Affirmative Fair Housing Marketing Plan.
- Occupancy Requirements.
- Any proposed rent increase.
- Any proposed potential annual post-Decoupling distribution amount(s) greater than the current, original distribution.
- The proposed repairs/rehabilitation to assure that the project will meet the Uniform Physical Condition Standards (UPCS) and the requirements of the Section 8 HAP contract. The scope of work must be detailed enough for HUD to be able to inspect completion of the work. The Owner may be required to enter into a Rehabilitation Completion Agreement at closing.
- The correct application of FHA underwriting standards for transactions that apply for FHA mortgage insurance in conjunction with the Decoupling.

## **26. OAHP APPROVAL AUTHORITY**

OAHP may approve Decoupling applications that adhere to the guidance and otherwise comply with the requirements outlined in this Notice.

## **27. APPROVAL FOR IRP DECOUPLING**

Once OAHP has determined that the proposal is consistent with all outstanding requirements and that all required business agreements are satisfactory, OAHP will issue an approval letter

for IRP Decoupling. If the transaction does not request a new FHA insured mortgage, the project shall be assigned a non-insured Section 236 project number.

Once OAHP has issued the Decoupling approval letter, the Office of General Counsel (OGC) in HUD HQ will assist in the review to assure that the Agreement for IRP is consistent with the Agreement for IRP contained in the Decoupling Notice. Once the Agreement for IRP has been approved by OAHP, and sent to all other parties for execution, the Agreement must be sent to OAHP for HUD's execution.

## **28. CLOSINGS**

Upon approval of a transaction, OAHP shall coordinate closings with the appropriate Multifamily Hub/Program Center Counsel and all other parties to the transaction including Owners, lender(s) and State or local agency, if applicable. If the transaction includes a new FHA-insured mortgage, then the closing will occur in the applicable Multifamily Hub or Program Center; however, if the financing is conventional, then all documents will be executed by HUD and provided to the Owner's attorney to be held for the external closing.

**Note:** Signatures required on the following documents from the Associate Deputy Assistant Secretary (ADAS), OAHP:

- Agreement for Interest Reduction Payments
- Use Agreement
- Rehabilitation Completion Agreement
- Assignment, Assumption and Modification of HAP

## **29. MULTIFAMILY HUB POST CLOSING DOCUMENTATION**

The Multifamily Hub/Program Center will obtain a recorded copy of the Deed (if ownership has changed) and the Use Agreement for the file, and e-mail a copy of the recorded Use Agreement to the Use Agreement Coordinator in the Headquarters' Business Relationships and Special Initiatives Division, Office of Multifamily Asset Management:  
[UseAgreementMailbox@HUD.gov](mailto:UseAgreementMailbox@HUD.gov).

The applicable Multifamily Hub or Program Center will set up a new file for the project containing all of the new business documents, e.g., recorded Use Agreement, Agreement for Interest Reduction Payments, Relocation Plan, Rehabilitation Completion Agreement, Assignment of HAP and all documents regarding the Owner and agent. The Multifamily Hub/Program Center will also purge the old file and ship to the Records Center in Headquarters when appropriate.

Enter the required data into iREMS as follows:

- **Owner Screen:** Enter all correct ownership data, including new distribution allowed by the Agreement for IRP.
- **Management Screen:** Enter all Management Agent data.

- **Subsidy Status Screen:** Under IRP Information, if the transaction does not include a HUD-insured mortgage, ADD a new non-insured project number. An example would be 067-005NI. This is not required if there is a HUD-insured mortgage. Make sure the IRP remains ACTIVE and update all data elements.
- **AFS Screen:** Make sure the AFS required button is YES.
- **Use Restriction/Lockout Screen:** ADD a Use Restriction, using the new insured or non-insured number and complete all data elements. Note that the number of units restricted is 100 percent of the units in the project.
- **Project History Screen:** Enter a brief description of the decoupling transaction. Identify the rehab period and approved distribution.

The rehabilitation should be monitored pursuant to a rehabilitation completion agreement. Unless approved by the Hub Director, failure by the Owner to complete the rehabilitation pursuant to the agreement may result in the abatement or termination of the HAP and/or IRP.

The new lender will bill HUD for IRP using the *e*LOCCS process discussed in Section 17 above.

Ongoing monitoring of the project is required pursuant to the Agreement for IRP and the Use Agreement. The project will continue to operate under rules governing the Section 236 program and will have a Basic and Market Rent to be approved by the PBCA, IRP Administrator, or HUD. Monthly excess income reports are required and the Owner must obtain HUD approval to retain excess income pursuant to 24 CFR Part 236 until the expiration of the Decoupling Use Agreement.

If there is an IRP Administrator other than HUD or the PBCA, OAHP will ensure that the IRP Administrator performs all duties required by the Agreement for Interest Reduction Payments.

### **30. POST DECOUPLING MONITORING**

As a result of signing the Agreement for IRP, the Owner agrees to maintain all characteristics of the Section 236 program. This includes following Section 236 income limits, processing budget-based rental increases, setting a Basic and Market Rent and following outstanding excess income collection guidelines. This section of the Notice describes the oversight of these requirements.

- a. **Oversight Responsibilities:** Under a Decoupling transaction, HUD or a Public Entity will be responsible for the oversight of the Decoupling Use Agreement.

#### Public Entity Oversight:

If a Public Entity agrees to perform the required oversight of the Use Agreement, they must commit to performing the following functions with no compensation from HUD or operating income of the project for the length of the post-Decoupling Use Agreement:

- Perform a Management and Occupancy Review (MOR) using outstanding Rental Housing Integrity Improvement Project (RHIP) guidelines consistent with HUD's MOR guidance. The results of this review must be communicated to HUD within 60 days from the day of the review.
- Compliance with waiting list, tenant selection and occupancy requirements, including for large families and person with disabilities.
- Compliance with civil rights requirements, including Affirmative Marketing, over and above the responsibilities currently performed by Contract Administrators (CAs).
- Review all budget-based rental increase requests prior to submission to HUD.
- Provide all materials and recommendations to the local HUD office for final approval of the rents.
- HUD shall retain regulatory approval over future rent increases. The Public Entity will process Section 236 rent increases pursuant to 24 CFR part 245, subpart D, while HUD retains approval authority. For properties partially or fully assisted by Section 8, rent increases for Section 8 units will be governed by the Section 8 rent increase procedures in effect at that time.
- Serve as the primary contact for resident inquiries, monitor any repairs required in the Decoupling transaction and review monthly excess income reports.

HUD will be required to perform the following duties when there is Public Entity oversight on a Decoupling:

- Input all required entries into iREMS including Decoupling closing information, changes in management agent/Owner, rent increase changes, management and operating review information and physical inspection follow up.
- Follow up and close out all Exigent, Health and Safety (EH&S) items noted on Real Estate Assessment Center (REAC) inspections.
- Follow up and make appropriate referrals on any substandard REAC scores.
- Make referrals to the Departmental Enforcement Center (DEC) if necessary for non-compliance.
- Provide final approval on rent levels for the project.
- Review all electronic financial statements including performing the limited financial review and closing out any Multifamily Housing referrals.
- Perform oversight reviews on the Public Entity according to HUD Handbook 4350.5, Subsidy Contract Administration and Field Monitoring.
- Approve Transfer of Ownership (TPA) and/or management changes.

**Note:** If the Public Entity Oversight Agency is also the Performance Based Contract Administrator (PBCA) for the Section 8 HAP Contract, the PBCA completes the iREMS entries and performs the physical inspection follow up as required in the Annual Contributions Contract (ACC).

### HUD Oversight

If HUD is performing oversight of the Decoupling Use Agreement, the assigned HUD office is responsible for all of the Public Entity oversight responsibilities and the standard

HUD duties as noted above.

- b. **Rents:** After a Decoupling, rents are set using the budget-based rent increase method. Budgets must be prepared according to outstanding instructions found in HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing, Chapter 7, with the following exceptions:
- The original distribution [at the time of the approval of the Section 236 mortgage] allowed will be included in the calculation of rents. The new allowed distribution will not be built into the calculation of allowable rents.
  - If applicable, use the actual Debt Service Coverage Ratio (DSCR) required by the lender as an operating expense line item in the budget.
- c. **Distribution:**
- The potential annual distribution approved by the Decoupling transaction is entered into the Agreement for IRP as a set dollar amount.
  - The Owner is eligible to take up to this amount on an annual basis **from surplus cash, only**.
  - If sufficient surplus cash does not exist, the earned but unpaid distribution accrues to the ownership to be paid when surplus cash becomes available.
  - The allowable new post decoupling potential annual distribution is not built into any budget-based rental increase during the term of the Decoupling Use Agreement.
- d. **Resident Files:**
- Owners are required to maintain resident files that evidence compliance with the Section 236 program.
  - The Owner should follow outstanding guidance in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, to determine what documents must be in the files as well as what screening methods must be used.
  - There are two special considerations for Decoupling transactions with vouchers or LIHTC:
    - i. For properties with voucher holders, the Owner should coordinate with the Public Housing Authority issuing the voucher to obtain a copy of the form HUD-50058 for the resident's file. If this can be obtained, the Owner does not need to complete form HUD-50059 or any third party verification because the form HUD-50058 is evidence that the resident meets the Section 236 program requirements. **NOTE:** *Section 236 Tenants are required to pay the higher of 30 percent of their adjusted income or the Basic Rent.* However, the minimum rent payment can be no less than the Section 236 Basic Rents. If 30 percent of their income exceeds the Basic Rent, then they will pay 30 percent of their income up to a maximum of the Section 236 Market Rent. Tenant rent is capped by the Section 236 Market Rent unless a tenant is in a Section 8 assisted unit where Section 8 tenant payment standards apply.
    - ii. For properties with LIHTC, the IRS requires that a Tenant Income Certification

(TIC) be completed for each file using HUD's occupancy guidelines as a standard. The Owner may perform an interim recertification on the Section 236 units to align form HUD-50059 with the TIC so that the residents are not inconvenienced by multiple recertifications in the future.

- iii. Annual recertifications are not required for residents paying Section 236 Market Rent.
  - iv. All tenants must be supported in the [Tenant Rental Assistance Certification System \(TRACS\)](#).
- e. **Management and Occupancy Reviews:** Either the Public Entity or HUD will perform on-site reviews. The general purpose of these reviews is to determine compliance with the Section 236 program. During the review, the reviewer will focus on the following areas:
- Resident Files:** The reviewer will look at resident files to determine if proper income limits were used.
    - A current recertification is in the file (a form HUD-50058 can be substituted for a form HUD-50059 if the resident has a voucher).
    - Verify Section 236 or project-based Section 8 rents against the HUD-approved rent schedule and ensure that excess rent is calculated correctly.
    - A signed lease is in the file.
    - An initial application and move in checklist is in the file.
  - Physical condition of the project:**
    - Follow up on recent REAC inspections to determine if work has been completed.
    - Review any approved Reserve for Replacement draws.
    - General observation of physical condition of the project.
  - Resident Selection and Screening:** The reviewer will review resident selection practices and screening to determine compliance with the Section 236 program.
    - Proper income limits.
    - Criminal and drug screening.
    - AFHMP.
  - Civil Rights/Fair Housing:**
    - Civil Rights on-site monitoring review
    - Affirmative Fair Housing Marketing including preparation and submission of updated AFHMPs, as required, and monitors compliance with the HUD-approved Plan.
- f. **Financial Statements:** The Owner is required to submit annual audited financial statements within 90 days of the ownership's fiscal year end. Financial statements must be submitted electronically to HUD through the Financial Assessment Subsystem (FASS). Delinquencies in submissions may result in financial penalties, referrals to the

Departmental Enforcement Center (DEC), or suspension of IRP.

- g. **Excess Income:** During the term of the assigned Use Agreement, all requirements of the Section 236 program must be maintained, including the submission of monthly excess income reports. In many cases, Decoupling transactions may have no excess income because the basic and market rents are identical; however, monthly excess income reports must continue to be submitted to HUD indicating that no excess income was collected. If appropriate, the Owner may request to retain excess income in accordance with outstanding HUD guidelines (24CFR 236.60). Copies of excess income retention approval letters must be submitted to the CFO's Office in Headquarters. All reports of excess income should be submitted along with amounts due via: <http://www.pay.gov>. For guidance on Section 8 units, see the Section 8 Renewal Policy Guide.
- h. **IRP:** The Decoupling program allows an Owner to receive the benefit of previously agreed upon IRP for refinancing the project. The continuation of these payments requires compliance with the Decoupling Use Agreement and Agreement for IRP signed at closing. Any instances of non-compliance with requirements of these Agreements shall be referred to the DEC for an administrative sanction. Sanctions may include, but are not limited to, suspension or debarment from engaging in future business with HUD. HUD reserves the right to suspend or terminate payment should the Owner be unwilling or unable to comply with the terms of the Agreements.
- i. During the term of the Agreement for IRP, there may be a change in the mortgagee (outside of a refinance) that receives the IRP. When notified of this change, the MF Hub Director must submit an Assignment and Assumption of Agreement for Interest Reduction Payments (Attachment) executed by the Owner, the current mortgagee and the new mortgagee, to OAHP for signature.

### **31. REFINANCING OF FORMERLY DECOUPLED PROJECTS**

OAHP may approve requests to refinance previously Decoupled projects where applications adhere to the guidance and otherwise comply with the requirements outlined in this Notice, including the specific requirements for refinancing of formerly decoupled projects as listed below.

**For continuation of the Interest Reduction Payments (IRP),** the following conditions will be imposed as part of the refinance approval:

- A new Agreement for Interest Reduction Payments must be executed that includes language referencing the termination of the Successor Mortgage Note and replacement with the new Note (local Counsel should be consulted for language). It must also reference the use of 5 years beyond the original Section 236 mortgage maturity date or termination of existing IRP assistance, whichever is longer.
- There will be no Section 236 Basic Rent or Market Rent increase attributable to the new financing.

- Agree to a 20-year HAP Renewal Contract that is executed as of the date of closing for all project-based units, using the Preservation Exhibit to the HAP extending the 20 year term by the number of years remaining on the contract at the time of extension. Section 2-8 of the Section 8 Renewal Guide that requires a Use Agreement be extended to the term of the Section 8 HAP contract is not applicable in these transactions.
- Equity take-out may be permitted provided all project needs are addressed (i.e., repairs to the project, funded reserves) in addition to meeting the other requirements listed in this section. The Owner must provide HUD with an Owner-certified accounting of the refinancing transaction that accounts for all costs.
- Payment of a developer fee funded from Low Income Housing Tax Credit Syndication proceeds shall be permitted.
- Potential annual distributions will not be changed from the potential distribution permitted in the original Decoupling approval. When the Agreement for IRP expires, the distributions may be recalculated.
  - In the event of a refinance transaction that entails a purchase/sale, the new owner may receive a potential annual distribution of up to six (6) percent of new equity in accordance with the distribution stipulations in this Notice, only if there was no increase in distributions/rents as a result of the initial Decoupling.
- Post-refinancing, the debt service payments must be equal to or greater than the continued IRP provided to the mortgagee for the project.

**Where the Owner is forgoing future IRP**, and the Section 236 Use Agreement is still active, the refinance of the Decoupled project must meet the following conditions.

- Section 8 Assistance: Pursuant to the existing Agreement for IRP, which requires the Owner to accept rental assistance for a period of at least five years following the expiration of the Agreement for IRP, the Owner must agree to a HAP Renewal Contract with a term of at least 5 years beyond the expiration date of the Agreement for IRP. The Owner is strongly encouraged to execute a 20-year HAP Renewal Contract. When the Section 236 Use Agreement terminates, the project will operate as a Section 8 project rather than a Section 236 project that requires Basic and Market rent setting. Rents will be set and adjusted according to the Section 8 Renewal Guide options applicable to the project.
- LIHTC transactions: If the project is being refinanced with the use of LIHTC equity, the Section 236 basic rents shall be equal to the LIHTC rents taking effect at the closing of the refinance transaction. When the existing Section 236 Use Agreement expires, the project will operate under LIHTC requirements and the Owner will not be required to use Basic and Market Section 236 rent setting.
- Other projects: Where there are no LIHTC and less than 90 percent Section 8 rental assistance, Basic and Market Rents will be set as Section 236 using the last years' IRP factor until the Decoupling Use Agreement expires.
- Project resources: The Hub Director may authorize the Owner to receive an equity take-out and/or an increased distribution in conjunction with the refinance transaction, but

only in the case that the Owner agrees to execute a 20 year Section 8 HAP Renewal Contract and subject to the requirements of the existing HAP contract and the Section 8 Renewal Guide. The Owner must not raise rents on unassisted residents.

Any questions regarding this Notice should be directed to OAHP, (202) 708-0001 (THIS IS NOT A TOLL-FREE NUMBER).

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

### Attachments

*The information collection requirements contained in this document is approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0572. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.*