



OFFICE OF HOUSING

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

Special Attention of:

Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Multifamily Regional Center Directors
Multifamily Satellite Office Directors
Regional and Field Office Directors
Regional Administrators
Performance Based Contract Administrators

Notice H 2018-02

Issued: March 22, 2018

Expires: This Notice remains in effect until amended, superseded, or rescinded.

Cross Reference: H 2013-17

SUBJECT: Refinancing of Pre-1974 Section 202 Direct Loans and Subsequent Issuance of Tenant Protection Vouchers (TPVs) or Senior Preservation Rental Assistance Contracts (SPRACs)

This Notice supplements Housing Notice H 2013-17, providing additional guidance to owners of pre-1974 Section 202 Direct Loan properties that have the option of refinancing the Section 202 Direct Loan for the purposes of reducing the interest rate and/or making capital improvements.

To prevent the displacement of unassisted, low-income elderly tenants following the refinancing of a pre-1974 Section 202 Direct Loan, HUD is authorized to provide rental assistance under the Housing Choice Voucher (HCV) program or to provide project-based rental assistance under a Senior Preservation Rental Assistance Contract (SPRAC). This Notice provides additional guidance on each.

Housing Choice Vouchers

The FY 2017 Appropriations Act provides, in part, for “tenant protection assistance including replacement and relocation assistance or for project-based assistance to prevent the displacement of unassisted elderly tenants currently residing in section 202 properties financed between 1959 and 1974 that are refinanced pursuant to Public Law 106-569, as amended.”¹

¹ Please note that the policy set forth in this section of the Notice relies on authority that appears in annual appropriations act language and may cease to apply if the language is eliminated or altered in a future appropriations act.

This Notice clarifies that Public Housing Agencies (PHAs) may utilize any Tenant Protection Voucher (TPV) assistance issued following the refinancing of such properties either as regular tenant-based vouchers under 24 CFR Part 982 to assist eligible residents in these properties or as project-based vouchers (PBVs) in accordance with 24 CFR Part 983 and HUD's Housing Opportunity Through Modernization Act of 2016 (Public Law 114-201, 130 Stat. 782) implementation and guidance notices affecting PBV (in particular, 82 Fed. Reg. 5458; 82 Fed. Reg. 32461; and Notice PIH 2017-21). The Appropriations Act identifies these properties as being eligible to directly receive project-based assistance. Accordingly, if the PHA and project owner ("Owner") agree to use the voucher assistance as project-based vouchers, owner proposal selection procedures described in 24 CFR §983.51 shall not apply and the assistance may be attached directly to the PBV unit without first offering it to the affected families in the form of tenant-based assistance (though tenant consultation procedures described in Housing Notice H 2013-17 still apply).

Additionally, pursuant to the HOTMA notices cited above, as long as the conditions described in Attachment F of Notice PIH 2017-21 are met PBVs placed on such properties are exempt from the PBV percent funding limitation contained in section 8(o)(13)(B) of the U.S. Housing Act of 1937 (1937 Act) and are exempt from the income-mixing limitation on the number of PBV units at a project contained in section 8(o)(13)(D) of the 1937 Act. All other PBV requirements apply.

SPRAC

The FY 2017 Appropriations Act provided \$10 million for HUD to use for Capital Advance and project-based rental assistance awards and/or to provide incremental SPRACs following the refinancing of a pre-1974 Section 202 Direct Loan property. Accordingly, HUD is making up to \$5 million available to award new SPRACs, which will be provided on a first-come, first-serve basis, based on the time of submission of a complete prepayment request that includes all required submission elements.² Owners requesting a SPRAC must e-mail SPRAC@hud.gov their submission of the refinancing request as the date and time of submission shall be recorded based on the receipt of the e-mail to this address. The Owner may make modifications to the prepayment request following submission without impacting their priority for SPRAC. To receive the SPRAC, the Owner must:

- 1) have a Management and Occupancy Review score that is satisfactory or higher and have no open referrals to the Departmental Enforcement Center, unless the Owner can demonstrate to HUD's satisfaction that a plan has been established to replace the management agent or take other corrective actions sufficient to address the problem and that such plan can and will be implemented in a timely manner,

² HUD will promulgate separate guidance regarding the balance of funding made available under this provision of the FY 17 Appropriations Act.

- 2) demonstrate in the refinancing request that the units proposed to be covered under the SPRAC could not be covered by a PBV contract and are not otherwise assisted by a Section 8 contract,
- 3) commit to serving very low-income elderly residents upon unit turnover,
- 4) be approved for and close on the refinance of the current Section 202 Direct Loan before the loan's mortgage maturity date, and
- 5) comply with Federal civil rights and fair housing laws and requirements. Outstanding civil rights matters must be resolved to HUD's satisfaction prior to grant award, provided that all applicable legal processes have been satisfied.

The prepayment and refinance of any Section 202 direct loan project is prohibited, unless HUD gives prior approval in accordance with the American Homeownership and Economic Opportunity Act of 2000; the Section 202 Supportive Housing for the Elderly Act of 2010; 24 CFR, Subpart E; HUD Notice 2013-17; and the terms of the particular rental assistance program and the original 202 loan agreement.

Per Notice H 2013-17, Owners considering prepayment must consult with their Account Executive prior to submitting the prepayment request. Where the prepayment plans entail the use of PBVs and/or SPRACs as described in this Notice, the Account Executive will coordinate with HUD's Public Housing Field Office to identify a PHA to administer the PBV Housing Assistance Payment (HAP) contract. The Owner may request a SPRAC to cover any units that the PHA, if one is available, determines could not be covered under the PBV HAP contract. The PHA and the Owner will determine the exact number of units that could be covered by the PBV HAP contract after the date of submission of the prepayment request based on occupancy of the project and eligibility of the current residents for PBV assistance. A SPRAC, if requested, would cover, at a minimum and subject to the availability of funds, those units that could not be covered under the PBV contract.

When the Owner's prepayment request is approved, HUD will also notify the owner of the approval for a SPRAC, reserve funds for the project, and provide nine (9) months for the prepayment to occur, unless otherwise approved by HUD. Once the Owner (or, if the refinancing transaction is undertaken in association with a change in ownership, the HUD-approved transferee) has successfully closed on the refinancing loan and is ready to proceed with prepayment of its Section 202 Direct Loan, HUD will request new voucher funding to be awarded to the PHA, who will in turn enter into the PBV contract and the Owner (or HUD-approved transferee, if applicable) will then execute the required Use Agreement and other loan documents as well as the SPRAC, if applicable.

Rental assistance provided under this SPRAC will be administered in accordance with the specific terms and conditions enumerated under the contract. Initial SPRAC rents will be established based on the lesser of comparable market rents or 150% of the Fair Market Rent

(FMR). Over the 20-year term of the SPRAC, contract rents will be adjusted using the processes described in the HUD Section 8 Renewal Policy Guidebook under Option 1A: Mark-Up-to Market.

For further information, Owners should consult their Account Executive and the SPRAC webpage: www.hud.gov/program_offices/housing/mfh/presrv/presmfh/sprac_contracts.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this Notice in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funds Available web page at https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps.

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