



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**Special Attention of:**  
**All Multifamily Hub Directors**  
**All Multifamily Program Center Directors**  
**All Multifamily Operations Officers**  
**All Multifamily Directors of Project Management**  
**All Multifamily Field Counsel**  
**All Contract Administrators**

**NOTICE H 2012-2**

**Issued: February 10, 2012**

**Expires: February 28, 2013**

Cross References: Subsection 236g of the  
National Housing Act, 12 U.S.C. 1715z-1(g)

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Subject: Collection Procedures for Excess Income Receivables and Form HUD-93104,  
Monthly Report of Excess Income

**Purpose**

It is the Department's policy that all confirmed delinquent Excess Income Receivables (EIR) and missing reports will be aggressively pursued, and all available enforcement remedies will be taken against those owners/management agents who fail to comply with the Department's requirements. This Notice describes the processes that must be followed to collect these receivables and ensure that all required monthly reports are filed and any required payment is made. Except where specifically referenced, this Notice supplements guidelines in HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing, Section 7-28.

**Background**

Excess Income is the rent collected in excess of the Basic Rents for Section 236 projects. Owners/management agents of Section 236 projects are required to prepare and submit form HUD-93104, Monthly Report of Excess Income, to HUD on a monthly basis, whether or not there is any Excess Income. Unless prior written authorization is given to retain the documented excess rental income, these funds must be remitted to HUD. On September 1, 2008, it became mandatory for owners/agents to use the [www.pay.gov](http://www.pay.gov) system, through which remittance of the required payment must be made. This notice provides guidance on pursuing unfiled reports and collection of additional monies due. All of the receivables were created prior to August 31, 2008, evidenced by owners/management agents submission of reports to HUD reflecting amounts owed, without the required payment. Some of these receivables were converted to HUD-approved Repayment Agreements. Receivables that are current under these Repayment Agreements are exempt from this Notice.

The payment of the Excess Income is paid from project operating accounts. Consequently any transfer of ownership has no effect on the responsibility of the project to pay amounts due.

## **Instructions for Collecting Excess Income Receivables**

Multifamily Hub Directors are now receiving a monthly Excess Income Receivables Report directly from the CFO's Accounting Center. Within 30 days of the date of this Notice, the Multifamily Hub/Program Center must send a Demand Letter (Attachment 1) by certified mail, return receipt requested, notifying the owner of the Excess Income Receivable. The Demand Letter instructs the owner to cure the receivable within 30 days or to contact the Multifamily Hub/Program Center to discuss available options if this is not possible. The Demand Letter must also inform the owner that any confirmed receivable that is not paid, or that does not have a signed Repayment Agreement within 90 days of the initial Demand Letter may be referred to the Departmental Enforcement Center (DEC) for further action. Enforcement actions such as Civil Money Penalties, Limited Denial of Participation, Debarment or Suspension from all Federal programs may be considered. (Chapter 7, Pages 7-20 and 7-21 of HUD Handbook 4350.1 REV-1, provides additional potential remedies.)

Each Multifamily Hub Director should designate a Collection Coordinator and an alternate staff person to monitor the progress of this collection activity. The Coordinator will be the primary point of contact with the Headquarter's Office of Asset Management (OAM) and for audits and/or Quality Management Reviews.

Within six months of issuance of this Notice, it is anticipated that 100 percent of the Excess Income Receivables will either be collected, under a Repayment Agreement, or will have been referred to the DEC.

Multifamily Hub Directors will receive a monthly report of projects that are delinquent under a Repayment Agreement. The Collection Coordinator must coordinate the pursuit of all collection remedies for all delinquencies.

Each Multifamily Hub Director must provide a quarterly status report to the Director of the Office of Asset Management in Headquarters discussing each project with an unresolved Excess Income Receivable (including missing reports) within their jurisdiction. For each project, the report must detail the date of the demand letter, the owner's response, date referred to the DEC and/or date referred to the U. S. Department of Treasury.

## **Documentation Supporting Inaccurate Accounting**

Although HUD made a significant effort to validate the outstanding receivables, property owners may be able to document that the receivable is invalid by providing the Multifamily Hub/Program Center either 1) a copy of a previously HUD-approved letter authorizing the owner to retain excess income, 2) proof of payment, or 3) a corrected form HUD-93104, Monthly Report of Excess Income, and supporting documentation for the period in question. The Multifamily Hub/Program Center must forward the information to the OAM (Desk Officer or Designee). Hubs must aggressively attempt to collect the amounts reflected as owing. All outstanding excess income owed, regardless of from what period owed, must be remitted to the Department.

## **Repayment Agreements**

Owners who are unable to repay the receivable within 90 days of the Demand Letter should submit a request for relief to their Multifamily Hub/Program Center Director within 60 days of receipt of the Demand Letter. In some circumstances, HUD may agree to a Repayment Agreement (see Attachment 2) for projects where a lump sum payment may destabilize the property. The Multifamily Hub/Program Center must perform a detailed analysis of the owner's request for a Repayment Agreement and determine that the project meets the following criteria before approving a Repayment Agreement:

1. The project owner is in compliance with its business agreements including the applicable Housing Assistance Payments (HAP) contract, Mortgage, Loan Agreement and/or Regulatory Agreement.
2. Property management is satisfactory as evidenced by the most recent Management and Occupancy Review.
3. Rents are at a sustaining level.
4. The physical condition of the property is satisfactory with the last physical inspection score being 60 or above.
5. The owner is current with submission of form HUD-93104, Monthly Report of Excess Income, to the Department. All outstanding reports must be submitted to the Department prior to the approval of a Repayment Agreement.
6. With the exception of the Excess Income Receivable, the project owner must certify that they do not owe any additional funds to the Federal Government.

Project owners may not take any otherwise allowed distributions until this debt is paid in full. Surplus cash due to the owner must be applied to the debt. Owners found in violation will be required to refund the full amount of the distribution and apply the funds to the remaining balance of the receivable.

Repayment Agreements must be in writing and have a fixed monthly payment amount that will allow for full payment at the earlier of: (1) 10 years from the date of the first payment under the Agreement, (2) the date of the maturity of the Section 236 mortgage, or (3) expiration of the HAP contract (unless extended). The Excess Income Receivable must be paid in full prior to the approval of a request to prepay the mortgage, unless otherwise determined by HUD. Under no circumstances may payment amounts be considered in processing a rent increase, nor may the payments result in a reduction in tenant living standards. The Repayment Agreement must include a Confession of Judgment so that, in the event of a default under the Repayment Agreement, the Department may, at its discretion, file a lien against the property. If the Repayment Agreement matures in more than three years, approval by the Director, Office of Asset Management, in Headquarters is required.

A copy of the executed Repayment Agreement must be submitted to the Financial Operations Analyst in the CFO's Accounting, Monitoring & Analysis Division Payment Branch and to the Director, Office of Asset Management, both in Headquarters.

### **Instructions for Collecting Delinquent Form HUD-93104, Monthly Report of Excess Income**

Multifamily Hub Directors and Operations Officers will also receive reports of missing form HUD-93104, Monthly Report of Excess Income, for those Section 236 projects identified as having failed to submit the required reports to HUD. The Office of Asset Management will provide each Hub Director a list of projects identified with missing reports through September 2009, and the OCFO will provide a list beginning October 2009 to the present. Each month thereafter, the Hub Director and Operations Officer will receive a report directly from the OCFO.

Within 30 days of receiving the initial reports, the Multifamily Hub/Program Center must send a Demand Letter by certified mail, return receipt requested, notifying the owner of the missing reports. The Demand Letter must also inform the owner that any confirmed missing reports and funds that may be due to HUD as a result of these reports that are not received within 90 days of the Demand Letter will be referred to the Departmental Enforcement Center (DEC) for further action. Enforcement actions such as Civil Money Penalties, Limited Denial of Participation, Debarment or Suspension from HUD programs may be considered. Multifamily Hub/Program Center Directors may follow the guidance under the section Repayment Agreements if the owner is unable to pay the amounts owing within 90 days. In addition, the owner will not be permitted to prepay the mortgage until the reports are received and all funds due (if any) are paid in full.

### **Instructions for Referring Projects to the Departmental Enforcement Center**

Owners who fail to comply in a timely manner with the demand letter are to be referred to the DEC as an elective referral. The following documents must be submitted as part of the referral packet:

1. Copy of the Demand Letter and proof of delivery.
2. Reports from the CFO's Office reflecting amounts owing or reports missing.
3. Any additional communication, including e-mails documenting collection efforts and any correspondence concerning possible retention of excess income.

4. Regulatory Agreement.
5. Housing Assistance Payments Contract (Original and renewals).
6. Any other pertinent business agreements.

If after the DEC performs an analysis and determines it would not be appropriate for continued HUD pursuit of the debt obligation, it will be returned to the Hub. The Hub should forward the same packet prepared for the DEC, including any communication from the DEC, to the Financial Operations Analyst in the CFO's Accounting, Monitoring & Analysis Division Payment Branch in Headquarters to be forwarded to the U.S. Department of Treasury for further collection action; or write off if legally uncollectible.

If you have any questions regarding this guidance, please contact your assigned desk officer in the Field Asset Management Division, Office of Asset Management.

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Carol J. Galante  
Acting Assistant Secretary for Housing-  
Federal Housing Commissioner

Attachments

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Attachment 1

Owner Name  
Owner Address  
Property Name

SUBJECT: Excess Income Charges  
Project Name:  
FHA Loan No.:  
Location:

Dear Sir or Madam,

The U.S. Department of Housing and Urban Development's Chief Accounting Officer's (CFO) Accounting Center has notified us that you owe Excess Income payments and/or have not filed required monthly report of Excess Income. Based on the Excess Income Reports that the project has filed from \_\_\_\_ (date) to \_\_\_\_ (date), HUD's Accounting Center reports that the project owes HUD \$\_\_\_\_\_. Attached is a schedule detailing the months in which excess income was reported as earned and the amounts owed to HUD as of (date). The schedule will also detail any reports that have not been filed.

This amount, plus any monies due from unfiled reports must be remitted to HUD within 30 days of the date of this letter. All payments must be made through Pay.gov at [www.pay.gov](http://www.pay.gov). Pay.gov provides detailed instructions on how you can make your payment.

Any confirmed missing reports and funds that may be due to HUD that are not received within 90 days of the Demand Letter will be referred to the Departmental Enforcement Center (DEC) for further action. Enforcement actions, including, but not limited to, Civil Money Penalties, Limited Denial of Participation, Debarment or Suspension from HUD programs may be considered.

The project is prohibited from using excess project funds (surplus cash) for owner distributions, payment of entity expenses, or repayment of related-party advances until all past due excess income payments have been made to HUD.

If you cannot pay monies owed within the 30-day time frame or have any questions regarding the amount due and missing reports, please contact [Insert Project Manager Name], at [Contact Information].

Sincerely,

**EXCESS INCOME REPAYMENT AGREEMENT**

**Project Name:**  
**FHA Loan No.:**  
**Location:**

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, hereafter referred to as "Debtor", and the Secretary of Housing and Urban Development, his successors and assigns, hereafter referred to as "HUD". Debtor's address is \_\_\_\_\_ and HUD's address is 451 Seventh Street, S.W., Washington, D.C. 20410.

Debtor is the owner of the above-identified project, which is subject to a first mortgage held by \_\_\_\_\_.

Pursuant to subsection 236(g) of the National Housing Act, 12 U.S.C. 1715z-1(g), and by the terms of a Regulatory Agreement or other contractual document entered into by Debtor with HUD, Debtor is obligated to accumulate and periodically pay to HUD rental charges collected in excess of the basic rental charges.

HUD has made demand for payment of the excess rental charges in the amount of \$\_\_\_\_\_, and the undersigned warrants to HUD that the Debtor, as of the date of this Agreement, owes HUD that amount but asserts that it is unable to pay that amount in a lump sum. The undersigned warrants further that it has been authorized to enter into this Agreement and to execute the Confession of Judgment Note (Note) secured by this Agreement in the above amount on behalf of the debtor.

HUD has agreed to accept periodic payments of said amount, as included in the Note.

**UNDERTAKING**

Therefore, in consideration of Debtor's execution of this Agreement and of the Note, HUD agrees to forbear from pursuing its legal and equitable remedies against Debtor, but only for so long as Debtor makes timely payment under the terms of the Note.

Debtor shall make \_\_\_\_\_ payments of \$\_\_\_\_\_ each on the first day of each month, starting from \_\_\_\_\_. Any unpaid principal, interest or late fees remaining unpaid at the end of such period will become due and payable as set forth in the Note.

Debtor agrees to submit to HUD forms HUD-93104 in a timely manner in accordance with HUD regulations (by the 10th of the month following the month covered by the report.)

No delay or omission of HUD to exercise any right it might be entitled to shall be construed to be a waiver of any such right, and every right, power and remedy enuring to HUD in equity, by

law or contract may be exercised from time to time and as often as may be deemed necessary by HUD.

The Agreement is assignable by HUD but may be amended only by a written instrument executed by Debtor and by HUD or its assignee.

This Agreement will be executed in three counterparts, each of which shall be deemed an original. Debtor will receive one counterpart, and HUD will receive one, and CFO's Accounting Financial Center will receive the third.

In testimony whereof, Debtor and HUD have executed this Agreement effective the date first above written.

Debtor

By: \_\_\_\_\_

Secretary of Housing and Urban Development

By: \_\_\_\_\_

Title: \_\_\_\_\_



**CONFESSION OF JUDGEMENT NOTE**

**Amount:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_, Maker of this Note, promises to pay to the order of the Secretary of Housing and Urban Development (HUD), 451 Seventh Street, S.W., Washington, D.D. 20410, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in monthly installments of \$ \_\_\_\_\_, starting on \_\_\_\_\_. The final installment of \$ \_\_\_\_\_, is due on \_\_\_\_\_.

Holder (HUD, its successors or assigns) may collect a late charge of 10% on any installment that is at least five days past due.

Failure to pay an installment within fifteen days after the date the installment is due shall constitute a default, and upon a default Holder may declare the unpaid balance to be immediately due and payable upon 5 days written notice.

This note is secured by an Excess Rental Income Repayment Agreement, a breach of which shall constitute a default under this Note.

In the event of a default, as specified above, Maker hereby appoints HUD as its attorney, which appointment shall be irrevocable, with the power to confess judgment against Maker in any court of law having jurisdiction.

Should payment not be made by the due date, Maker agrees to pay interest at the rate of \_\_\_\_\_ (\_\_\_\_%) per year on the amount past due until paid.

Maker severally waives demand, notice and protest, and any defenses due to extension of time or other indulgence by Holder, or to any substitution or release of collateral.

Maker agrees to pay reasonable costs of collection, including attorney fees, whether or not judgment is entered on this Note.

Debtor

By: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_