



OFFICE OF HOUSING

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

Special Attention of:

All Multifamily Regional Center Directors
All Multifamily Operations Officers
All Directors of Asset Management
All Field Counsel

Notice H 2016-16

Issued: October 28, 2016

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superseded or rescinded.

Cross-reference: H 2012-25

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 amended and restated Use Agreements for properties assisted under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). Amended and Restated LIHPRHA Use Agreements 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 LIHPRHA Use Agreement may be amended and restated, the amendments that may be allowed, and the conditions that must be met in the proposed preservation transaction to be considered for approval.

This Notice also provides implementation guidance for the recent changes to the LIHPRHA statute that were made when the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94 was enacted in December of 2015. These changes will allow for, after a determination by HUD that the statutory criteria has been met, the unlimited distributions of surplus cash from the project and for the release of all monies accumulated in a residual receipts account to an Owner upon request.

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)-(d)(5)(BMIR), and Section 236 properties first became eligible to prepay their mortgages in the early to late 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 the 1990s 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 standard for the remaining useful life of the property (not 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. HUD's authority to provide incentives under LIHPRHA lasted 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. Projects 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 stopped appropriating funds for new LIHPRHA incentives.

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 with mortgages insured under section 221(d)(3)-(d)(5) below-market interest rate (BMIR), Section 221(d)(3) market interest rate (MR), and section 236 of the National Housing Act. Whether insured by FHA or by a state agency, these projects are subject to low-income occupancy restrictions. LIHPRHA required an extension of the project's low-income occupancy restrictions 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 US 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. For example, some Use Agreements 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. Neither of these restrictions were required by statute. Such restrictions may hamper Owners' ability to execute refinance or acquisition transactions.

Previously, the LIHPRHA statute allowed Owners to take distributions up to 8% of "Preservation Equity" as calculated at the time of the original LIHPRHA closing. This equity was 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."

The LIHPRHA statute was recently modified to allow an Owner, who is currently subject to a LIHPRHA Plan of Action or Use Agreement to be entitled to distribute annually, all surplus cash generated by the property, once HUD has determined that the Owner is in material compliance with the LIHPRHA Use Agreement, including compliance with prevailing physical condition standards established by the Secretary.

Though the statute now authorizes distributions of all surplus cash, following a determination by HUD that an Owner is in material compliance with the LIHPRHA Use Agreement, many current LIHPRHA Use Agreements restrict periodic distributions of surplus cash generated by the properties to 0% of 6% of initial equity. Additionally, some Owners have previously modified their LIHPRHA Use Agreements in order to receive 8% of "Preservation Equity" as a distribution. Regardless of the current limitation on distribution currently found in the LIHPRHA Use Agreement, if the Owner seeks to distribute all surplus cash, the LIHPRHA Use Agreement currently associated with the project will need to be modified.

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 LIHPRHA Plan of Action and Use Agreement. It provides guidance for consideration of Owner requests to amend LIHPRHA Plans of Action and Use Agreements.

Some LIHPRHA project Owners may also be requesting approval for mortgage prepayment or an Interest Reduction Payment (IRP) decoupling. This Notice does not alter the existing policies or processes 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 Amended and Restated LIHPRHA Use Agreement will remain as the useful life of the project. Such nonprofit Owners seeking to refinance and/or restate and amend the LIHPRHA Use Agreement must also follow the guidance put forth in this Notice as well as the guidance found in Housing Notice 2011-31.

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. However, the FAST Act did not amend ELIPHA. Thus, although Owners of ELIPHA projects with an active ELIPHA Use Agreement may request a restatement and amendment of their ELIPHA Use Agreement, they are not eligible for the benefits outlined in the FAST Act (i.e., unlimited distributions of surplus cash and the release of funds accumulated in a residual receipts account).

IV. Requirements for Amending and Restating Use Agreement

HUD will allow the amendment and restatement of the property's LIHPRHA Use Agreement to allow the Owner to receive proceeds from the refinance of the property, to allow the Owner to receive unlimited annual distributions from surplus cash, as defined in the amended Use Agreement, and to receive funds accumulated in a residual receipts account as allowed by statute.

While all such amendments and restatements will be examined on a case-by-case basis, HUD expects all requests for amendments and restatements will meet a minimum compliance with business agreements as outlined in Section 1.A. below. In addition to the minimum compliance requirements, HUD will require additional requirements for those owners seeking to

distribute unlimited annual distributions from surplus cash and/or the release of funds accumulated in a residual receipts account, which are described in Section 1.B. below.:

1. Requirements for All Properties

A. Compliance with business agreements

For the Department to consider an Owner's request to amend and restate 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 Regional Center or Satellite Office must concur that the conversion will cure all outstanding non-compliance issues. If a non-compliance item is not listed in the conversion plan, HUD must ensure that the non-compliance issue is cured prior to submission of the request. Compliance must be demonstrated by:

- a. The project must have a current 60 or above REAC PASS score if the project does not currently have a passing REAC score, 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 nondiscrimination and equal opportunity 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, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, and submit a certification of compliance with these requirements as a condition of this request. The project must have an approved up to date Affirmative Fair Housing Marketing Plan. 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 USC 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 and restate the LIHPRHA 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 and Restated LIHPRHA Use Agreement.
- e. Any 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.

B. Additional Requirements for Requests for Unlimited Distributions of Surplus Cash or Release of Residual Receipts Account

For all requests where the owner is seeking either unlimited distributions of surplus cash and/or the release of funds accumulated in a residual receipts account, the owner must meet the requirements as outlined in Section 1.A. above, with two additional requirements:

- a. The project must have a current 60 or above REAC PASS score. If the owner is planning on curing deficiencies as part of their transaction, the owner will not be allowed to amend and restate their Use Agreement to allow for unlimited distribution of surplus cash until the project receives a passing REAC score.
- b. The project must have received a passing score on their most recent Management and Occupancy Review.

V. Program Requirements

1. Terms of Amended and Restated LIHPRHA 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 Amended and Restated LIHPRHA Use Agreement will continue with the same affordability and rental restrictions as those in place prior to prepayment and will be for the same term as the original LIHPRHA use restrictions (i.e., through the remaining useful life of the project). The project Plan of Action may require conforming amendments to ensure consistency with the Amended and Restated LIHPRHA Use Agreement.

The Amended and Restated LIHPRHA Use Agreement must meet the following requirements:

An amended and restated Use Agreement will be required.

- a. The base document will be the project's existing LIHPRHA Use Agreement.
 - b. The Amended and Restated LIHPRHA Use Agreement will amend the Owner distributions (Authorized Annual Return) to be: 1. not more than 8% of Extension Preservation Equity or 2. allow for unlimited distributions of surplus cash, if the Owner has met the requirements to receive unlimited distributions as outlined in Section IV, 1, Compliance with Business Agreements.
 - c. The Amended and Restated LIHPRHA 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.
 - d. If the existing LIHPRHA 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.
 - e. The field will draft and execute the Amended and Restated LIHPRHA Use Agreement which must be approved by Field Office of General Counsel.
 - f. Affordability Restrictions: The Owner will maintain the Project as affordable to Very Low-, Low-, and Moderate-Income tenant as recorded in the existing LIHPRHA Use Agreement. No amendments to the proportion of Very Low-, Low- and Moderate-Income tenants will be made.
2. Requirements for Owners Seeking to Access Residual Receipts/Reserve for Replacement Account

An existing LIHPRHA Use Agreement contains language whereby certain provisions of the project's Regulatory Agreement remain in full force and effect when the mortgage is prepaid or if the mortgage insurance is terminated. Therefore, if there are funds in the Residual Receipts and Reserve for Replacement accounts, they must be deposited in separate accounts in the "Name of the Mortgagee", Trustee for "Name of the Project" and the

Secretary of Housing and Urban Development, with a Federally-insured financial institution. However, disbursements from these accounts cannot be released without HUD's prior approval. Once the funds are deposited, evidence in the form of a deposit receipt must be forwarded to Regional Center or Satellite Office that has jurisdiction over the project.

Changes made by the FAST Act to the LIHPRHA statute now allow for the release of all funds accumulated in a Residual Receipts account to the Owner, provided the Owner meets the statutory requirements outlined in Section 222 of LIHPRHA. The statutory requirements are as follows:

1. The Owner must be in material compliance with their use agreement as outlined in Section IV A and B, above; and
2. The Owner must have completed, or set aside sufficient funds for completion of any capital repairs identified by the most recent third party capital needs assessment.

In order for these funds to be released, the Owner must provide a current Capital Needs Assessment that shows that all critical repairs at the property will be addressed through new financing and demonstrate that the Reserve for Replacement account can adequately address the physical needs at the property, as described in Section 8, "Physical Improvements", and Section 9, "Environmental Review". Owners should make this request through their Account Executive in the field.

3. Distributions

For those Owners who have a LIHPRHA Use Agreement or an Amended and Restated LIHPRHA Use Agreement that does not allow for unlimited distributions of surplus cash, the Regional Center or Satellite Office 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 LIHPRHA agreement or closing documents.

When an Owner has an Amended and Restated LIHPRHA Use Agreement that allows for unlimited distributions, the Owner is allowed unlimited distributions of surplus cash. 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.

4. Requirements for Owners Proposing Sale or Transfer of Property

In the case of a proposed sale of the project where the financing of the purchaser is assuming or taking is subject to the existing FHA-insured mortgage, the new owner is subject to review under the Previous Participation Regulations and to TPA requirements set out in HUD Handbook 4350.1. If there is a proposed sale of the project to a new owner that is

refinancing with an FHA-insured mortgage, TPA requirements are not applicable. In the case of a prepayment and proposed acquisition of the project by a new Owner entity, Previous Participation review is required because the project is subject to a LIHPRHA Use Agreement, but a Transfer of Physical Assets (TPA) is not required. However, the Regional Center 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 Amended and Restated LIHPRHA Use Agreement. The Regional Center or Satellite Office 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 involving troubled projects will be assessed based on the following criteria:

- A. Purchasers must provide the following information to the Regional Center or Satellite Office 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.
- B. 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.
- C. Evaluation of proposed management agent. The proposed management agent must meet all of the following criteria:
- D. 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.
- E. 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.

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 Regional Center Director or designee 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 Regional Center or Satellite Office. The Regional Center or Satellite Office will require the same standards of performance from an incumbent agent as it would from a new agent.

5. Prepayment Approval

For owners seeking an amendment/restatement in order to prepay the mortgage, 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 2013-25, Updated Guidelines for Continuation of Interest Reduction Payments after Refinancing: “Decoupling”, under Section 236(e)(2), 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 LIHPRHA Use Agreement may be submitted concurrently. The Owner must also meet all requirements of the applicable aforementioned processes.

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

If there is a HAP Contract in place at the property, and the project is seeking prepayment approval from HUD, the Owner must execute a Renewal Contract with a 20-year term. The Owner and Regional Center 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.

7. 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, with HUD approval, to the purchaser at the time of closing using the “Assignment, Assumption and Amendment Agreement of Section 8 Housing Assistance Payment Contract” form provided as Attachment 2 to this Notice.

8. Physical Improvements

For properties with proposed rehabilitation activities in conjunction with the request to amend/restate the use agreement, 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 Amended and Restated 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 CNA 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 Amended and Restated 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 Owner is requesting release of all funds accumulated in the residual receipts account, Section 8.B above is required.

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 repairs or alterations to dwelling units or common areas necessary for compliance with all applicable accessibility standards, including, but not limited to those in the Uniform Federal Accessibility Standards required by 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.

9. Environmental Review

For owners seeking to amend and restate their LIHPRHA Use Agreement and where rehabilitation is being contemplated, an environmental review may be required by HUD Multifamily Development staff. If the amendment involves the award or allocation of LIHTCs as discussed above at Section 8.A, no environmental review is required. If the amendment involves submission of a CNA as discussed above at Section 8.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)(2)(ii). 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 8.C, an environmental review in compliance with 24 CFR Part 50 and Chapter 9 of the MAP guide is required.

10. Rent-Setting and Project Based Rental Assistance

The Regional Center Director or designee 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 existing 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 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. Where vouchers are provided for a prepayment as detailed above, tenants must meet income eligibility criteria established under 223(f)(2) of LIHPRHA.

The Regional Center Director or designee must assure that no involuntary displacement of existing tenants occurs as a result of the transaction.

VI. HUD Review of Proposed Transaction

Any transaction approved pursuant to this Notice must put the project on solid financial footing and must follow the requirements set forth in Section 214(c) of LIHRPHA. To justify the Amended and Restated LIHPRHA Use Agreement, the Regional Center or Satellite Office must ensure that the following requirements are satisfied:

- i. The Owner shall provide for adequate rehabilitation pursuant to a capital needs assessment to ensure long-term sustainability of the property satisfactory to the lender of bond issuance agency
- ii. Any resulting budget-based rent increase shall include debt service on the new financing, commercially reasonable debt service coverage, and replacement reserves as required by the lender;
- iii. For tenant of dwelling units not covered by a project-or tenant-based rental subsidy, any rent increases resulting from the refinancing transaction may not exceed 10 percent per year, except that –
 1. Any tenant occupying a dwelling unit as of time of the refinancing may not be required to pay for rent and utilities, for the duration of such tenancy, an amount that exceeds the greater of:
 - a. 30 percent of the tenant's income; or

- b. The amount paid by the tenant for rent and utilities immediately before such refinancing.

HUD will review the proposed financing transaction in conjunction with the CNA provided by the Owner to ensure both the financial feasibility of the transaction and the continuing physical health of the project.

VII. Processing of Request for Amended and Restated LIHPRHA Use Agreement

- A. **Responsibilities of Owner.** Owner submits request to Regional Center or Satellite Office Director describing the transaction and how it meets requirements 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 Regional Center Director or designee.** The Regional Center Director or designee will review the request for Amended and Restated LIHPRHA Use Agreement to ensure compliance with this Notice and to oversee the execution of the required HAP contract (if applicable) and Amended and Restated LIHPRHA Use Agreement. Upon receipt of an eligible project and complete proposal, the Regional Center or Satellite Office must review the request in accordance with the requirements of this Notice within 30 days. The Regional Center or Satellite Office must analyze the proposal and verify supporting documentation. A sample review checklist is provided as Attachment 3 to this Notice.

In a project where the Owner is not seeking an unlimited distribution of surplus cash, the Regional Center or Satellite Office 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 Regional Center Director or designee will then submit the request for amendment and restatement of the LIHPRHA Use Agreement to the Office of Asset Management and Portfolio Oversight, along with the proposed Amended and Restated LIHPRHA 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 Regional Center or Satellite Office 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 and Restatement of the LIHPRHA Use Agreement is approved, the Regional Center or Satellite Office will follow the process detailed in section IV (2) of this Notice to execute the Amended and Restated LIHPRHA 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 Regional Center or Satellite Office receives the original recorded Use Agreement and a legal opinion or title report showing that the Amended and Restated LIHPRHA Use Agreement has the first lien position. HUD will not consent to release the sale or refinance proceeds from escrow until all recording requirements have been satisfied. Once these documents are received, the Regional Center or Satellite Office 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 Amended and Restated LIHPRHA Use Agreements. The Amended and Restated LIHPRHA Use Agreement provides an opportunity to verify the accuracy of the agreement's information in iREMS. The iREMS Servicing screen allows for the following information to be recorded and tracked:
- a. Ability to record reasons for restrictions of the Amended and Restated LIHPRHA Use Agreement;
 - b. Amended and Restated LIHPRHA 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 LIHPRHA 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 the Amended and Restated LIHPRHA 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 LIHPRHA Use Agreements shall be submitted to HUD HQ for review and final approval. HUD Headquarters will advise the Regional Center Director or designee if and when the amendment is approved. The Regional Center or Satellite Office will execute the Amended and Restated LIHPRHA Use Agreement in conjunction with OGC field office counsel in accordance with Section IV(2) of this Notice.

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

Edward L. Golding
Principal Deputy Assistant Secretary

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