

# **HARRP POLICY**

## **Quota Share Deductibles for Failure to Practice Contractual Risk Transfer**

### **Policy Statement:**

All HARRP members have agreed, in the Intergovernmental Cooperation Agreement, to comply with HARRP's risk control recommendations. One recommendation, which is prudent for all members, is Contractual Risk Transfer. Analyzing risks involved in contractual situations and allocating them to the appropriate party is necessary for the protection of your agency's assets. Also, HUD, in various documents, requires that contractors (in both construction and non-construction agreements) be responsible for their own claims and that housing authorities not assume the liabilities of those with whom they do business.

### **Policy:**

All HARRP members are expected to contractually transfer risk to those with whom they do business. Risk transfer is implemented by inserting an indemnification clause into agreements that makes contractors responsible for their own claims and for defending the housing authority from those claims. It also includes requiring insurance in appropriate amounts and with proper endorsements delivered to the housing authority before the contract becomes effective.

All HARRP members will be given an opportunity to be educated on contractual risk transfer by regional seminars, workshops, phone consultations and the HARRP Contractual Risk Transfer Manual. Failure to transfer risk after implementation of this policy will result in a quota share deductible for a portion of the funds HARRP pays on a claim resulting from that failure.

### **Implementation:**

When HARRP staff determines that a claim could have been avoided if the member had practiced effective risk transfer, the member will be so notified. On the submission of a second such claim, a deductible will be implemented after consultation between staff and the Claims/Loss Management Committee. Any staff recommendation for a quota share deductible will take place only after a thorough investigation of the risk transfer issues has been conducted. The quota share deductible will be applied following the final resolution of the claim.

This policy will be implemented only for contracts entered into, amended or extended after March 31, 2002.

### **Criteria:**

Quota share deductibles will be implemented on subsequent claims after the first claim resulting from the failure to transfer the risk has been submitted to HARRP. In coverages where there is already a quota share or other deductible, (i.e. E&O claims) this risk transfer quota share deductible will be in addition to the existing deductible.

HARRP will take whatever action is appropriate to attempt to recoup from contractors at fault for the claim, any sums paid by HARRP and the member.

**Procedure:**

The Risk Manager or Claims Manager will investigate the member's risk transfer endeavors on claims where the failure of risk transfer is determined to have led to the claim and report to the Claims/Loss Management Committee with a recommendation regarding implementation of a member deductible. After consideration of the facts the Committee will determine the appropriate action to take.

**HARRP will not apply a quota share deductible where:**

A mistake was made by the member in determining the type of specialty insurance to require in the contract; or

Where all responsive bidders for a contract refused to accept risk transfer; or

Where a member is receiving funding and the funding source requires indemnification by the HARRP member; or

Where a member is protected as an insured under another entity's insurance policy (such as where the member manages property for private building owner); or

Where there is only a single source for a needed housing authority procurement of products and/or services and that source will not accept risk transfer; or

Where the contractor is a seller or distributor of a product (i.e. stoves) and does not indemnify purchasers.

**Quota Share Deductibles Will be Applied as Follows:**

1 <sup>st</sup> risk transfer failure	Warning of future implementation of deductibles and offer of telephone or regional risk transfer training.
2 <sup>nd</sup> risk transfer failure	10% quota share deductible of the total cost of the claim.
3 <sup>rd</sup> risk transfer failure	15% quota share deductible of the total cost of the claim and referral to the Claims/Loss Management Committee for special additional loss control conditions.