



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON D.C. 20410-8000

JUN 28 2013

OFFICE OF HOUSING

MEMORANDUM FOR: Industry Partners, Section 236 Property Owners
Multifamily Hub Directors and Operations Officers
Multifamily Program Center Directors
Performance Based Contract Administrators
OGC Field Counsel
OGC Regional Counsel
Traditional Contract Administrators

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

SUBJECT: Transfer of Section 236 Preservation Activities to the
Office of Affordable Housing Preservation (OAHP)

I am writing to announce some changes in the way the Office of Multifamily Housing will process certain affordable housing preservation transactions. The changes discussed in this memorandum affect only those Section 236 preservation transactions submitted to HUD Headquarters on or after **July 1, 2013**. Any such preservation transactions that have been submitted to a Multifamily field office prior to July 1, 2013, shall remain with that field office for final processing. Furthermore, once all approved transactions for any Section 236 property have been executed, the property shall remain within the Multifamily Office of Asset Management servicing portfolio in HUD Headquarters. Field Office servicing of the property will remain unchanged.

Owners and purchasers of Section 236 properties commonly seek assistance from HUD to preserve the affordability for tenants, along with the long-term physical and financial viability of their properties. Preservation transactions typically involve the prepayment of an existing Section 236 loan, first mortgage refinancing (either with or without FHA mortgage insurance), and securing new, additional sources of capital financing such as Low Income Housing Tax Credit equity. These Section 236 preservation transactions typically require various approvals from HUD. HUD Field and Headquarters Offices anticipate a dramatic increase in the volume of Section 236 transactions as these mortgages reach maturity dates and Owners and potential purchasers evaluate the options available to their properties. The current Multifamily operating model requires numerous approvals from HUD Field Offices as well as Headquarters Offices, which often prolongs these transactions, challenges consistent application of policy, and hinders our ability to effectively preserve these critical affordable housing resources.

Effective July 1, 2013, HUD's Office of Multifamily Housing will launch 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.

This modification of HUD's current Section 236 transaction procedures is authorized under a Re-Delegation of Authority memorandum signed by FHA Commissioner Carol Galante on June 28, 2013. The new procedures are designed to streamline how Section 236 prepayment applications and related requests are processed, and to dedicate staff specifically to oversee the complex work involved in these transactions. Under this reorganized framework, Section 236 property owners will submit requests for applicable transactions directly to OAHP for review, approval (or denial, as applicable), and processing. OAHP is well positioned to take on these transactions, building on the experience of the Mark-to-Market program and the new Rental Assistance Demonstration, among other programs. **Please note** that the changes described under this memorandum are procedural in nature. With the exception of the issuance of the Re-Delegation of Authority memorandum referenced above, HUD has not made nor requested any change in any other current Departmental policies, nor has HUD sought or made any change in any current statutes or regulations governing how these transactions are evaluated and approved.

Applicable transaction requests that will be evaluated and processed by OAHP include:

- **Requests for prepayment of FHA-insured and HUD-held Section 236 Loans:** OAHP will receive Owner requests for prepayment of FHA-insured and HUD-held Section 236 loans, including requests that require HUD consent for prepayment and requests that do not require HUD consent for prepayment. OAHP will complete the Prepayment Checklist to determine that all statutory, regulatory and applicable Notice requirements are met, reach a determination whether to approve or deny the prepayment request, and forward approved prepayment requests to Insured Operations Branch or Notes Servicing Branch, as appropriate.
- **Requests for HUD approvals on State Agency Section 236 Loans:** State Agencies will continue to process prepayment requests on State Agency financed Section 236 loans. If the prepayment transaction does not require any other HUD approvals, the State Agencies will work directly with the local Multifamily Hub or Program Center. For example, a Section 236 prepayment and a complete pay-off of a Flexible Subsidy loan will be handled by the State Agency and the local HUD Multifamily Field Office. However, if the Owner is seeking approval to defer the Flexible Subsidy loan, or any of the other applicable transaction requests listed below, then the request will come to OAHP.
- **Interest Rate Payment (IRP) Decouplings:** OAHP will intake, review and either deny or approve Section 236 IRP Decoupling requests, and the approval of re-decoupling requests for projects that have previously participated in a Section 236 IRP Decoupling, pursuant to the guidance in the forthcoming IRP Decoupling Notice. This includes insured, HUD-Held and State Agency Section 236 projects.
- **Flexible Subsidy Deferrals:** OAHP will receive, process, and approve or deny requests for waivers to allow owners to defer repayment of Flexible Subsidy debt (Operating Assistance Loans) in conjunction with the prepayment of an FHA-insured, HUD-Held or State Agency Section 236 loan, following the policy guidance in Housing Notice 2011-05, Policies and Procedures for the Deferred Repayment of Operating Assistance Flexible

Subsidy Loans.

- **Post-Transaction Unit Rent-Setting:** In conjunction with the proposed prepayment of an FHA-insured or HUD-Held Section 236 mortgage, OAHP will approve the rents for non-Section 8 units. OAHP will also verify that the Owner has met the tenant comment requirements found at 24 CFR Part 245. See Housing Notice 2011-29 for additional guidance on HUD's tenant participation requirements.
- **Unit Rent Increases of Greater than 10 Percent:** The Project-Based Contract Administrator (PBCA) or Traditional Contract Administrator (TCA) is authorized by HUD to approve of project-based rent increases of up to 10 percent, with the following exception: in any instance where a Section 236 property owner is requesting a rent increase in conjunction with the renewal of a HAP contract, and simultaneous to a separate IRP decoupling request for the same property, OAHP will review and approve of the establishment of the updated unit rents under the renewed HAP contract. In conjunction with the proposed prepayment of an FHA-insured or HUD-Held Section 236 mortgage, OAHP will review and either approve or deny any property Owner's request to increase unit rents by over 10 percent of current rent limits.
- **Determination of Excess Income Compliance:** In conjunction with the proposed prepayment of an FHA-insured or HUD-Held Section 236 mortgage, OAHP will work in coordination with the HUD Office of the Chief Financial Officer (CFO) to verify whether a given property Owner is in compliance with HUD Excess Income requirements. As noted above, the local Multifamily Hub or Program Center will work with the State Agency on determining Excess Income Compliance on transactions that do not require any additional HUD approvals.
- **Housing Assistance Payment (HAP) Assumptions:** In conjunction with the proposed prepayment of an FHA-insured or HUD-Held Section 236 mortgage, OAHP will continue to request Previous Participation approvals, which are issued by Hub staff under current Delegations of Authority.
- **Issuance of Tenant Protection Vouchers and Enhanced Vouchers:** In conjunction with the proposed prepayment of an FHA-insured or HUD-Held Section 236 mortgage or State Agency Section 236 mortgage, OAHP will complete the Calculation of Budget Authority for Conversion Actions and submit it to the PIH Field Office following the process outlined in PIH Notice 2001-41, Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions.
- **Nonprofit Fees and Sales Proceeds:** In conjunction with the proposed prepayment of an FHA-insured or HUD-Held Section 236 mortgage, OAHP will issue these approvals per guidance under Housing Notices 1996-63 and 2011-31.
- **Modifications to LIHPRHA/ELIHPA Use Agreements:** In conjunction with the proposed prepayment of an FHA-insured, HUD-Held or State Agency Section 236 mortgage, OAHP will review requests and issue approvals according to policies described under Housing Notice 2012-25.

- **Unit Conversion Requests:** In conjunction with the proposed prepayment of an FHA-insured or HUD-Held Section 236 mortgage, OAHP will review requests and issue approvals according to the policies described under Housing Notice 2011-03.

Section 236 transaction requests that will **NOT** be evaluated and processed by OAHP include:

- **FHA-Insured Refinancing Applications:** OAHP will process requests for prepayments of FHA-insured and HUD-Held Section 236 mortgages. Some Owners may seek to refinance using a new FHA-insured loan (Section 223(f), 223(a)(7) or 221(d)(4)). HUD Field Office Asset Development staff will continue to process FHA-insured mortgage applications for such refinance transactions. The FHA refinance application process remains unchanged.
- **Requests for 236-Related Payment of Partial Claims (PPCs), and the Modification of HUD-Held Section 236 Loans:** While such transactions are unlikely, incoming requests must be sent to the Multifamily Office of Asset Management, which will evaluate these on a case-by-case basis.

The attached document provides additional details describing the procedures OAHP will follow in order to receive and process Owner requests for Section 236 preservation transactions. To facilitate timely intake and processing of Section 236 requests, Owners/purchasers are strongly encouraged to submit applications for prepayment approval and all related Section 236 project approvals, as listed above, using an electronic intake system at www.hudmfpreservation.net. Owners may also submit prepayment and other requests and supporting materials in an electronic, PDF format, to Section236@hud.gov.

For further information, I encourage you to visit HUD's Section 236 Resource Desk at www.hudmfpreservation.net, or to contact OAHP by e-mail at the following address: 236Preservation@hud.gov.

Attachment

Attachment 1 – Roles and Responsibilities of, and Resources Available to Section 236 Property Owners under HUD’s Preservation Strategy

HUD’s experience processing previous transactions suggests that in order to secure a sufficient amount of time to complete the process timely, Owners and purchasers should make application to HUD at least six months prior to the intended transaction closing date. In particular, processing tenant protection voucher applications and Flexible Subsidy repayment waiver requests have consistently required significant staff time in order for the transaction to successfully close on time.

In cases involving Section 236 prepayment applications, HUD advises owners and purchasers to work in advance with their lenders and accountants to verify the maturity date of the Section 236 loan. HUD understands that whenever an owner has made one or more unscheduled principal payments, and the loan has not been subsequently re-amortized, it may mature earlier than the original amortization schedule indicates. Failure to maintain awareness of this date may result in the maturation of a Section 236 mortgage before the owner is able to apply for prepayment. Furthermore, tenant protection vouchers (provided to tenants who do not currently have Section 8 rental assistance), while readily available prior to the property’s loan maturity date, have very limited availability once the loan matures.

HUD advises owners of Section 236 properties to carefully evaluate all of HUD’s affordability preservation options, and to select the option or options that will be the most effective means to securing the property’s long-term affordability and overall usefulness. A summary of these options is provided below. More detailed information describing each of these transactions, including application submission procedures and criteria, is provided through HUD’s Section 236 Resource Desk (www.hudmfpreservation.net).

NOTE: For transactions involving any Section 236 loan held by a State Housing Finance Agency (and which is not FHA-insured), contact the State Housing Finance Agency that holds the loan in question. OAHP will process related requests for Section 236 transactions (such as IRP Decoupling requests, flexible subsidy loan deferrals and other related approvals) on State Agency projects.

Information for Owners and Purchasers – HUD Section 236 Preservation Options

While Section 236 preservation transactions primarily involve requests to prepay an existing Section 236, prepayment approvals often result in a given project’s need for additional related approvals from HUD. HUD advises owners of Section 236 properties to carefully evaluate all of HUD’s affordability preservation options, and to select the option or options that will be the most effective means to securing the property’s long-term affordability and overall usefulness. A summary description of each of the Section 236 preservation transactions that will be facilitated by OAHP is provided below, along with information about HUD’s Section 236 application process. More detailed information for each of these transactions is provided both under the specified program notices (linked below), as well as the Section 236 Resource Desk (www.hudmfpreservation.net).

1. *Request for Prepayment Approval.* The primary reason that Section 236 Owners request to prepay the existing Section 236 loan is to facilitate the recapitalization of the property

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to fund needed repairs. Some Section 236 loans (known as “Section 250” loans) require HUD’s discretionary pre-approval before the Owner can prepay the mortgage. Other Section 236 loans do not require HUD’s advance approval to prepay, but do require the Owner to provide advance notice to tenants and to the local government. Housing Notice 2006-11 describes HUD’s policies and procedures governing Section 236 mortgage prepayment approvals.

2. *Request to Increase the Section 236 Basic Rents.* For units with project based Section 8, unit rent adjustments are approved by the performance-based contract administrator (PBCA) or traditional contract administrator (TCA). However, the PBCA’s/TCA’s authority is limited to approving rent increases of up to 10 percent. For other non-project based units, rent adjustments are approved by HUD. Rent-setting guidance for units with project-based Section 8 is provided in HUD’s Section 8 Renewal Policy Guide Book. Rent setting guidance for other Section 236 units is provided in Chapter 7 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing.
3. *Request for Tenant Protection Vouchers.* When a Section 236 loan is prepaid, most tenants who do not have Section 8 or other rental assistance become eligible for tenant protection vouchers. HUD’s policies and procedures governing the issuance of TPVs are described under Housing Notice 2012-03, PIH Notice 2001-41 and PIH Notice 2012-24, respectively.
4. *Request for Decoupling Approval.* Under a decoupling transaction, the Section 236 loan is prepaid but the remaining Section 236 Interest Reduction Payments (IRPs) remain in place to help keep rents affordable. HUD’s policies and procedures governing decoupling transactions are currently described under Housing Notice 2000-08. HUD intends to publish an updated Section 236 IRP decoupling Notice during Fiscal Year 2013. Please monitor Multifamily Preservation home page on HUD.gov for information about and access to this updated Notice.
5. *Request to Revise a Prior Decoupling Approval.* Owners sometimes request to modify a prior decoupling approval, most commonly when pursuing a refinancing.
6. *Request to Waive Flexible Subsidy Repayment Requirements.* Flexible Subsidy is a form of soft debt awarded by HUD to some Section 236 properties (among others) during the 1970s, 1980s and 1990s. Repayment of the total original principal balance of the Flexible Subsidy debt is due upon prepayment or maturity of the Section 236 loan. For some Flexible Subsidy loans, HUD will consider requests to defer repayment for some or all of the Flexible Subsidy debt. Deferral waiver policies and procedures are described under Housing Notice 2011-05. Click here to download Notice Appendices 1 through 3.
7. *Request by A Nonprofit Seller to Retain Sales Proceeds.* Although the HUD Regulatory Agreement generally prohibits nonprofit Section 236 property owners from receiving sales proceeds, HUD will consider waiver requests on a case-by-case basis for Section 236 preservation transactions. Sales proceeds waiver policies and procedures are described under Housing Notice 2011-31.

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8. *Request to Modify LIHPRHA Use Agreements.* The Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) authorized a HUD multifamily preservation program that financed the rehabilitation and preservation of several hundred Section 236 properties during the 1990s. The use of LIHPRHA funds includes a requirement for the property to be governed by a Use Agreement, the terms of which remain in effect for the remaining useful life of the property. HUD will consider allowing certain modifications to LIHPRHA Use Agreements in cases involving Section 236 preservation transactions. HUD’s policies and procedures for the consideration of these requests are described under [Housing Notice 2012-25](#).
9. *Request for Unit Conversion.* A growing number of Section 236 property owners are reporting to HUD that efficiency units in their properties are difficult to market and lease, and oftentimes remain vacant. However, these owners also report that the efficiency units are marketable if they are converted to one bedroom units. HUD’s policies and procedures governing requests to complete unit conversions in Section 236 properties are described under [Housing Notice 2011-03](#). [Click here](#) to download Notice Attachments 1 through 6.

Section 236 Preservation Concept Meeting

Owners and purchasers who are contemplating one or more Section 236 preservation transactions may request a Concept Meeting with HUD to discuss the particular details of a potential transaction and to ask questions about preparing an application. Requests to schedule a Concept Meeting can be e-mailed to HUD at 236Preservation@hud.gov. HUD encourages, but does not require applicants to participate in a Concept Meeting prior to the submission of a Section 236 preservation application.

Other Pre-Application Tasks

HUD recommends that owners verify the maturity date of the Section 236 loans. Some loans had unscheduled principal payments that may cause the loan to mature faster than originally anticipated. Check with your lender and accountant.

Owners and purchasers need to be aware that all Section 236 transactions require the HUD Office of the Chief Financial Officer to conclude that the Owner has submitted all required Excess Income reports and has made all required Excess Income payments. The balance due under any Excess Income repayment agreements will need to be paid in connection with the transaction.

Section 236 Preservation Application Package

Interviews with HUD staff, owners, purchasers and other project stakeholders have consistently indicated that a primary factor causing delays to the timely completion of Section 236 preservation transactions is uncertainty about what information applicants are required to provide to HUD. HUD is addressing this issue through the development of a standard Section 236

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preservation application package. This application package consists of a Consolidated Application (formatted in Microsoft Excel) along with standard numbered Exhibits. While this represents a change in HUD’s procedures for receiving Section 236 applications, it is important to note the ways in which HUD’s process remains the same. Namely:

- The Consolidated Application doesn’t contain any new HUD forms. The information HUD is requesting for these various transactions remains the same under this new process as it has been under the previous model.
- Likewise, HUD is not introducing any new requirements or eligibility criteria for any of these transactions. Applications and requests that are sent to OAHP under this new model will be evaluated according to the same regulatory and statutory criteria as those that had been sent to Multifamily Hubs for review and approval.

In short, HUD’s revised Section 236 application procedures have been developed to introduce greater efficiency, consistency, and transparency to the application review process. Section 236 property owners and purchasers will now have one central portal through which to provide project information that is currently collected under the established Paperwork Reduction Act (PRA) approval numbers. Owners and purchasers are strongly encouraged by HUD to use the Consolidated Application each time they apply for HUD approval of various Section 236 transactions. Owners and purchasers who choose not to use the Consolidated Application have the alternative option of submitting various required documents to HUD by e-mail, and as Portable Document Format (.PDF) files, to the following address: 236Preservation@hud.gov. In either case, OAHP will only receive electronic submissions of Section 236 applications.

After an applicant completes the Consolidated Application, it will indicate which Exhibits the applicant must provide in order for HUD to evaluate requested individual transaction. HUD provides templates for each Exhibit, specifying the information to be provided and providing references to Notices and other relevant guidance. As noted previously, all such applications will be sent to OAHP as of **July 1, 2013**. Please monitor Multifamily Preservation home page on HUD.gov for information about and access to the Consolidated Application package.

NOTE: Applications that were sent to any Multifamily Hub, and which are under review as of July 1, 2013, will remain with the applicable Hub for completion. OAHP will only process applications that are new submissions as of **July 1, 2013**.

Requests for New FHA Mortgage Insurance

Please note that while many Section 236 preservation transactions include new FHA-insured financing, the OAHP portfolio of new Section 236 responsibilities under the reorganization of the Office of Multifamily does NOT include processing applications for FHA mortgage insurance. If your project contemplates financing long-term debt through FHA multifamily mortgage insurance, please direct your questions to HUD’s Office of Asset Development which processes FHA multifamily mortgage insurance applications. You may also contact an FHA-approved multifamily lender for information. Please log onto HUD.gov to find the names and contact information for the FHA-approved lenders who serve your community.

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HUD’s New Section 236 Resource Desk

HUD has established an online Resource Desk for Section 236 preservation, which provides registered users with access to relevant program guidance, plus a searchable database of questions and answers about Section 236 preservation transactions. For information on how to register, please log in at: www.hudmfpreservation.net.