



U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-8000

OFFICE OF THE ASSISTANT SECRETARY  
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

November 6, 2000

MEMORANDUM FOR: All Multifamily Hub Directors

FROM: Shaun Donovan, Deputy Assistant Secretary  
for Multifamily Housing Programs, HT

SUBJECT: Revisions, Questions and Answers regarding HUD Notice H 00-8, Guidelines for Continuation of Interest Reduction Payments after Refinancing: Decoupling, under Section 236(e)(2) and refinancing of insured Section 236 projects into non-insured Section 236(b) projects.

Since the issuance of the subject Notice, we have had some very good dialog, both within HUD and the industry, concerning the requirements of the Notice. These discussions have led to one major program change regarding the implementation of the IRP decoupling procedures as set forth in the notice and several explanations in the form of questions and answers that may assist you and your staffs in the processing of these cases.

**SECTION 8 HAP CONTRACT ADMINISTRATION:** The major program variation from the Notice is what entity may be the Section 8 HAP Contract Administrator (CA) after the IRP transaction. Because HUD has either contracted with entities to do performance based Section 8 CA for some States or is in the process of contracting with other entities to perform similar services for all other States, a decision has been made that the new CA function (i.e., where HUD was the CA prior to the IRP transaction) will only be given to the State-wide entity that has been selected to perform these functions within the State where the IRP project is located. We decided that it made no administrative or management sense to continue to expand the number of entities doing performance-based HAP CA services, if HUD had recently selected, or is about to select, an entity to perform this function State-wide.

Therefore, Section 8 HAP CA functions for IRP transactions may only be given to an entity that has been chosen to perform this service under the multifamily performance-based Section 8 HAP CA procedures. Requests from entities, that may otherwise be involved in the IRP transaction (financing, acquisition of the Section 236 mortgage, etc.), but were not selected to provide the performance-based CA services may not be given the Section 8 CA function for an IRP transaction.

If there is a need for a CA where a performance-based CA is not operative, HUD shall perform the CA functions until the State-wide CA is operational.

### **Questions and Answers**

- Q. Can the agency financing the project, but which is not the Section 8 CA, get a fee for the Section 236 oversight monitoring?
- A. The agency will have to work out an arrangement with the project owner to obtain the Section 236 oversight functions. A reasonable fee may be built into the Section 236 Basic Rent. Caution: As noted in the Notice, if an agency is both financing and performing Section 8 CA functions, the agency MAY NOT get a fee for both functions. It may only get the Section 8 CA fee or an administrative fee for the Section 236 oversight functions.
- Q. Are non-insured Section 236 projects eligible for decoupling?
- A. Yes, Section 236 non-insured projects are eligible to decouple (pay off) the Section 236 mortgage and retain the IRP subsidy under the guidelines of the IRP Notice.
- Q: What is the allowable rent increase that the Hub Director may approve?
- A. Hub Directors may approve up to a 10% rent increase, from current rents, on non-assisted Section 236 units. Hub Directors may also approve rent increases above 10% on Section 8 assisted units, i.e., mark up to market

procedures. If the project is a partial Sec. 8 assisted project and the Section 236 rents are not increased above 10%, while the Section 8 rents may be increased above 10%, this scenario would not have to come to HQ for approval.

Q. Can a project get a rent increase on Section 8 units up to comparable market without the IRP reduction?

A. No. We will monitor this matter and determine if adjustments to the Mark up to Market parameters need to be revised but current activity indicates this is not overly restrictive.

Q. Why are Preservation projects (projects that have LIHPRHA or ELIHPA use agreements) given such limited consideration under the IRP Notice?

A. Preservation projects, because of the existing use agreements, do not have the same at-risk potential as Section 236/8 projects which have the unilateral right to prepay or opt out of the Section 8 program without HUD prior approval. Additionally, the projects that have gone through Preservation, generally, have had repairs completed, rents increased and equity taken out.

Q. When processing an IRP transaction on a Preservation project, which program requirements/use restrictions take precedence?

A. As long as there is no rent increase provided under the IRP transaction and the project, project residents and HUD are in the same or better position for the provision of long-term affordable housing than was provided in the Preservation transaction, HUD will not now revise the Preservation use requirements except to add the additional 5-year affordability requirements as statutorily required by a Section 236(e)(2) IRP transaction. Since we are accepting the Preservation program requirements as being at least equal to the IRP program requirements, with the inclusion of the additional 5-year affordability requirement, we will leave the Preservation use restrictions intact.

- Q. Does the Basic Section 236 Rent calculation omit a debt service coverage component?
- A. A Hub's calculation is expected to include the financing costs of the new transaction, including reasonable debt service coverage.
- Q. What debt does the Hub Director have the authority to defer under the IRP Notice?
- A. Hub Directors have the authority to defer where it is otherwise financially infeasible to pay off certain HUD debt at the time of the IRP transaction and maintain the low-income housing resource. The debt that the Director has the authority to defer is Flexible Subsidy loans, Section 241 loans, and Section 106(b) loans. If the Flexible Subsidy loan is an Operating Assistance Loan, the Hub Director must recommend to Headquarters a good cause for waiver of 24CFR219.2 in order to defer this debt under a Section 236(e)(2) prepayment transaction.