HUD OGC, Assisted Housing Division

Table Illustrating Original Section 8 HAP Contracts by Contract

Type Requiring a Residual Receipts Account

1. The section 8 HAP contract type is normally identified at the top of Page 1 of Part I and Part II of the original HAP contract by both the section 8 program name (e.g., New Construction) and the regulatory part in Chapter VIII of Title 24 of the Code of Federal Regulations under which the contract was issued (e.g., 24 CFR Part 880).
2. As a general rule, only new regulation section 8 HAP contracts contain a residual receipts account requirement. A new regulation section 8 HAP contract is an original section 8 HAP contract issued under Part 880, 881, 883, or 885 that contains a section captioned “Financial Requirements,” usually located in section 2.6 of the contract. This section contains a provision, usually in section 2.6(b), authorizing HUD (the HFA, for Part 883 contracts) to require a residual receipts account when the project produces surplus project funds. As illustrated in the chart below, there is a corresponding regulatory provision for HAP contracts issued under new Part 880, 881, and 883. Note that there is no corresponding regulatory provision for contracts issued under Part 885, which governs 202/8 projects, and which was moved to Part 891 in 1996. Nonetheless, the contract provision authorizing the requirement of a residual receipts account (usually located in section 2.6) applies on its own force (i.e., without any regulatory backing).
3. In addition to containing a provision captioned “Financial Requirements” usually located in section 2.6, new regulation HAP contracts can almost always be identified by a date of August 1980 or after printed in parenthesis beside the HUD form number, usually located in the lower right-hand corner of each page of the contract (e.g., “HUD-52522B (8-80)”).
4. The requirement for a residual receipts account in new regulation section 8 HAP contracts does not apply if the project is a “small project” or a “partially-assisted project,” as defined in 24 CFR §§ 880.201, 881.201, and 883.302 of the new regulations, and as designated by a mark in the space provided usually at the top of Page 1 of Part I of the HAP contract. See 24 CFR §§ 880.205(f), 881.205(f), and 883.306(f) (exempting owners of such projects from any section 8 limitation on distributions). Nor does it apply to “previously HUD-owned” projects, as designated by a mark in the space provided usually at the top of Page 1 of Part II of the HAP contract. These exclusions are normally stated in section 2.6(b) of new regulation HAP contracts.
5. Neither the old regulations (which are no longer printed in the Code of Federal Regulations) nor the forms for old regulation section 8 HAP contracts contain a residual receipts account requirement. Thus, as a general rule, old regulation HAP contracts do not contain a residual receipts account requirement. Unless the AHAP or HAP contract was amended to include a limitation on distributions, as authorized pursuant to 24 CFR §§ 880.104(b)(2), 881.104(b)(2), or 883.105(b)(2) of the new regulations, old regulation projects are not subject to a residual receipts account requirement. Although such amendments were extremely rare, the HAP contract and AHAP must be examined to determine definitely whether either instrument was amended to impose a limitation on distributions. If so, then a residual receipts account requirement is implicit.
6. There is no residual receipts account requirement in the governing regulations for the remaining section 8 HAP contract types: Section 515/8 contracts (24 CFR Part 884), Loan Management Set-Aside contracts (24 CFR Part 886 Subpart A), Property Disposition contracts (24 CFR Part 886 Subpart C), and RAD HAP contracts (24 CFR Part 880, in effect as of November 5, 1979 as marked up in Notice PIH 2012-13 (HA), REV-1, Appendix I). In rare cases, HUD staff attached a rider or amendment to the HAP contract with the owner’s knowledge and consent that imposes a residual receipts requirement. (However, this never occurs in the case of RAD HAP contracts.) In these instances, the project is subject to a residual receipts account requirement, even though the contract rider or amendment requiring a residual receipts account lacks a corresponding regulatory provision.

A chart is provided on the following page that identifies *in the most general of terms* the types of section 8 HAP contracts that typically contain a residual receipts account requirement. However, because there are many exceptions (as discussed above), to these general terms and guidelines, HUD staff are very strongly cautioned to use the chart only as a general rule of thumb and to analyze the question of whether the section 8 HAP contract imposes a residual receipts account requirement based on the above narrative, not solely on the chart.

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| **Section 8 HAP Contract Type** | **Governing Section 8 Regulations** | **Residual Receipts Account Requirement?** |
| Old Regulation New Construction | 24 CFR Part 880 in effect before November 5, 1979 | No, Unless (1) the AHAP was executed before November 5, 1979; and (2) the AHAP or HAP contract was amended pursuant to 24 CFR § 880.104(b)(2) to include a limitation on distributions |
| Old Regulation Substantial Rehabilitation | 24 CFR Part 881 in effect before February 20, 1980 | No, Unless (1) the AHAP was executed before February 20, 1980; and (2) the AHAP or HAP contract was amended pursuant to 24 CFR § 881.104(b)(2) to include a limitation on distributions |
| Old Regulation State Agency Program for New Construction or Substantial Rehabilitation | 24 CFR Part 883 in effect before February 29, 1980 | No, Unless (1) the AHAP was executed before February 29, 1980; and (2) the AHAP or HAP contract was amended pursuant to 24 CFR § 883.104(b)(2) to include a limitation on distributions |
| Old Regulation 202/8 | 24 CFR Part 885 | No |
| New Regulation New Construction | 24 CFR Part 880 in effect as of November 5, 1979 and after | Yes   * 24 CFR § 880.205(e) * HAP Contract, § 2.6 (“Financial Requirements”) |
| New Regulation Substantial Rehabilitation | 24 CFR Part 881 in effect as of February 20, 1980 and after | Yes   * 24 CFR § 881.205(e) * HAP Contract, § 2.6 (“Financial Requirements”) |
| New Regulation State Agency Program for New Construction or Substantial Rehabilitation | 24 CFR Part 883 in effect as of February 29, 1980 and after | Yes   * 24 CFR § 883.306(e) * HAP Contract, § 2.6 (“Financial Requirements”) |
| New Regulation 202/8 | 24 CFR Part 885 | Yes   * No regulatory provision * HAP Contract, § 2.6 (“Financial Requirements”) |
| Section 515/8 (USDA Rural Housing) | 24 CFR Part 884 | No |
| Loan Management Set-Aside (LMSA) | 24 CFR Part 886 Subpart A | No |
| Property Disposition (PD) | 24 CFR Part 886 Subpart C | No |
| RAD Section 8 PBRA | 24 CFR Part 880 in effect as of November 5, 1979 and after as marked up in Notice PIH 2012-13 (HA), REV-1, Appendix I | No |