



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 Directors of Project Management**  
**All Field Counsel**

**Notice H 2012-25**

Issued: November 21, 2012

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Superseded, or rescinded.

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Cross References: Handbook 4350.6  
H 2011-31  
Letter 97-01

**Subject:** Policy for Amended and Restated Use Agreement for Multifamily Projects Subject to the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA)

**I. Purpose**

This Notice provides guidance on the circumstances under which HUD may consider amendments to Use Agreements for properties assisted under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). Amendments may be considered for the purpose of incentivizing and facilitating prepayment and refinance or acquisition transactions to preserve the viability of these affordable properties. This Notice clarifies the circumstances under which a Use Agreement for a LIHPRHA property may be amended, the amendments that may be allowed, and the conditions that must be met in the proposed preservation transaction to be considered for approval.

**II. Background**

During the 1960s and 1970s, HUD worked with profit-motivated and nonprofit Owners to finance thousands of properties under an array of mortgage insurance programs, including Section 221(d)(3) and Section 236 of the National Housing Act. Many of these projects obtained rental assistance contracts under Section 8 of the United States Housing Act, or through the Rent Supplement or Rental Assistance Payment (RAP) programs.

FHA mortgage insurance under Sections 221(d)(3) and 236 was typically for 40 years, and typically gave the Owners the option to prepay the FHA-insured mortgage after 20 years. As a result of the prepayment, the Owner could convert the project to market rate housing. This option provided a powerful incentive for Owners to prepay the FHA-insured mortgage, particularly if the property had appreciated in value and was located in a desirable neighborhood, enabling the owner to realize

considerable profits.

Owners with Section 221(d)(3) and Section 236 properties first became eligible to prepay their mortgages in the early 1980s. During this period, the Department faced two major preservation challenges: the maturity and/or prepayment of federally-insured mortgages; and the concurrent expiration of Section 8 project-based rental assistance contracts. During the 1980s, these events caused hundreds of thousands of apartments to convert from assisted to market rate housing. The federal government implemented several strategies to preserve the subsidized stock and keep units affordable for residents. One notable strategy was the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA).

Congress enacted LIHPRHA in 1990 to prevent the loss of several hundred thousand FHA-insured affordable housing units. LIHPRHA imposed a general prepayment limitation of federally subsidized mortgages, and offered Owners fair-market-value incentives to: 1) extend low-income affordability standards for the remaining useful life of the property (no less than 50 years); or 2) transfer their properties to non-profit organizations, tenant associations, and community-based organizations who would keep the housing units affordable for the remaining useful life of the properties. LIHPRHA incentives were utilized for approximately 6 years. Incentives included the approval of Section 241(f) equity take-out loans and/or additional Section 8 subsidy, Section 8 rent increases and/or Capital Grants. Properties that participated in LIHPRHA are sometimes referred to as “Title VI” or “Preservation” projects. In 1996, Congress restored the Owners’ right to prepay federally insured mortgages and removed all federal LIHPRHA preservation funding.

More than 20 years after the advent of LIHPRHA, HUD oversees an inventory of approximately 640 properties and more than 75,000 units subject to LIHPRHA provisions. LIHPRHA projects are primarily low-income housing projects insured under section 221(d)(3) below-market interest rate (BMIR) and section 236 of the National Housing Act. Whether insured by FHA or by a state agency, these projects have low-income use restrictions. LIHPRHA required an extension of the project Use Agreement from the original term to an additional term through the remaining useful life of the property. All LIHPRHA projects are fully or partially assisted under Section 8 of the U.S. Housing Act of 1937.

Many LIHPRHA properties, originally built up to 40 years ago, are today in need of significant repair. Owners accessed LIHPRHA financing approximately 20 years ago to complete moderate repairs, and in the intervening years the capital needs of the projects have increased. Owners may now seek to prepay the FHA-insured mortgage and to refinance their properties with new forms of debt and equity, including but not limited to Low-Income Housing Tax Credits (LIHTC), to make necessary project improvements. The use of LIHTCs and other equity is a desirable strategy to preserve the viability of these LIHPRHA projects.

The LIHPRHA Use Agreements in place at these properties sometimes impose restrictions on Owner distributions and refinance proceeds beyond the restrictions required under the LIHPRHA statute. Such restrictions may hamper Owners’ ability to execute refinance or acquisition transactions. For example, the LIHPRHA statute allows owners to take distributions up to 8% of “Preservation Equity” as calculated at the time of the original LIHPRHA closing.<sup>1</sup> This equity is

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<sup>1</sup> Section 213 of LIHPRHA provides that upon receiving notice of intent, Preservation Value is determined upon

defined in HUD Handbook 4350.6, *Processing Plans of Action under the Low Income Housing Preservation and Resident Homeownership Act of 1990*. At the time of the LIHPRHA transaction, the project was either transferred to a new Owner who committed to extending the affordability of the property, or the existing Owner retained ownership of the project and extended the affordability restrictions. In the former case, the Preservation Equity is defined in Handbook 4350.6 as “Transfer Preservation Equity”; in the latter, it is defined as “Extension Preservation Equity.” Though the statute authorizes distributions up to 8% of the Transfer Preservation Equity or Extension Preservation Equity, many current LIHPRHA Use Agreements restrict periodic distributions of surplus cash generated by the properties to 0% or 6% of initial equity. Some Use Agreements also restrict Owners from realizing any proceeds from a refinance of the project. Other LIHPRHA Use Agreements expressly prohibit Owners from bringing LIHTC equity into the project. None of these restrictions are required by the statute.

Amendments to existing LIHPRHA Use Agreements are prudent in certain circumstances to incentivize and facilitate preservation transactions without the need for additional expenditures by the Department. Owners today are often seeking to bring new equity to their properties as part of a capital repair program. An increase in distributions or refinance proceeds to the levels allowed under the LIHPRHA statute is justifiable if the Owner is bringing new equity to the project. Distributions from surplus cash, and proceeds from a refinance, can play an important role to enable the financing of a transaction to improve and preserve a LIHPRHA property. This is particularly true in the case of a LIHTC transaction, for which LIHTC investor will typically demand a reasonable return on their investment. Under the LIHTC program, a nonprofit General Partner of a LIHTC partnership will typically be allowed a Developer Fee. LIHTC transactions also require compliance and monitoring fees, which distributions and refinance or sales proceeds may help to offset.

### **III. Applicability**

This Notice applies to all properties that received incentives under the Low-Income Housing Preservation and Homeownership Act of 1990 (LIHPRHA) and have a recorded LIHPRHA Use Agreement. It provides guidance for consideration of Owner requests to amend LIHPRHA Use Agreements.

Some LIHPRHA project Owners may also be requesting approval for mortgage prepayment or Interest Reduction Payment (IRP) decoupling. This Notice does not alter the existing policies or process for Owners to request approval for prepayment of mortgages or IRP decoupling.

Nonprofit Owners of LIHPRHA projects participating in a sale/acquisition transaction and seeking release of sales proceeds must adhere to the requirements of Housing Notice 2011-31. All requirements of Notice 2011-31 will apply in such cases, except that the duration of the project Use Agreement will remain as the useful life of the project. Nonprofit Owners seeking to refinance and amend the LIHPRHA Use Agreement must also follow this Notice.

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appraisals performed at that time. Section 214 provides that pursuant to the appraisal, the Secretary of HUD shall determine the Annual Authorized Return, equal to 8% of Preservation Equity. Section 229(8) defines Preservation Equity as the applicable value determined under Section 213. See also HUD Handbook 4350.6, *Processing Plans of Action Under the Low-Income Housing*, Section 11-10.

This Notice also applies to properties subject to a Use Agreement under the Emergency Low Income Housing Preservation Act (ELIPHA). ELIPHA properties are subject to similar restrictions as LIHPRHA projects, but the Use Agreements under ELIPHA expired on the maturity date of the original FHA-insured or HUD-Held mortgage. Most ELIPHA Use Agreements have therefore recently expired or will expire in the near future. Because the expiration of ELIPHA Use Agreements is imminent, it is unlikely that Owners will desire an amendment to an ELIPHA Use Agreement. However, HUD will consider requests for amendments of ELIPHA Use Agreements that meet the requirements of this Notice. Where the Notice makes reference to LIHPRHA Use Agreements, it also applies to ELIPHA Use Agreements.

#### **IV. Administrative Process**

HUD will allow the amendment and restatement of the property's Use Agreement to allow the Owner to receive proceeds from the refinance of the property, and to allow the Owner to receive annual distributions of proceeds up to 8% of Transfer Preservation Equity or Extension Preservation Equity that was calculated at closing of the LIHPRHA transaction, as allowed by statute.

In general, HUD will only consider such an amendment and restatement of the Use Agreement where the Owner is proposing a transaction to prepay the existing FHA-insured, HUD-held or state-insured mortgage in conjunction with a refinance or sale/acquisition transaction. While all such amendments and restatements will be examined on a case by case basis, HUD expects that favorable treatment will be accorded to those that meet the following criteria :

##### **1. Compliance with business agreements**

For the Department to consider an Owner's request to amend the LIHPRHA Use Agreement, the Owner must be in compliance with all business agreements with the Department and project operations must meet HUD standards. In the event of non-compliance that the Owner believes will be cured through the transaction, the Owner (or proposed purchaser, in the case of an acquisition) must submit a description of how and when compliance will be achieved. The Hub must concur that the conversion will cure all outstanding non-compliance issues. Any non-compliance that will limit the ability of HUD to analyze an amendment request must be cured prior to submission. Compliance must be demonstrated by:

- A. The project must have a current 60 or above REAC PASS score. If the project received any deficiencies on the last HUD physical inspection, the owner must demonstrate how the acquisition or refinancing will provide adequate funding to cure the deficiencies. Evidence will include a repair plan that details how all of the physical needs of the project will be addressed and written comments regarding the status of any corrective action in progress, e.g., what repairs have been completed, what other corrective actions have been taken, and target dates for completing these actions.

- B. Owners must be in current compliance with all applicable fair housing and civil rights requirements contained in 24 CFR 5.105(a), including the Fair Housing Act and its physical accessibility requirements, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, and submit a certification of compliance with these requirements as a condition of this deferral request. In addition, Owners must not (1) be defendants in a Fair Housing lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of person raising an issue of general public interest pursuant to 42 U.S.C. 3614(a); (2) be recipients of a letter of findings identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974; or (3) be recipients of a charge from HUD concerning a systemic violation of the Fair Housing Act or have received a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability or familial status. Unless the lawsuit, letter of finding, charge or cause determination has been resolved to HUD's satisfaction before the request to amend the Use Agreement is submitted, an Owner's request will not be considered.
- C. The project must have received satisfactory Management and Occupancy Review ratings for the prior three review cycles. If the project received a less than satisfactory rating in any section of its last Management and Occupancy Review, the Owner must provide written comments regarding the status of any corrective action in progress, the other corrective actions taken, and target dates for completing these actions.
- D. The owner is current in the submission of Annual Financial Statements in the form required by the Department and Monthly Accounting Reports for the prior three-year period and Excess Income Reports for the prior seven-year period, and has resolved all compliance flags, if any. All excess income, regardless of the time frame, owed to the Department must be paid in full prior to execution of the amended LIHPRHA Use Agreement.
- E. The FHA insured, HUD -held or state insured mortgage on the property has been current over the prior three-year period. If the mortgage has not been current, the Owner/purchaser is pursuing a financing plan to put the project on sound financial footing.
- F. There are no outstanding notices of default or violation.
- G. In the case of a prepayment and proposed acquisition of the project by a new Owner entity, a Transfer of Physical Assets (TPA) is not required. However, the Hub/PC Director or designee is to evaluate the qualifications of the proposed purchaser to ensure that the project is being sold to an experienced owner (nonprofit or for-profit) of affordable rental housing that has the capacity to complete the repair program and

manage the project successfully as affordable housing over the term of the Use Agreement.

The Hub/PC should complete a review of the proposed purchaser's experience of owning and operating affordable rental housing, completing repair programs of a similar scale to that proposed by the transaction, preventing involuntary displacement of tenants, and successfully meeting debt obligations. The purpose of this review is to evaluate whether the sale transaction poses a risk to the Department, the project residents and the surrounding community.

For a troubled project, HUD will require an experienced owner/managing agent who has demonstrated the ability to successfully own and manage troubled projects. In cases where there will be significant repair and/or upgrades, the prospective owner/managing entity must be judged to have sufficient experience, capability and capacity to timely complete the rehabilitation requirements. All proposed transactions will be assessed based on the following criteria:

1. Purchasers must provide the following information to the Hub/PC for review:
  - a. An explanation of the organization and structure of the purchasing entity;
  - b. A description of the organization's history and experience in operating affordable rental housing;
  - c. An explanation of the business transaction reflected in the Source and Use of Funds Statement, including the terms of any non-FHA financing proposed for the transaction;
  - d. An explanation of the purchaser's relationship to the management agent and whether it expects to make changes in the management of the project, particularly within the first year;
  - e. The organization's success in completing or overseeing capital repairs in multifamily properties at a similar scale to those proposed in the transaction;
  - f. An explanation of why the purchaser believes the proposed repair program and/or deposit to the reserve for replacement account will be adequate to maintain the project in safe, decent and sanitary condition;
  - g. The proposed rents for any unassisted residents at the property, and how the unassisted residents will be protected from displacement; and,
  - h. An explanation of how it will correct any financial deficiencies reflected in the interim financial statement, including eliminating payables at closing and making sure the various escrows (property tax, insurance) and

trust accounts (tenant security deposit) will be properly funded as a result of the transaction.

2. Evaluation of purchaser. The proposed purchaser must meet all of the following criteria:

- a. Has provided evidence of successful experience owning and operating affordable multifamily housing properties.
- b. Has provided evidence of successful operation of HUD or other affordable multifamily properties.

3. Evaluation of proposed management agent. The proposed management agent must meet all of the following criteria:

- a. The proposed management agent must have the appropriate staffing and leadership skills, knowledge, and experience to successfully manage the project. This includes an evaluation of the prospective managing entity's knowledge and experience addressing reasonable accommodations requests under the Fair Housing Act or section 504 of the Rehabilitation Act of 1973. The type and length of experience required will vary depending upon the degree of difficulty of managing the particular project. Management agents who lack the requisite experience will be rejected.
- b. For a troubled project, HUD may require an experienced managing agent who has demonstrated the ability to successfully manage troubled multifamily projects. In cases where there will be significant repair and/or upgrades, the prospective managing entity will be reviewed to determine that they have sufficient experience, capability and capacity to complete the rehabilitation.
- c. If the existing agent will remain in place, that agent must have a demonstrated record of success at the target project to be acceptable. The Hub/PC Director must decide whether an existing agent in a troubled project will remain, based on staff evaluations and recommendations. An incumbent agent is subject to full review by the Hub. The Hub will require the same standards of performance from an incumbent agent as it would from a new agent.

## 2. Use Agreement

The Owner must ensure that the project will continue to be maintained by the Owner, or in the case of the sale of the project, by the purchaser as affordable rental housing. This requires amendment and restatement of the existing Use Agreement. The Use Agreement, once amended will continue with the same affordability and rental restrictions as those in place prior to prepayment and will be for the same term (through the remaining useful life of the project). The project Plan of Action may

require conforming amendments to ensure consistency with the Use Agreement.

The Use Agreement must meet the following requirements:

- A. An amended and restated Use Agreement will be required.
- B. The base document will be the project's existing LIHPRHA Use Agreement.
- C. The Use Agreement will amend the Owner distributions (Authorized Annual Return) to be not more than 8% of Extension Preservation Equity or Transfer Preservation Equity per annum.<sup>2</sup>
- D. The Use Agreement will remove restrictions on the use of proceeds from a refinance or sale/acquisition transaction. This includes any restrictions on sale or refinance proceeds that would apply to the desired preservation transaction.
- E. If the existing Use Agreement includes an express prohibition on the use of Low Income Housing Tax Credit equity at the project, such a prohibition will be removed.
- F. **No other provisions of the Use Agreement may be altered.**
- G. The field will draft and execute the amended Use Agreement which must be approved by Field Office of General Counsel.
- H. Affordability Restrictions: The Owner will maintain the Project as affordable to Very Low-, Low-, and Moderate-Income tenants as recorded in the existing LIHPRHA Use Agreement. No amendments to the proportion of Very Low-, Low- and Moderate-Income tenants will be made.

### 3. Prepayment Approval

In accordance with the requirements of the mortgage Note, the Owner may be required to submit a request for approval of prepayment of the FHA-insured or HUD-held mortgage, including documentation required to comply with Section 219 of the 1999 Appropriations Act. If the transaction involves an IRP Decoupling, the Owner is required to comply with requirements of Notice 2000-08, *Guidelines for Continuation of Interest Reduction Payments after Refinancing: "Decoupling", under Section 236(e)(2) and refinancing of insured Section 236 projects into non-insured Section 236(b) projects*, or any subsequent guidance on IRP Decoupling. If the Owner is requesting approval to prepay an FHA-insured or HUD-held mortgage, or an IRP decoupling, the request for an Amended and Restated Use Agreement may be submitted concurrently. The Owner must also meet all requirements of the applicable aforementioned processes.

### 4. Calculating Allowable Distributions

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<sup>2</sup> Note: Transfer Preservation Equity or Extension Preservation Equity were calculated at the time of the initial LIHPRHA transaction. Pursuant to the LIHPRHA statute, HUD may not include new equity in the calculation of this figure.

The Hub/PC will calculate the allowable Owner distributions by referring to Form HUD-9607 Section V in the project's servicing file which lists the owners Authorized Annual Return. If this form is not available, the figures may appear in the project's Plan of Action or other LIHPRHA agreements or closing documents. The Owner is allowed 8% of Transfer Preservation Equity or Extension Preservation Equity as an annual distribution. The distribution must be taken from surplus cash, and may not be listed as a line item expense in the Section 8 HAP Contract budget.

If the figures for Transfer Preservation Equity or Extension Preservation Equity are not available, the Hub/PC must derive the dollar figure of the Transfer Preservation Equity or Extension Preservation Equity, according to the instructions in Preservation Letter 97-01 and Handbook 4350.6, as follows:

- A. Transfer Preservation Equity is listed as Owner equity from Form HUD 9607 adjusted for principal repayment since issuance and changes in value due to condition since issuance of the 9607. This is calculated by taking Transfer Preservation Value (the value determined at the time of the LIHPRHA transaction) less outstanding balance of federally assisted mortgage(s) for the project (at the time of the LIHPRHA transaction).
- B. Extension Preservation Equity is listed as Owner's equity from Form HUD 9607, adjusted for principal repayment and reasonable value fluctuations for condition since the issuance of the form. This is calculated as Extension Preservation Value (Highest and Best Use) at the time of the LIHPRHA transaction, minus all unpaid debt at the time of the LIHPRHA transaction.

#### 5. Renewal of Section 8 Housing Assistance Payments (HAP) Contract

If there is a HAP Contract in place at the property, the Owner must execute a Renewal Contract with a 20-year term. The Owner and Hub Director may mutually agree to terminate the existing HAP contract and execute a 20-year Renewal Contract, which includes the "Preservation Exhibit" that is provided in Attachment 1 of this Notice. The term of the Renewal Contract must be equal to 20 years. The Preservation Exhibit must be completed to provide that upon expiration, the 20-year Renewal Contract shall automatically renew for an additional term at least equal to the number of years remaining on the existing HAP contract that is being terminated by mutual agreement of HUD and the Owner.

#### 6. Assignment of HAP Contract

In the event of a sale transaction, the seller will execute the Renewal Contract at or before the closing, and then assign the HAP contract to the purchaser at the time of closing using the "Assignment, Assumption and Amendment Agreement of Section 8 Housing Assistance Payments Contract" form provided as Attachment 2 to this Notice.

#### 7. Physical Improvements

HUD will not approve the scope of proposed rehabilitation activities but will verify that the Owner will address the physical needs of the project over the term of the LIHPRHA Use Agreement. This may be demonstrated in one of three ways:

- A. Submission of evidence of an award or allocation of 4% or 9% Low Income Housing Tax Credits (LIHTCs) for the purpose of acquisition and rehabilitation of the subject property. Acceptable documentation includes a LIHTC award/allocation letter from the state LIHTC allocating agency, or a proposed LIHTC Letter of Commitment from a tax credit investor.

OR

- B. Submission of a Capital Needs Assessment (“CNA”) to assess the repair and rehabilitation needs of the property, and a repair plan that demonstrates the needs identified in the PCNA will be met.

OR

- C. Submission of a Section 221(d)(4) or Section 223(f) FHA insured loan application to HUD, inclusive of required architectural and repair exhibits.

The submission (whether A, B or C) must include a time schedule for proposed repairs, and a description of the sources of funding to meet the physical needs of the project over the term of the LIHPRHA use agreement. Any significant repair needs (accessibility repairs, major building systems or life safety items) must be addressed through a capital repair effort to be initiated upon closing of the transaction.

If the project receives federal financial assistance, including, but not limited to, project-based Section 8 housing assistance (for a definition see 24 CFR 8.3), then the Owner must include in the CNA its plan for any alterations to dwelling units or common areas necessary for compliance with HUD’s Section 504 regulation at 24 CFR Part 8. The Owner is advised that an independent accessibility assessment may be required; the repairs identified in such an assessment must be integrated into the overall capital repair plan.

## 8. Environmental Review

The amendment of a LIHPRHA Use Agreement under this Notice may require environmental review by HUD Multifamily Development staff. If the amendment involves the award or allocation of LIHTCs as discussed above at Section 7.A, no environmental review is required. If the amendment involves submission of a CNA as discussed above at Section 7.B, an environmental review in compliance with 24 CFR 50.4 (“Part A” of Form HUD-4128) is required per 24 CFR 50.20(a)(6) Guidance for completion of this review may be found in Chapter 9 of the *Multifamily Accelerated Processing* (MAP) Guide. If the amendment involves submission of a Section 221(d)(4) or Section 223(f) FHA insured loan application as discussed above at Section 6.C, an environmental review in compliance with 24 CFR Part 50 and Chapter 9 of the MAP Guide is required.

## 9. Rent-Setting and Project Based Rental Assistance

The Hub/PC Director will retain authority to approve rent adjustments for LIHPRHA projects adhering to this Notice. The owner will continue to receive rents as outlined in the Plan of Action listed in the Use Agreement. See Chapter 11 of HUD Handbook 4350.6 and Chapter 7 of the *Section 8 Renewal Policy Guide* for processing instructions of budget-based rent increases for LIHPRHA projects. The existing project Use Agreement rent and affordability restrictions will remain in force.

The Owner must also submit a narrative addressing what subsidies, such as Housing Choice Vouchers, LIHTC equity, and bond financing will be provided as part of the transaction, and detailing what steps will be taken to protect current tenants from rent increases that may occur in relation to these other funding sources. Subject to the availability of appropriations, when an Owner prepays the loan on a LIHPRHA project, Enhanced Vouchers (EVs) may be provided to eligible tenants in units not covered by rental assistance contracts if conditions are met in accordance with Section 223(f) of LIHPRHA and as described in PIH Notice 2001-41. EVs are provided at the time of prepayment even though the LIHPRHA Use Agreement survives the prepayment. (EVs are not provided at the time of expiration of the LIHPRHA Use Agreement.) Where vouchers are provided for a prepayment as detailed above, tenants must meet income eligibility criteria established under 223(f)(2) of LIHPRHA.

The Hub/PC Director must assure that no involuntary displacement of existing tenants occurs as a result of the transaction.

## 10. Project Equity and Proposed Financing

Any transaction approved pursuant to this notice must put the project on solid financial footing. To justify an amendment and restatement of the LIHPRHA Use Agreement, The Hub/PC must ensure that the following requirements are satisfied:

- A. The proposed financing must include a sufficient debt service coverage ratio, and interest rates appropriate for the project and the market. Particular care must be taken to assess the risks posed by adjustable rate or balloon payment mortgages.
- B. All accounts payable must be cleared at the time of the prepayment. If deemed necessary by the Hub/PC, an adequate escrow or letter of credit may be required.
- C. Present balances in all escrow and reserve accounts must be sufficient to pay near term billings. Present balances and monthly deposits must also be sufficient to cover the costs of replacements and maintenance over the term of the Use Agreement.
- D. The transaction must involve the addition of new equity by the Owner. This equity may take the form of LIHTC equity, Owner cash contribution or other resources external to the project (project Residual Receipts and Reserve for Replacement funds do not qualify as new Owner equity). The Owner must provide documentation of the equity that is being added. Acceptable documentation includes, but is not limited to,

a LIHTC award/approval letter, certification from the Owner of commitment of equity (for non-LIHTC equity), and dollar amount if contribution, or a proposed LIHTC Letter of Commitment from a tax credit investor. This Owner equity must total at least 10% of the development cost of the transaction.

**Please note: public sources of financing in the form of grants or forgivable debt from local, state, or federal sources will not be considered toward the calculation of the Owner equity contribution under this Notice.**

11. Hub/PC Processing of Request for New Use Agreement

- A. Responsibilities of Owner. Owner submits request to Hub/PC Director describing the transaction and how it meets requirements 1 through 10, above. If there is a Section 8 rental assistance contract at the property, the Owner also submits request for the 20-year Renewal Contract and Preservation Exhibit.
- B. Responsibilities of Hub/PC Director. The Hub or PC Director will review the request for Amended and Restated Use Agreement to ensure compliance with this Notice and to oversee the execution of the required HAP Contract (if applicable) and Restated Use Agreement. Upon receipt of an eligible project and complete proposal, the Hub/PC must review the request in accordance with the requirements of this Notice within 30 days. The Hub/PC must analyze the proposal and verify supporting documentation. A sample review checklist is provided as Attachment 3 to this Notice.

The Hub or PC may also be requested to calculate the allowable distribution. The maximum permitted annual distribution is 8 percent of the initial preservation equity and is derived as described in Paragraph 4, above.

The Hub or PC Director will then submit the request for amendment and restatement of the LIHPRHA Use Agreement to the Office of Asset Management, along with the proposed Use Agreement, with amendments noted, to HUD Headquarters for consideration.

- C. Some of the requirements in this Notice mirror the HUD requirements for approval of prepayment, TPA, IRP Decoupling and/or Assignment of the HAP Contract. The Hub/PC will continue to forward prepayment approval requests, IRP Decoupling Applications and Transfer of Physical Assets packages to HUD Headquarters for review and approval, as applicable. The request for approval of Amendment and Restatement of the LIHPRHA Use Agreement may accompany the other requests submitted to HUD Headquarters for review.
- D. If the amendment of the LIHPRHA Use Agreement is approved, the Hub/PC will follow the process detailed in section IV.(2) of this Notice to execute the amended and restated Use Agreement and ensure that it is recorded.

- E. Proceeds from the sale or refinance of the LIHPRHA project must be placed in escrow until the Multifamily Hub/PC receives the original recorded Use Agreement and a legal opinion or title report showing that the Use Agreement has the first lien position. HUD will not consent to release the sale or refinance proceeds from escrow until all Use Agreement recording requirements have been satisfied. Once these documents are received, the Hub/PC will approve the remittance of the sale or refinance proceeds.
- F. The Project Manager must assure that information about the prepayment is entered into iREMS to track and monitor Use Agreements. The amendment and restatement of the LIHPRHA Use Agreement provides an opportunity to verify the accuracy of the LIHPRHA Use Agreement information in iREMS. The iREMS Servicing screen allows for the following Use Agreement information to be recorded and tracked:
- a) Ability to record reasons for restrictions of Use Agreement;
  - b) Use Agreement effective date and expiration date (dates will not change as a result of the amendment under this Notice);
  - c) Reason for restriction (LIHPRHA/Title VI);
  - d) Date of recordation (use the original Use Agreement recordation date, not the date of recordation of the amended and restated Use Agreement);
  - e) Number of units that must be maintained by property (Use Restricted);
  - f) Ability to enter date Owner submitted compliance certification;
  - g) Ability to record comments on Owners compliance with Use Agreement Requirements; and
  - h) Explanation for why the original Use Agreement date was terminated (there will not be a change in the original Use Agreement date as a result of this Notice).
- G. Responsibilities of HUD Headquarters. All requests for Amended and Restated Use Agreements subject to provisions in LIHPRHA shall be submitted to HUD HQ for review and final approval. HUD Headquarters will advise the Hub/PC Director if and when the amendment is approved. The Hub/PC will execute the amended and restated Use Agreement in conjunction with OGC field office counsel in accordance with Section IV.(2) of this Notice.

For further information or questions, HUD Hub/PC staff should call their Headquarters Desk Officer in the Office of Asset Management. Owners should contact the Housing Project Manager in the Hub/PC responsible for their project.

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

#### Attachments

[Attachment 1](#) - Preservation Exhibit

[Attachment 2](#) - Assignment, Assumption And Amendment Agreement  
of Section 8 Housing Assistance Payments Contract

[Attachment 3](#) - Field Office Amended LIHPRHA Use Agreement Supplement Checklist

*The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0275, 2502-0587, 2502-0178, 2502-0204, 2502-0001 and 2502-0572. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.*