

Office of Multifamily Housing Assistance Restructuring



Deal Profile: Non-Profit Owner, No New First Mortgage,
Residual Receipts, Surplus Project Accounts

Date of Presentation: February 25, 2002

Questions and Answers

1. Definition of Surplus Project Accounts

Q. What are Surplus Project Accounts?

A. Surplus Project Accounts reflect Cash Available after the following calculation: Pre-M2M Reserve for Replacement Account balance, plus Pre-M2M Residual Receipts Account balance, minus Post M2M Closing Initial Deposit to the Reserve for Replacement Account (IDRR).

Or, in brief: (Pre R4R + Pre Residual Receipts) – M2M initial R4R balance = Surplus Project Accounts

2. Different Treatment of the 2nd Mortgage

Q. When can HUD take back paper in the form of a 2nd (or 3rd) Mortgage for the amount of the Surplus Project Accounts used to reduce the Payment of the Claim?

A. HUD can include the amount of the Surplus Project Accounts used to reduce the Payment of Claim in the initial balance of the 2nd/3rd Mortgage when the source is Residual Receipts and the property has a New Regulation Section 8 contract. Types of deals where HUD will not include Surplus Project Accounts in the M2M 2nd/3rd are projects that have 236 or 221(d)(3)BMIR loans, or have Old Regulation Section 8 Contracts, or where the source of the surplus is the Reserve for Replacement Account regardless of the type of underlying loan or Section 8 contract.

3. Documents for Determining Use and Ownership of Residual Receipts

Q. How difficult is it to obtain the documents needed?

A. If the Owner cannot provide the original documents, contact your local HUD office as soon as possible. HUD should be able to provide the Regulatory Agreement and the Agreement to Enter into the Housing Assistance Payment (AHAP). If you cannot locate all the critical documents, send what you have to OMHAR to obtain an opinion.

Q. Why is the AHAP document so important?

A. The AHAP defines the date in determining if the property is bound by New or Old Section 8 Regulations. Disposition of Residual Receipts is different under the New Regulations compared with the Old Regulations. The AHAP is an attachment to the FHA Firm Commitment and was usually issued at least 60 days prior to Initial Endorsement (and the start of construction or rehab). If the AHAP was executed prior to November 5, 1979 for Section 8 New Construction or February 28, 1980 for Substantial Rehabilitation, then the old rules should apply, even if initial occupancy and execution of the HAP came several months later.

4 Use of Residual Receipts Prior to M2M Closing

Q. Can Residual Receipts be used to do significant rehab work prior to M2M?

A. Yes, this is possible subject to two conditions: a.) HUD must pre-approve the use of funds in the Residual Receipts Account and b.) approval and implementation process would not cause any delay in closing the M2M transaction or reducing the Section 8 Contract Rents to Market.

5 Unpaid Principal Balance and Payment of Claim

Q. What was the UPB in this deal?

A. The UPB was approximately \$1.4 Million. After reducing the Contract Rents to Market, the Net Operating Income would not support any new first mortgage and this restructure would have required 100% Payment of the Claim. However, Surplus Project Accounts of \$82,000 reduced the Payment of the Claim to just over \$1.3 Million.

6 Impact on Sizing the First Mortgage

Q. Does use of Surplus Project Accounts have any impact on the sizing of the new first mortgage for deals that have a new first?

A. No, Surplus Project Accounts does not impact the sizing of the new first. The Payment of Claim is reduced by the amount of the Surplus Project Accounts not needed to fund any increase in the Reserve for Replacement Account, or HUD's portion of the Rehab Escrow or Transaction Costs after a.) determining the amount needed for the Initial Deposit to the Reserve for Replacement Account and b.) allowing for the Owner's share of Surplus Project Accounts distribution of up to 10%.