CHAPTER 25. RESIDUAL RECEIPTS

25-1. Applicability. This Chapter 25 applies to all non-profit and limited dividend multifamily projects with HUD-insured and HUD-held mortgages, including the Section 202 Program projects. This Chapter does not apply to releases of Residual Receipts under an approved Plan of Action pursuant to the Emergency Low-Income Housing Preservation Act of 1987 or the Low-Income Housing preservation and Resident Homeownership Act of 1990; guidance for such uses may be found in HUD Handbook 4350.6, Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Many but not all of these projects are required to establish a Residual Receipts Account. Generally, all projects owned by non-profit mortgagors and all Section 236 and 221(d)(3) projects owned by limited distribution (LD) mortgagors as well as Section 8 New Construction/ Substantial Rehabilitation projects subject to the 1979/80 revised Section 8 regulations are required to establish a Residual Receipts Account. The requirement for a Residual Receipts Account is established by a Regulatory Agreement or a project-based subsidy contract such as Section 8 Housing Assistance Payments. A general test for a Residual Receipts Account requirement is: If distributions of cash to the owners are limited or not permitted, the project probably must maintain a Residual Receipts Account.

25-2. Definition. During the life of the mortgage (except for certain Section 8 projects that are described in paragraph 25-11 of this Chapter), Residual Receipts are an asset of the mortgagor held under HUD control. When a Residual Receipts Account is required, the project's Regulatory Agreement provides an exact definition of "Residual Receipts." For purposes of a "working definition" for this Handbook 4350.1, however, "Residual Receipts" may be thought of as including:

A. All "Surplus Cash" for non-profit projects.

B. Cash remaining after all accrued distributions have been properly taken for limited dividend projects (see paragraph 25-3).

C. Under certain circumstances for Section 221(d)(3) BMIR projects, another source of residual receipts may exist. Rental collections due from over-income tenants not receiving Section 8 subsidy are normally greater than the BMIR "contract rent" as described in HUD Handbook 4350.3. Occupancy Requirements of Subsidized Multifamily Housing Programs. These surcharges, which are the differences between the BMIR "contract" and "market" rents, are recorded in Account No. 115190, Rent Revenue - Miscellaneous," as described in HUD Handbook 4370.2, Financial Operations and Accounting Procedures for Insured Multifamily Projects. Although accounted for separately, these surcharges are ordinary revenue for purposes of operations and surplus cash computations.

25-3. Calculation of Residual Receipts. Form HUD-93486, "Computation of Surplus Cash, Distributions, and Residual Receipts," is shown in Appendix 2 of HUD Handbook 4370.2. Financial Operations and Accounting Procedures for Insured Multifamily Projects. Project owners use this form either semi-annually or annually (depending on the executed Regulatory Agreement for the project) to calculate allowable distributions and any amounts that may be due for deposit to the Residual Receipts Account. Instructions for completing the form are shown on the back of the form and in the Appendix 2 of Handbook 4370.2.

25-4. Depositing Residual Receipts. The project's Regulatory Agreement or Section 8 HAP Contract specifies where Residual Receipts are to be deposited. Owners of Section 202 projects maintain their own separate bank accounts for Residual Receipts; all other project owners with insured or HUD-held mortgages or State-financed projects are required to deposit Residual Receipts with their mortgagees.

25-5.* Holding and Investing Funds. The Residual Receipts of all projects with HUD-insured mortgages should be invested with interest accruing from the investments credited to the Residual Receipts account. Investments of Residual Receipts Account funds may be effected and are to be safeguarded by mortgagees and mortgagors in the manner described in Chapter 4 of this Handbook 4350.1. The procedures and sanctions described in Chapter 4 also pertain to the Residual Receipts Account. Reference also is made to HUD Handbook 4350.4, Insured Multifamily Mortgagee Servicing and Field Office Remote Monitoring Handbook, for additional information on this topic.

25-6. Combined Investments. For HUD-insured mortgages, monies held in the Residual Receipts Account and the Reserve Fund for
* Replacements Account may be combined to purchase a single investment or combination of investments.

A. Earned interest and the return of principal when the investment is liquidated must be prorated to the respective bookkeeping accounts.

B. Care should be taken to preserve sufficient liquidity in these accounts. Some forms of investment, such as passbook savings accounts, are very liquid; others are increasingly less liquid, such as Thirty, Sixty, or Ninety Day Certificates of Deposit (CDs), etc.

25-7. Insured Mortgagee Charges for Handling Investments of the Residual Receipts Account. Reference is made to HUD Handbook 4350.4 for additional information on this topic. If an insured mortgagee proposes to assess charges for investing the Residual Receipts Account, the Field Office Asset Management staff are reminded to examine the Mortgagee's Certificate for the project to see if any fees or charges for making investments were
* disclosed or stated. If such fees are disclosed, no further review is necessary; if they are not shown, any fees so collected by the insured mortgagee may only be collected according to a written agreement between the insured mortgagee and the mortgagor.

25-8. Other Fees. HUD does not recognize special fees or charges that might be paid by project mortgagors to investment brokers or other parties (other than HUD) such as managing agents for providing investment advice or for making or brokering investments except where the nature of the investment itself requires that it be brokered, i.e., obligations of federal agencies such as GNMA. Such fees, other than those involving the above exception, are not considered to be necessary expenses of the project, should not be paid from project funds, and are not considered by HUD when calculating rental rates.

25-9. Capital Resources. Projects fortunate enough to have funds in a Residual Receipts Account have a versatile source of capital that may be used only with the approval of HUD for any number of purposes if the uses are fully consistent with the intent of the program under which the project was originally endorsed or approved. Except for projects subject to the 1979/1980 revised Section 8 regulations, withdrawals from the Residual Receipts Account may be authorized by the Asset Management Branch Chief; some of these uses include but are not limited to:

A. Reduce operating deficits when legitimate cash flow deficits exist, i.e., offset increased operating expenses instead of increasing rental rates.

B. Make mortgage payments when a mortgage default is actual or imminent.

C. Make repairs to the property not covered by the Reserve Fund for Replacements.

D. Provide additional project amenities such as air conditioning, a sprinkler system, fire or smoke detectors, or energy saving devices as well as office equipment such as computers and associated software. For Section 202 projects the amenities must conform to the program's cost containment provisions.

E. Pay accrued, allowable distributions where insufficient surplus cash is available provided:

1. There are no known violations of the Regulatory Agreement.

2. There are no major unresolved findings from management reviews or analyses of financial statements.

3. The project is in acceptable physical condition and the mortgagor has certified to the acceptability of the project's physical condition.

F. Repay HUD-approved Residual Receipts Notes if the project is financially solvent, well maintained, and in a stable market if these Residual Receipts Notes do not exist as a result of a Transfer of Physical Assets (TPA). For projects with insured and HUD-held mortgages. authority for release of residual receipts for TPA-related transactions is reserved to the Director, Office of Multifamily Housing Management, in HUD Headquarters.

G. Repay Flexible Subsidy Operating Assistance or Capital Improvement Loans.

H. Make enhancements to the project or retrofit units for Rousing Accessibility under Section 504.

I. Provide for testing or abatement of lead-based paint at the project.

25-10. Section 8. Special Considerations. For those projects subject to the revised 1979/1980 Section 8 regulations, requests for withdrawals will be considered if such requests are for the purposes stated in only paragraphs 25-9A or 25-9B above. Asset Management Branch Chiefs may approve requests for these two purposes. Requests for purposes other than those in paragraphs 25-9A or 25-9B will be disapproved by the Field Office.

25-11. Section 8 Other Considerations. For certain Section 8 projects, notably those subject to the 1979/1980 revised Section 8 regulations, the Assistant Secretary for Housing/Federal

Housing Commissioner may direct that all or a portion of funds in a project's Residual Receipts Account be used to reduce Rousing Assistance Payments or for other project purposes. When a project's Section 8 contract expires, is terminated, or any extensions are terminated, HUD will request the project owner to return to HUD the unused balance of funds remaining in the Residual Receipts Account at the time of the contract's termination. It is therefore reasonably possible that some portion of monies that have been deposited to the Residual Receipts Account during the course of operations under a Section 8 Contract will be transferred back to HUD. HUD staff may hear about so-called "phantom income" from project owners subject to this provision, where taxes might be paid on this portion of income without the taxpayer (mortgagor, in this case) having the benefit of the income. Although HUD employees are not responsible for providing tax advice to mortgagors, these amounts may represent a "loss contingency" as defined by the Financial Accounting Standards Board (FASB) Statement No. 5, "Accounting for Contingencies." HUD staff may refer mortgagors to FASB Statement No. 5 if they become aware of questions on this issue.

25-12. Residual Receipts Notes. Form FHA-1710, "Residual Receipts Note (non-profit mortgagors)" and Form FHA-1712, "Residual Receipts Note (Limited Distribution Mortgagors)" may be used where such notes are necessary. The use of these Residual Receipts Notes after final endorsement or closing should be relatively rare except for advances from owning persons or sponsors to cover unpaid construction costs after final endorsement or closing and reported in the Supplemental Cost Certification. However, use of these Residual Receipts Notes may be permitted in order to recognize owning persons', sponsors', or management's advances made to cover operating expenses, taxes, or capital improvements after final endorsement/closing. Execution of Residual Receipts Notes is often desired by sponsors or other third parties as a form of guarantee that such advances may be repaid if Residual Receipts are generated. The Field Office Housing Management

Division Director, in association with the Field Office Counsel, is responsible for review, modification, and approval of these Residual Receipts Notes after final endorsement. Copies of executed Residual Receipts Notes and related correspondence are to be forwarded to the Operations Division, Office of Multifamily Housing Management, in Headquarters for inclusion in the Washington Docket. Reference is made to HUD Handbook 4355.1, Flexible Subsidy, for information about residual receipts notes used in conjunction with the Flexible Subsidy program.

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