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New York State Division of Housing and Community Renewal

25 Beaver Street
New York, NY 10004

HOUSING MANAGEMENT BUREAU MEMORANDUM # 2004-B-14

To: All Federally-Assisted Housing Companies

From: Jane I. Berrie, Director
Housing Management Bureau

Date: September 30, 2004

Subject: Final Rule: Retention of Excess Income in the Section 236 Program

The attached notice - **Directive # FR - 4689 - F - 02** - effective on **October 1, 2004** contains the final rule establishing the new terms and procedures by which owners of multifamily housing developments that receive Section 236 rental assistance may retain some or all of their excess rental income. This final rule amends the proposed rule issued on August 12, 2002, and extended through July 31, 2004.

Although all owners/managing agents are expected to review the six changes to the proposed rule contained in this Directive under item III, they should pay particular attention to **Section 236.60 (e)**.

Section 236.60 (e) is revised in the Final Rule to provide that a housing company requesting approval to retain Excess Income for a specific ongoing purpose where the purpose extends beyond the current fiscal year may **1) submit a request stating the proposed use of the Excess Income; and 2) advise that the intended use will extend beyond the current fiscal year**. If HUD approves the housing company's request, the housing company **will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same**.

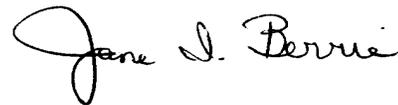
If the housing company has already requested and received permission to retain Excess Income, they will have to submit another request letter and note in the letter that the need for retention extends beyond one year.

In the event that the use of Excess Income changes, the housing company must notify HUD of the change and submit a new request to retain Excess Income **at least 90 days prior to the date that the housing company intends to begin retaining Excess Income for a new purpose.**

Housing companies that request HUD's permission to retain excess income will still be required to send a copy of the request to the attention of Linda Kedzierski, the Federal Programs Coordinator, at DHCR. If HUD approval is granted, a copy of their approval letter and, **thereafter on an annual basis**, a copy of the required narrative report to HUD describing the amount of excess income retained and the uses made of these funds should also be sent to Ms. Kedzierski.

In addition, all Section 236 developments, including those that are authorized by HUD to retain excess income, must continue to submit a Monthly Report of Excess Income (HUD form 93104) to HUD with a copy to DHCR.

If you should have any questions or concerns, please call Linda Kedzierski at (212) 480-2021, or e-mail her at Lkedzierski@dhcr.state.ny.us



Jane I. Berrie
Director