HUD Office of Affordable Housing Preservation

Senior Preservation Rental Assistance Contract (SPRAC) Program

Frequently Asked Questions (FAQ) Guide

UPDATED, June 30, 2014

The Section 202 Supportive Housing for the Elderly Act of 2010, signed into law in January 2011, authorizes HUD to award Senior Preservation Rental Assistance Contracts (SPRACs) to eligible Section 202 Supportive Housing for the Elderly properties. The purpose of the SPRAC Program is to prevent the displacement of currently unassisted income-eligible elderly residents residing in eligible Section 202 Direct Loan properties that may result from the owner's refinancing or recapitalization of the property.

In FY 2012, $16 million was made available for SPRAC funding under a competitive process to be directed by HUD. On December 17, 2013, HUD announced the preliminary award of **$14.8 million** in SPRAC funds to 12 projects in 6 states. Other SPRAC Program information and related documents can be accessed on the SPRAC Program Web page and the SPRAC Program Documents web page.

In response to the publication of the SPRAC Final Notice and the subsequent announcement of preliminary SPRAC awards, HUD has received and continues to receive a variety of questions pertaining to the program's requirements and eligibility criteria. The Department is publishing this Frequently Asked Questions (FAQ) document to ensure that all Owner-Applicants have access to the same general program guidance. HUD will continue to update this document as additional questions are received. In order to submit a SPRAC-related question to HUD for guidance and information, please use the following e-mail address: SPRAC@hud.gov.

NOTE: The terms "Owner-Applicant" and "Owner-Applicants" shall also be read to include "purchaser," as this term is used in the SPRAC Final Notice.

SPRAC FAQ Contents (REV. June 30, 2014)

1. General SPRAC Topics/Questions

1a. SPRAC Section 202 Prepayment Applications

Where should SPRAC awardees mail their Section 202 prepayment application packages? What is the application submission deadline?

HUD Response

Owners are strongly encouraged to submit their Section 202/SPRAC prepayment applications electronically to Larry.D.Pack@hud.gov.

Hard copies of any Section 202/SPRAC Prepayment application submissions must be mailed to the following address:

SPRAC/202 Prepayment Team
C/o Mr. Larry D. Pack
Director, Washington Preservation Office
Office of Affordable Housing Preservation
US Department of Housing & Urban Development
The Portals Building, Suite 380
1280 Maryland Ave., SW
Washington, D.C. 20024

NOTE: The SPRAC 202 Prepayment Application deadline expired on April 18th, 2014.

1b. Project Development Team Qualifications

The narrative on pp. 41-42 of the SPRAC Final Notice indicates that the Development Team qualifications must be included as a part of the owner's 202 Prepayment application. Can HUD elaborate on the acceptable contents and format of this component of the prepayment application?

HUD Response

Section 202 property owners who apply for SPRAC and who receive a Notification to Proceed letter from HUD must first apply for and receive HUD approval to prepay the existing Section 202 direct loan before execution of the SPRAC award can proceed. The SPRAC Notice specifically requires the Owner's prepayment application package to include information responding to the HUD Owner-Applicant eligibility criteria described on both pages 21 and 42 of the Final Notice, as follows:

> In order to address the criteria for this review, each Owner-Applicant must provide the following information as a part of the Section 202 prepayment application package:
>
> - The names of the proposed development team members;
> - Documentation demonstrating, as applicable, the team's recent successful experience financing, developing, rehabilitating, constructing, owning, and operating properties or projects that are substantially similar to the project described under the SPRAC application;
> - A description of the teaming partner relationships;
> - A resume for each proposed team member; and
> - If multiple sources of financing have been identified for the proposed project, documentation demonstrating that the development team has experience with at least three transactions involving each form of financing for the proposed project.
>
> HUD reserves the right to require changes in the membership of any applicant's Development Team to ensure a high level of Owner capacity, prior to prepayment approval.

NOTE: Section 202 property owners that apply to HUD for prepayment approval, but have **not** also applied for a SPRAC award, are not required to address these criteria. These applicants must meet the requirements and criteria specified under Housing Notice 2013-17, including Acceptable Project Ownership (page 12).

1c. Additional/Future SPRAC Appropriations

Will additional SPRAC funds be made available for future awards?

HUD Response

Additional SPRAC funds may become available under future appropriations, HUD currently has no information about SPRAC funds aside from those made available under the 2013 SPRAC Final Notice.

1d. Forms Availability

Where can I get fillable SPRAC and Use Agreement forms?

HUD Response

You may download these documents from the SPRAC Documents page: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh/sprac_contracts.

1e. More Information

Where can I get more information on SPRAC?

HUD Response

More information is available online at HUD.gov:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh/mf_sprac

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2. Property Capital Needs Assessment (PCNA)

2a. "Substantially Equivalent" PCNA

Are the plans and specifications required under the 221(d)(4) application and/or some additional component appended by the owner to these documents sufficient to satisfy the "SPRAC substantially equivalent" standard of the SPRAC Notice?

Can HUD clarify how an Owner-Applicant can receive "prior written approval" to use a "substantially equivalent standard" for a PCNA with a green component?

HUD Response

Please refer to p. 63 of the SPRAC Notice, which states in part: "The Owner-Applicant's prepayment request must include a Property Capital Needs Assessment (PCNA). The PCNA will be used to fully evaluate the project per the project ranking criteria described under this final Notice. In order to satisfy the PCNA requirements of the 202 prepayment application, Owner-Applicants will have the option of submitting a completed 'green' PCNA (re: a HUD RAD SOW or a RAD PCA), as may be modified to specifically meet the requirements of SPRAC, **or a substantially-equivalent standard, with the prior written approval of HUD, and which contains a Green Building component** (emphasis added). HUD will use the Owner-Applicant's PCNA to establish the repair needs of the property for purpose of ranking each application under one of the four tiers, as described under this final Notice."

The use of the phrase "or a substantially-equivalent standard with the prior written approval of HUD" speaks primarily to instances where an Owner-Applicant has previously requested and received approval from HUD to use a PCNA template that is substantially-equivalent to the specific options identified under the Final Notice. Owner-Applicants who wish to use a PCNA template that is substantially-equivalent to the Green PCNA options that HUD has specified must submit this request to HUD in writing, and provide a copy of the alternative PCNA template to HUD for evaluation purposes. Each such request must be sent to: Larry.D.Pack@hud.gov.

Please note that HUD requires a Green PCNA to be included as a part of each selected owner's 202 Direct Loan prepayment approval request. Therefore, any such substantially-equivalent PCNA templates that have not already been evaluated and approved by HUD must be submitted as soon as possible. It is possible that HUD may be unable to evaluate and approve (or deny) the use of all such substantially-equivalent PCNA templates in time for these to be included as a part of an Owner-Applicant's Section 202 Direct Loan prepayment approval request. In each such case where HUD is unable to evaluate an Owner-Applicant's substantially-equivalent PCNA template according to the prepayment request timeline, the Owner-Applicant is required to prepare a Green PCNA as specified under the Final Notice.

Plans and specifications for a 221(d)(4) application are not an acceptable substitute for a PCNA. In response to public comment HUD changed the ranking criteria for selection to include a priority for substantial rehabilitation needs identified by the PCNA. The Final Notice makes it clear that owner-initiated repairs, above and beyond those identified by a PCNA, are not considered in the ranking. Therefore it is imperative that all properties have a PCNA and that all PCNA are performed to the same standard, identifying critical and non-critical repairs following the HUD RAD statement of work, or an equivalent standard approved in advance.

2b. PCNA Lead Based Paint Requirements

HUD has given guidance in the past that if a property is used for the sole purpose of serving low-income senior/elderly tenants, it is therefore exempt from Lead Based Paint analysis and remediation requirements of 24 CFR Part 35. Can HUD confirm that SPRAC-eligible properties that are 100% senior are exempt from lead based paint analysis?

HUD Response

The Lead Safe Housing Rule (24 CFR Part 35) summarizes those circumstances/activities that are exempt from federal lead paint disclosure, inspection, analysis and remediation requirements under § 35.115. The 3rd item on this list reads, "Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of 'housing for the elderly' and 'expected to reside' in § 35.110)."

SPRAC Properties found to meet this criterion are exempt from the requirements of 24 CFR Part 35.

2c. PCNA and Substantial Rehabilitation

Why is HUD requiring project owners to submit a Property Capital Needs Assessment (PCNA)? When is the owner required to submit this report to HUD for purposes of the SPRAC Program?

HUD Response

HUD requires each Section 202 owner to include a PCNA with each prepayment application in order to establish the level of rehabilitation work needed at the property. Substantial Rehabilitation was used by HUD as one of the criteria for ranking qualified SPRAC applications under Tier One for purposes of making initial awards.

The SPRAC Final Notice cites the definition for substantial rehabilitation published under the HUD MAP Guide, 4430-G, which reads as follows:

A. Substantial Rehabilitation - required repairs, replacements and improvements involve:
  1. The replacement of two or more major building components, or
  2. Costs which exceed the greater of:
    a. 15% (exclusive of any soft costs) of the property's replacement cost (fair market value) after completion of all required repairs, replacements, and improvements,
    b. $6,500 per dwelling unit (adjusted by HUD's authorized high cost percentage), or
    c. 20% of the mortgage proceeds applied to rehabilitation expenses.
    NOTE: Estimates for determining the cost for substantial rehabilitation must include general requirements and fees for contractor's general overhead and profit, bond premium, borrower's and contractor's other fees and design architect and supervisory architect. However, when determining the eligibility of Section 223(f) projects, include only the direct repair costs and do not add general requirements and fees.

Section 202 owners in receipt of a SPRAC Notification to Proceed letter are required to document the full extent of each project's deferred maintenance needs as a condition for qualifying to receive a final SPRAC award. HUD is requiring that each such owner provide for the inclusion of a completed Green PCNA, as defined on page 63 of the SPRAC Final Notice, with each 202 prepayment application package to be eligible for a final SPRAC award. Owners are also instructed to submit a sources and uses document that describes their proposed use of loan proceeds in accordance with the requirements of Housing Notice 2013-17, along with information describing any supplemental financing with which the owner proposes to finance any of the project rehabilitation. This information will also help demonstrate that the owner's proposal meets the substantial rehabilitation threshold of the SPRAC Notice.

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3. Project Rent Comparability Study (RCS) and Rent-Setting

3a. Revised/Updated, "Post-Rehab" RCS

When are owners required to submit a revised RCS to HUD? What rent standard is this document used to validate?

HUD Response

Owner-Applicants that have received a SPRAC Notification to Proceed letter from HUD have been instructed to prepare and submit a Section 202 mortgage prepayment application to HUD, including an updated/revised version of the RCS that the Owner-Applicant had originally included with the SPRAC application. Per pp. 61-2 of the Final Notice:

"The Notification [to Proceed] will include an estimated dollar amount for potential SPRAC assistance, as determined by HUD through use of the required RCS submitted by the Owner-Applicant. As with HUD's Mark-Up-to-Market rent-setting policies, HUD will commission an independent rent comparability study at time of the Owner-Applicant's prepayment application for comparison purposes under SPRAC. This amount is subject to change based on HUD's final determination of the number of income-eligible unassisted units at the property and market comparable rents using the Owner-Applicant's **updated** (emphasis added) RCS, as well as HUD's evaluation of the Owner-Applicant's provision of a Property Capital Needs Assessment (PCNA) with the Section 202 prepayment application submission."

Per pp. 67-8 of the Final Notice, "The updated RCS is required to provide the Owner-Applicant's justification for the post-rehabilitation market rents for the units, and must otherwise meet the requirements of the Section 8 Renewal Policy Guidebook."

Owner-Applicants were permitted to use an existing RCS for the initial application if one was available, and which met the criteria specified under the Final Notice. An existing RCS would cover existing Section 8 units in existing condition. The revised RCS submitted with the prepayment application may be based on post-rehabilitation rents.

3b. Tenant Rents, Increases and Decreases under SPRAC

Are all SPRAC-eligible Section 202 units subject to a rent decrease when an approved 202 prepayment transaction results in the award of SPRAC assistance to the project?

HUD Response

No, unit rents will not necessarily decrease in all cases. SPRAC assistance is intended prevent the displacement of currently unassisted low-income tenants by offsetting any rent increases that may result from prepayment and refinancing/recapitalization. However, if an eligible tenant currently pays less than 30% of their adjusted income for rent, their rent could increase if/once the unit is assisted with SPRAC. For example, if an unassisted tenant is currently paying $400 a month but 30% of their adjusted income is $500, then they would pay $500 under SPRAC rents and HUD would pay the difference up to the SPRAC contract rent (which will be the lesser of the RCS rent or 150% of the Fair Market Rent).

3b. Tenant Rents, Non-SPRAC Units

Can unit rents be set to the new SPRAC rent standard for unassisted tenants who are NOT eligible for SPRAC?

HUD Response

No, owners are required to offset any rent increases for unassisted tenants during their tenure at the property using proceeds from the prepayment and refinance to establish a rent increase escrow. See page 23 ("VIII. Refinancing to Address the Physical Needs of the Project") and page 25 ("Use of proceeds") of Housing Notice 2013-17 for further guidance.

3c. Rent Increases, Non-SPRAC Units

How are rents to be adjusted in the future for ***non-SPRAC*** units?

HUD Response

The answer depends on whether or not the unit is assisted with another form of subsidy. Accordingly:

1. Units assisted with project-based Section 8 will have their rents adjusted as provided for in the *Section 8 Renewal Policy Guide* and the HAP contract.
2. Units assisted with tenant-based Section 8 assistance will have their rents adjusted in accordance with the procedures established by the administering housing authority based on the type of voucher the tenant has.
3. Units designated as tax credit units will have their rents adjusted in accordance with the LIHTC rules.
4. Any other units receiving other types of assistance will have their rents adjusted in accordance with the applicable program rules.
5. Unassisted units will have their rents adjusted upon renewal of the lease in a manner consistent with any state or local rent restrictions. One administrative option owners may consider is the use of HUD's Operating Cost Adjustment Factor (OCAF) that will be used to adjust the SPRAC rents (and in some cases, the project-based Section 8 rents). Note that the OCAF can only be used if it is consistent with any state or local rent restrictions. As such, HUD anticipates that rent increases for unassisted units will vary by property. As stated in 3B of these FAQs, current unassisted tenants may not have their rents increased to the new SPRAC rent (which allows for increased debt service and substantial rehabilitation). Instead, any increases resulting from the prepayment and refinance of the Section 202 Direct Loan must be funded by a rent increase escrow established using refinance proceeds however; this does not preclude an annual adjustment in accordance with state and local law, as stated above.

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4. SPRAC-Eligible Tenants and Units

4a. Documentation of Tenant Income

Can HUD clarify the format it requires owners to use for the documentation of tenant income verifications submitted as part of the 202 prepayment application?

HUD Response

For purposes of the SPRAC 202 prepayment application, acceptable documentation of the verification of tenant income eligibility can include a spreadsheet file containing information listing the income of each unit, and verifying whether or not this amount is within 80% of the area median income, as established by HUD and adjusted for household size. Owners are instructed to use the HUD FY14 income limits, which are accessible online at HUDUSER.org. The spreadsheet must also indicate each instance where a unit is assisted under Section 8 Project Based Rental Assistance, and each instance where a unit is occupied by a tenant household whose rent is subsidized through the Section 8 Housing Choice Voucher program.

As to the submission of unit household income information, owners have the option of providing either gross or adjusted income amounts. Owners who opt to provide adjusted income data for their project units must calculate adjusted income according to HUD Section 8 methodology[1] and requirements[2].

For purposes of the execution of the SPRAC just prior to closing of the new loan, the Owner must complete 50059 certification forms for each SPRAC unit. The Multifamily Field Office with jurisdiction over the property, will be reviewing a sample of the 50059 forms (along with the tenant file that contains the documentation used to verify income, deductions and rent) based on the size of the property. The following minimum sample size should be reviewed with the option for HUD to review additional files if the preliminary review indicates additional review is warranted.

Number of Units	**Minimum File Sample**
100 or fewer	5 files plus 1 for each 10 units over 50
101-600	10 files plus 1 for each 50 units or part of 50 over 100
601-2000	20 files plus 1 for each 100 units or part of 100 over 600
Over 2000	34 files plus 1 for each 200 units or part of 200 over 2,200

4b. Vacant vs. Leased Units

Will HUD award SPRAC funds to assist project units that are currently vacant if the owner commits to reserving any such units exclusively for very low-income (≤50% AMI) tenants?

HUD Response

Please see pp. 62-3 of the SPRAC Notice, which reads in part:

> The maximum possible number of leased units that are eligible for and which may receive SPRAC assistance shall be established by HUD at time of the Owner's initial application. If, at the time of execution of the SPRAC, the total number of SPRAC-eligible leased units is less than the total number initially established by HUD at time of the Owner's initial SPRAC application, HUD, at its sole discretion, may reduce the Owner's total SPRAC award. Conversely, the total number of leased units that are eligible for and which may receive SPRAC assistance shall be capped at the maximum number of eligible units as determined by HUD at time of the Owner's initial application. While the total number of income-eligible leased units may increase in number between the dates of the Owner's initial application and the execution of the SPRAC, HUD will not increase the amount of the Owner's SPRAC award at the time of SPRAC execution on this basis, as the purpose of the SPRAC Program is to prevent the displacement of existing income-eligible tenants.

In short, the number of SPRAC-eligible units identified under the owner's initial SPRAC application is the ceiling on the total possible project units that might be assisted with SPRAC.

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[1] HUD Handbook 4350.3 REV 1, Chapter 5: Determining Income and Calculating Rent (http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35649.pdf)

[2] General Income and Rent Determination FAQs (http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/faq_gird#ai)

The actual number of units assisted by SPRAC is established at the time of contract execution, and is based upon “the total number of SPRAC-eligible **leased units**” (emphasis added). The owner’s intent to lease vacant units to income-eligible tenants does not meet the statutory purpose described under the Notice, which is to use SPRAC funds “to prevent the displacement of existing income-eligible tenants.”

4c. Eligible Units at SPRAC Execution

How will HUD determine the total number of project units that are eligible for SPRAC assistance at the time of the execution of the SPRAC document?

HUD Response

In addition to the text from the SPRAC Notice cited under FAQ 4b (above), please see pp. 1-2 of the draft Agreement to Enter into a Senior Preservation Rental Assistance Contract (ASPRAC II), which reads in part:

> “d. Leased Units at Time of Execution. At the time the Owner applies to HUD for SPRAC assistance, HUD shall examine the lists of dwelling units leased and not leased, referred to in section 2.2(a) and (b), and shall determine the maximum number of leased units that may be eligible to receive SPRAC assistance. At the time of SPRAC execution, HUD shall state in writing its final determination with respect to the total number of SPRAC-eligible leased units and for which of those units it will make SPRAC payments pursuant to the Contract.
>
>> “i. The total possible number of leased units that are eligible for SPRAC assistance shall be established by HUD at time of the Owner’s initial application. If, at the time of execution of the SPRAC, the total number of eligible leased units is less than the total number initially established at time of SPRAC application, HUD, at its sole discretion, may reduce the Owner’s total SPRAC award.
>>
>> “ii. Conversely, the total number of leased units that are eligible for SPRAC assistance shall be capped at the total number of eligible units as determined by HUD at time of the Owner’s initial application. While the total number of leased units may increase in number between the dates of the Owner’s initial application and the execution of the SPRAC, HUD will not increase the amount of the Owner’s SPRAC award at the time of contract execution, as the purpose of the SPRAC Program is to prevent the displacement of existing income-eligible tenants.”

The following draft SPRAC documents are accessible from HUD.gov:

- Agreement to Enter into a Senior Preservation Rental Assistance Contract (ASPRAC), I and II
- Senior Preservation Rental Assistance Contract (SPRAC), I and II

4d. Temporary Relocation and Unit Eligibility

A project is in the process of unit renovation, and the owner has temporarily relocated some of the tenants and holds their units vacant until the work is completed. Other units are held vacant at turnover in order to accommodate the renovation work. The SPRAC Notice indicates that the maximum number of SPRAC-eligible units is calculated at the time of the initial SPRAC application submission. In this circumstance, are the units which the owner holds vacant for renovation purposes disqualified from receiving SPRAC subsidy? If the owner can demonstrate that some of the vacant units will be leased to qualified renters from the project waiting list, could these units be included under the maximum SPRAC unit calculation?

HUD Response

Both the SPRAC authorizing statute and the SPRAC Final Notice specify that SPRAC-eligibility is premised, in part, on the demonstrated need for SPRAC assistance to prevent the displacement of low- and very low-income tenants currently residing at a 202 property. In general, any instance of unit vacancy at the time of application presents no risk of tenant displacement from those specific units. Therefore, HUD will generally discount any such units from its calculation of the total SPRAC award that it may make to an otherwise eligible property.

HUD is willing to take certain extenuating circumstances into consideration when evaluating whether currently-vacant units may still be eligible for SPRAC assistance. This includes instances where one or more units are held vacant on a temporary basis by the owner for purposes of accommodating ongoing rehabilitation work. In order for these vacant units to be found eligible for SPRAC under the anti-displacement criterion, the owner must provide HUD with sufficient documented evidence that the owner has provided all affected tenants with alternative temporary housing for the duration of the rehabilitation work, and that the affected tenants have a legally-secured right to return to their respective units once the rehabilitation work is completed. Acceptable documented evidence of this includes, but is not limited to, a Certificate of Occupancy for the project, copies of all correspondence between the Owner-Applicant and each affected tenant, both previous to and during the rehabilitation work, such as notices, written agreements, and work schedules, as well as the Owner-Applicant's Development Plan and Relocation Plan, as applicable. Properties that qualify under this criterion must still meet all other eligibility specified under the Final Notice to be considered for a SPRAC award.

The number of SPRAC-eligible units identified under the owner's initial application is the ceiling on the total possible units that might be assisted with SPRAC. The actual number of units assisted by SPRAC is established at the time of contract execution, and is based upon "the total number of SPRAC-eligible **leased units**" (emphasis added). The owner's intent to lease vacant units to income-eligible tenants does not meet the statutory purpose described under the Notice, which is to use SPRAC funds "to prevent the displacement of existing income-eligible tenants."

4e. SPRAC ("Unassisted") Units

Which units in an otherwise eligible Section 202 property can qualify for SPRAC assistance? Can all of the units qualify, or only those units currently unassisted under Section 8?

HUD Response

Funds awarded under SPRAC can only be used to subsidize the affordable rents for units not currently assisted under Section 8. "Unassisted" units include any that are not covered by Project Based Rental Assistance (PBRA), as well as any units that are not occupied by a tenant or tenants who are participants under the Housing Choice Voucher (HCV) program at the time the Owner applies to HUD for a SPRAC award.

Any unit that is covered under an existing Section 8 PBRA contract at the time of the owner's SPRAC application is ineligible to be included in the calculation of the total possible SPRAC award. Likewise, any project unit leased to a tenant household assisted with an HCV at the time of the owner's SPRAC application is ineligible to be included in the calculation of the total possible SPRAC award.

4f. Assisted Living Units vs. Unassisted Units

A 202 owner has converted a few floors of the building into a licensed assisted living facility. This work was financed in part with a Flexible Subsidy Capital Loan and state rehabilitation funds. The project now provides assisted living tenants with meals and other services that are typically provided by standard assisted living projects. Does the conversion of these apartment units into assisted living units have any impact on whether they are eligible for SPRAC assistance?

HUD Response

Section II of the SPRAC Final Notice (pp. 3-35) contains a summary of all the public comments HUD received in response to the publication of the SPRAC advance notice, along with HUD's response to each such question. A response found on page 6 includes a description of "unassisted" units, as this term is used by HUD when evaluating whether a unit is or is not eligible for SPRAC assistance:

"A commenter stated that the January 8, 2013, advance Notice indicated that there would likely be more than one subsidy contract on a property: one for the Section 8 subsidized units and one for the SPRAC units (the non-Section 8/unassisted units)."

With regard to the question of the eligibility or ineligibility of assisted living units for SPRAC, if the "assisted living" aspect of the converted units does not include the provision of subsidized/affordable rents, these assisted living units are "unassisted" for the purposes of SPRAC, and may be eligible for SPRAC assistance under this particular criterion. The SPRAC rents on the assisted living units must not include meals or personal services. SPRAC funds will be awarded solely for the purpose of supporting the cost of housing. Furthermore, please note that FHA multifamily insurance cannot be used with Assisted Living properties (see below), although FHA Healthcare insurance may be an option.

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5. Section 202 Mortgages and Project Financing

5a. Use of Reserve for Replacement Deposits

A nonprofit owner intends to refinance and recapitalize the Section 202 property with a 221(d)(4) mortgage. The owner does not have ready access to capital resources, and is currently in the process of securing pre-development funds to address the necessary transaction costs prior to the FHA closing. Prior to securing this advance capital, the owner would prefer to use Reserve for Replacement funds in order to begin addressing other project-related expenses. Can the owner use this source of funding in an amount that exceeds HUD's $20,000 cap on Reserve for Replacement expenditures?

HUD Response

Reserve for Replacement funds may be used to fund 3rd party reports for Section 202 refinances, up to $20,000 and subject to Asset Management approval. HUD approval may be granted so long as the project has sufficient Reserve for Replacement funds to meet the needs of the project if the refinancing is not completed. Requests for a waiver to exceed the $20,000 limit should be submitted to the Multifamily Hub/PC for review and approval.

5b. Prior Approval of 202 Prepayment

Prior to applying for SPRAC, a 202 owner applied for and received HUD's approval to prepay the project's existing Section 202 mortgage. However, the prepayment and mortgage refinance have not yet gone to closing. Under these circumstances, is the project still eligible for a SPRAC award? If so, is the owner required to resubmit a prepayment application to HUD for SPRAC purposes?

HUD Response

Final approval of a SPRAC award and the execution of SPRAC documents with HUD are contingent in part upon the owner having successfully applied to HUD for approval to prepay a project's existing Section 202 mortgage. See p. 15 of the Final Notice. The fact that an owner's 202 prepayment application has been already been approved by HUD does not render the project ineligible for SPRAC if the mortgage itself has not yet been prepaid. However, under these circumstances the owner must now also submit a SPRAC-specific prepayment application to HUD if the original prepayment application is insufficient for SPRAC purposes. The owner should review the original submission against the prepayment application criteria specified under the SPRAC Final Notice. Any owner may contact HUD for further guidance on this question: SPRAC@hud.gov.

5c. ALCP and FHA-Insured Financing

Prior to the owner's application for SPRAC funding, the property was awarded an Assisted Living Conversion Program (ALCP) grant from HUD. The grant provides funding to convert certain apartment units and common areas throughout the building. These renovations will reduce the total number of units in the building.

Subsequent to receiving a SPRAC Notification to Proceed letter from HUD, the owner is now preparing its Section 202 prepayment application; however, it is likely that a Section 221(d)(4) MAP application will not be completed until later this spring or early summer. Based on that timing, project construction that the owner proposes to finance with the Section 221(d)(4) loan, and which will be concurrent with the execution of the SPRAC contract, will likely not occur until the fall of 2014.

Due to efficiencies created by having a single construction phase, the owner wishes to complete the work under the ALCP grant concurrently with that of the Section 221(d)(4) substantial rehabilitation. Could HUD approve of this proposal, and provide the owner with a waiver of any restrictions currently prohibiting the issuance of FHA mortgage insurance for ALCP projects?

HUD Response
HUD is not currently in a position to consider or otherwise approve Multifamily FHA mortgage insurance applications for properties assisted with ALCP grants. The MAP Guide explicitly prohibits the approval of mortgage insurance for any projects with 232-like services, even in cases where these services are only made available for a portion of the units, or provided to the property on a contract basis.

5d. Eligibility of Subordinated Section 202 Mortgage

A 202 property was originally financed with a Section 202 direct loan in 1969. None of the units are assisted with project based Section 8. The project was recently transferred to a tax credit limited partnership as part of a recapitalization / preservation effort that facilitated the completion of some improvements to the project. As part of this transaction, the Section 202 direct loan was modified and subordinated to the new loan covering all units at the project. Can HUD confirm whether the project's Section 202 loan meet's the SPRAC eligibility criteria now that it is no longer in first lien position?

HUD Response
Of the various criteria that a Section 202 property must meet in order to qualify under HUD's SPRAC eligibility threshold, first among these is the requirement that the property is currently encumbered under an existing/active Section 202 Direct Loan mortgage.

The SPRAC Final Notice does not require that a property's Section 202 mortgage be in first lien position. Owners who have received a SPRAC Notification to Proceed letter are now required to apply for and receive HUD approval to prepay the Section 202 mortgage before HUD will authorize and execute the final award of SPRAC funds. Guidance pertaining to this part of the SPRAC award process is provided on pp. 61-69 (Stages 4, 5, and 6) of the Final Notice.

NOTE: For each project selected for a SPRAC award, HUD will also require the property's new SPRAC Use Agreement to take first priority when it is recorded at prepayment, as it must trump whatever lien/liens is in/are in superior position/s.

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6. Cross Cutting Federal Requirements

6a. Subsidy Layering Review

What are HUD's standards for compliance with subsidy layering requirements pertaining to SPRAC 202 prepayment applications?

HUD Response

See p. 30 of Housing Notice 2013-17 ("Structure of the Transaction and Additional Considerations") for HUD subsidy layering requirements pertaining to Section 202 prepayment transactions.

6b. Environmental Review, 24 CFR Part 50

Who is responsible for completing an environmental review for each SPRAC project?

HUD Response

Both the SPRAC Final Notice (p. 67) and Housing Notice 2013-17 (p. 14) specify that Multifamily Development field staff are responsible for completing Part 50 environmental reviews for SPRAC projects.

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7. Multifamily Field Office Responsibilities

7a. Field Office Interactions with OAHP.

What is the Multifamily Field Office's (MFO) role in the 202 prepayment process and initial SPRAC award?

HUD Response

OAHP is responsible for the SPRAC program management and prepayment of only those 202 properties that are selected for SPRAC awards. Other 202 prepayments are unchanged. Therefore many of the responsibilities are the same and a few are modified.

i. **2530/APPS Approval** – The MFO performs the review for all transactions consistent with standard 2530 practice. Since the SPRAC contract is the equivalent of a new Section 8 Contract, 2530 is required even if HUD is not involved in new project financing and there is no change of ownership.
ii. **Environmental Review** – Both the SPRAC Final Notice (p. 67) and Housing Notice 2013-17 (p. 14) specify that Multifamily Development field staff are responsible for completing Part 50 environmental reviews for SPRAC projects.
iii. **Flexible Subsidy Payment or Deferral** – OAHP will process any deferral requests for SPRAC properties with input from the MFO. Working with the Fort Worth Accounting Center, the Multifamily Office finalizes numbers at closing for full payment or pay down

if part of the Flex Sub is deferred. See Housing Notice 2013-17 (p. 29) and Housing Notice 2011-05.

iv. **Relocation Plan** – SPRAC does not allow permanent relocation but temporary relocation to accommodate rehabilitation is permitted. The MFO reviews the temporary relocation plan with the assistance of the relocation specialist. See Housing Notice 2013-17 (p. 14) Section 202 projects are subject to the relocation requirements at 24 CFR 891.155(e). For tenants with disabilities this includes locating a unit that is accessible according to their needs.

v. **Updated Rent Comparability Study Approval** – The SPRAC rent setting process anticipates an RCS obtained by HUD for comparison purposes. The MFO commissions an independent rent comparability study, or if there are significant intractable impediments, requests a waiver from OAHP to permit the Multifamily appraiser to conduct an in-house review of the project owner's RCS.

vi. **Section 8 Rent Increases and Renewals** – This process is in accordance with standard procedures. Note that ideally, the SPRAC rents and Section 8 rents will be the same but they may differ if the SPRAC rents are controlled by the 150% of FMR limitation. If the property has Section 8, the Owner-Applicant must agree to terminate the contract early, execute a new 20 contract and execute a Preservation Exhibit for the remaining term of the existing contract.

vii. **Use Agreements** – The Hub or Program Center Director executes the Use Agreement for HUD and ensure it gets recorded. The prepayment of the 202 Direct Loan requires a Use Agreement of at least 20 years. The Use Agreement must be recorded in a superior position to any new financing. If the Section 202 property will be refinanced using an FHA-insured loan and Low-Income Housing Tax Credits (LIHTCs), HUD may consent, on a case-by-case basis, pursuant to guidance in the MAP Guide, to the LIHTC Use Agreement being in first position. If the Section 202 Prepayment Use Agreement is not in first position, the LIHTC Use Agreement must include a provision that the 202 Use Agreement in second place cannot be extinguished by the extinguishment of the LIHTC Use Agreement in first place. The Use Agreement runs with the land and binds all subsequent Owners and creditors until the date of expiration of the Use Agreement, and survives foreclosure. See page 5 of Housing Notice 2013-17.

viii. **First Lender Agreement** to Subordinate First Debt (unless FHA or LIHTC) to the Use Agreement – As part of the financing review the MFO obtains and documents at closing the first lender's consent.

ix. **Funding Estimate for 1st Year** – The MFO completes the SPRAC Funding Worksheet and submits to OAHP. Send an email to sprac@hud.gov to request the complete SPRAC package.

x. **Funding Request -** Request SPRAC Contract Number via SharePoint. The Office of Housing Financial Operations Division (FOD) will assign a contract number. Once the initial funding amount has been determined (See ix above.) enter a Funding Request into SharePoint and FOD will prepare the Commitment Package.

xi. **Preparation and Execution of ASPRAC, SPRAC** – The Project Manager or Funding Specialist will prepare the documents and Multifamily Hub or Program Center Director will execute the ASPRAC and SPRAC.

7b. What is the Multifamily Field Office's role in ongoing administration of the SPRAC contract?

HUD Response
While not considered Section 8, SPRAC will be administered like Section 8. Renewals and rent adjustments will be made following Option 1 in the Section 8 Policy Renewal Guide (with the exception that post-rehab rents will be allowed for the initial rent setting unless the RCS rents exceed 150% of FMRs in which case the 150% FMR cap will be used).

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8. SPRAC Leases

8a. Which lease should be used for SPRAC units?

HUD Response:
The HUD Model Lease for Subsidized Housing Programs (form HUD 90105a) should be used until such time that HUD releases a new SPRAC-specific lease. In the interim, owners should revise their House Rules to incorporate provisions that are not part of the 90105a lease and attach the House Rules to the lease. The following language is recommended as a sample:

Sample Language for Housing Rules for Use with the Senior Project Rental Assistance Program

The landlord and the tenant mutually agree as follows:

1. If there are HUD permitted mandatory meals those charges are set forth and identified in paragraph 6.b of the lease.
2. Paragraph 30 of the lease is modified by the insertion of "or Senior Project Rental Assistance" after "Section 8 Rental Assistance" and before "contract".
3. As a former 202 Elderly property, the tenants have special provisions regarding pets. Therefore the language at paragraph 13.d. of the lease is modified by the addition of the following:

The TENANT is permitted to keep common household pets in his/her dwelling unit (subject to the provisions in 24 CFR Part 5 and the pet rules promulgated under 24 CFR Part 5). Any pet rules promulgated by the LANDLORD are attached hereto and incorporated hereby. The TENANT agrees to comply with these rules. A violation of these rules may be grounds for removal of the pet or termination of the TENANT's (pet owner's) tenancy (or both), in accordance with the provisions of 24 CFR Part 5 and applicable regulations and State or local law. These regulations include 24 CFR Part 5 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Section 8 housing assistance payments and project assistance payments programs.

Note: The Part 5 Pet Rules do not apply to an animal used by a Tenant or visitor that is needed as a reasonable accommodation for the Tenant or visitor's disability. Optional: The LANDLORD may after reasonable notice to the TENANT and during reasonable hours, enter and inspect the premises. Entry and inspection is permitted only if the LANDLORD has received a signed, written complaint alleging (or the LANDLORD has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the LANDLORD may enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days. The LANDLORD shall enter the premises and remove the pet or take such other permissible action only if the LANDLORD requests the TENANT (pet owner) to remove the pet from the project immediately, and the TENANT (pet owner) refuses to do so, or if the LANDLORD is unable to contact the TENANT (pet owner) to make a removal request. The cost of the animal care facility shall be paid as provided in 24 CFR Part 5.