



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 2013-17**

Issued: May 30, 2013

Expires: The notice remains in effect until amended, superseded, or rescinded.

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Cross References: H 2012-08  
H 2002-16  
H 2004-21  
H 2010-26  
H 2011-03  
H 2011-05

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SUBJECT: Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans

**I. Purpose**

This Notice provides guidance for HUD approval and processing of the prepayment of Section 202 Direct Loan projects. This Notice updates and clarifies the guidance provided in Housing Notice 2012-08 and supersedes all outstanding policy regarding Section 202 Direct Loan prepayments, including Housing Notices 2002-16, 2004-21, 2010-14, 2012-08 and Frequently Asked Questions disseminated by HUD related to Housing Notice 2012-08.<sup>1</sup>

**II. Authority**

General authority for the prepayment of a Section 202 Direct Loan is provided by Section 811 of the American Homeownership and Economic Opportunity (AHEO) Act of 2000, as amended, and by 24 CFR 891.530. The Section 202 Supportive Housing for the Elderly Act of 2010 (“the 2010 Act”)(Public Law 111-372), signed into law on January 4, 2011, made significant changes to Section 811 of AHEO and, as a result, to policy governing the prepayment of Section 202 Direct Loans.

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<sup>1</sup> Readers seeking guidance on the underwriting of FHA insured mortgages for refinance of Section 202 Direct Loans should refer to this Notice and the *Multifamily Accelerated Processing (MAP) Guide*.

### **III. Background**

The Section 202 Supportive Housing for the Elderly program provides rental housing to households in which the head of household is aged 62 and above. Over the 50 year history of the Section 202 program, the system of providing financing shifted from loans to grants, and the population served changed from moderate-income elderly households to very low-income elderly households. The program has also shifted from serving elderly households, to serving elderly and disabled households and returning to serving elderly households exclusively.

Today, HUD oversees a portfolio of more than 2,600 properties with active Section 202 Direct Loans, many of them also supported with project based Section 8 Housing Assistance Payments (HAP) Contracts. Owners of Section 202 Direct Loan properties have the option of prepaying the Section 202 Direct Loan and/or refinancing the Section 202 property for the purpose of reducing the interest rate and debt service, and/or making capital improvements.

Properties financed during different stages of the Section 202 Direct Loan program have different needs and are governed by AHEO, as amended over time, and contractual requirements. Over the years, HUD has issued a series of policy directives (Housing Notices 2002-16, 2004-21, 2010-14 and 2012-08) to provide guidance to Owners requesting approval for Direct Loan prepayment and refinance, and to Multifamily Housing staff processing such requests.

The 2010 Act was signed into law in January 2011, and made significant changes to provisions of AHEO governing Section 202 Direct Loan prepayment and refinance. The 2010 Act applies to all Section 202 properties constructed prior to 1992, for which the Secretary's consent to prepay is required. However, it makes a distinction between prepayment requirements for those projects demonstrating a reduction in debt service (which generally applies to Section 202 Direct Loan projects constructed between 1975 and 1992), and those projects wishing to refinance to address the physical needs of the project, but that will face an increase in debt service, which generally are projects constructed between 1959 and 1974, that have Section 202 mortgage interest rates of six percent or less.

### **IV. Applicability**

This Notice applies to all prepayments, refinances and sale/acquisition transactions of Section 202 Direct Loans for which the Secretary's approval of mortgage prepayment is required (see Table 1 for details on applicability). It applies to all Direct Loan prepayment requests that require the Secretary's approval received by the Department after the publication date of this Notice. This Notice supersedes all prior HUD guidance on Direct Loan prepayment and refinance, including Housing Notices 2012-08, 2002-16, 2010-14, and 2004-21.

Owners whose Section 202 Direct Loan documents do not require HUD approval are not required to comply with this Notice. However, these Owners may elect to voluntarily comply with this Notice. Administrative procedures for processing prepayment requests for such properties are outlined in Section VI of this Notice.

This Notice applies to proposed Section 202 prepayments only. It does not provide instruction for the oversight and Asset Management of Section 202 properties that completed Direct Loan prepayments prior to publication of this Notice. Owners who have already completed Section 202 Direct Loan prepayments should refer to outstanding HUD guidance – including HUD Handbooks 4350.1 and 4350.3, and the *Section 8 Renewal Policy Guidebook*, for policy related to ongoing management of these properties.

Section IX of this Notice (Underwriting FHA-Insured Refinances of Section 202 Properties) provides guidance for FHA loan underwriting of Section 202 properties. Section IX.A provides specific underwriting instructions for the prepayment of a Section 202 Direct Loan and the underwriting of a new FHA-insured loan refinance. Owners who are refinancing Section 202 Direct Loans using FHA-insured Section 207/223(f), Section 231 or Section 221(d)(4) loans should comply with the terms of this Notice related to prepayment of the Direct Loan, and should also refer to the *Multifamily Accelerated Processing (MAP) Guide* for specific underwriting instructions. Section IX.B of this Notice provides underwriting instructions specific to transactions where the Owner has previously prepaid and/or refinanced a Section 202 Direct Loan and is now seeking to “re-refinance” the subsequent loan to place new debt on the property. Section IX.B is the only section of this Notice that applies to “re-refinances” of properties originally financed under the Section 202 program. All other sections of this notice are specific to the prepayment of the original Section 202 Direct Loan. Additional underwriting instructions specific to FHA insured loans may be found in the MAP Guide.

This Notice does not apply to Transfers of Physical Assets (TPAs) where the Section 202 Direct Loan remains in place at the project.

This Notice applies to all prepayments, refinances and sale/acquisition transactions of Section 202 Direct Loan projects where prior approval of HUD is required for prepayment. If the Section 202 prepayment involves the sale of a project, the Section 202 Nonprofit Owner may retain the proceeds from the sale of the project, provided that the transaction meets the requirements of this Notice.

<b>Table 1: Applicability of this Notice by Type of Section 202 Direct Loan Project</b>			
<b>Type of Section 202 Direct Loan Project</b>	<b>Purpose of Prepayment Transaction</b>	<b>Location of Guidance for Prepayment</b>	<b>Guidance for FHA Insured Underwriting</b>
Post-1974 Direct Loan Project where Secretary Approval is Required for Prepayment	Reduce Debt Service <b>(Statutorily Required)</b>	Sections V, VII, X, XI, XII, XIII, XIV of this Notice	Section IX of this Notice and MAP Guide
Pre-1974 Direct Loan Project	Make Capital Repairs (reduction in debt service not required) <b>(Statutorily Required)</b>	Sections V, VIII, X, XI, XII, XIII, XIV of this Notice	Section IX of this Notice and MAP Guide
Post-1974 Direct Loan Project where Secretary Approval is not Required for Prepayment	Prepay loan; Initial exemption from Mark-to-Market restructurings	Section VI of this Notice; Optionally Sections V, VII, X, XI, XIII, XIV of this Notice	Section IX of this Notice and MAP Guide
Section 202 Projects where the Direct Loan was previously prepaid and refinanced	"Re-Refinance" the property	Section IX of this Notice	Section IX of this Notice and MAP Guide

This Notice will take effect on the date of publication and will apply to all prepayment requests received after publication. This Notice updates and clarifies Housing Notice 2012-08 but does not alter the submission requirements for a prepayment request. Owners with pending prepayment requests submitted prior to publication of this Notice are not required to re-submit prepayment packages for approval but in some cases may wish to update the pending prepayment request to address the requirements and terms of this Notice.

#### **V. Approval of Prepayment of Debt which Requires HUD Consent**

This section applies to all prepayments of Section 202 Direct Loans that require HUD consent.

AHEO, as amended, states: “Upon request of the project sponsor of a project assisted with a loan under Section 202 of the Housing Act of 1959, for which the Secretary’s consent to prepayment is required, the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to any remaining principal and interest under the loan as part of a prepayment plan under which the project sponsor agrees to operate the project until at least 20 years following the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement or any project-based rental assistance payments contract, or any successor project-based rental assistance program relating to the project.”

AHEO, as amended, indicates that Section 202 prepayment may involve refinancing of the loan if such refinancing results in a reduction in debt service related to such loan. It also authorizes HUD to approve the prepayment and refinance of Section 202 Direct Loans originally financed

with interest rates of six percent or less where no debt service savings are anticipated if, as part of the refinance, the project Owner will address the physical needs of the project.

All Section 202 Direct Loan prepayments that require prior approval of the Secretary must meet all the requirements listed below. In addition to the requirements listed in this section of the Notice, Section 202 Direct Loan prepayments and refinancing where debt service savings are anticipated must also comply with the requirements listed in Section VII (Refinancing Resulting in Reduction in Debt Service) of this Notice. Section 202 Direct Loan projects with original interest rates of six (6) percent or less, where no debt service savings are anticipated, must also comply with the specific requirements in Section VIII of this Notice.

Requirements for all Section 202 Direct Loan prepayments requiring HUD approval include:

- A. Use Agreement. The Owner must execute the Section 202 Prepayment Use Agreement provided as Attachment 1 to this Notice that will ensure the continued operation of the project until at least 20 years following the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement. The Use Agreement must be executed by the Owner and the Department and recorded upon HUD's approval of the prepayment transaction.
1. Attachment 1 provides a copy of the Use Agreement that will be used under this Notice.
  2. The proposed Use Agreement must be submitted with the application for prepayment.
  3. The Owner and HUD shall execute the Use Agreement after prepayment approval is granted by the Hub/PC Director. The Owner must provide the Hub/PC with evidence of recordation at the time of prepayment.
  4. 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.
  5. 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.
  6. The Use Agreement must extend a minimum of 20 years beyond the original mortgage maturity date. The Use Agreement may include a longer term at the Owner's election, for example to match the terms of a LIHTC use restriction.
- B. Reporting Requirements. Pursuant to 24 CFR 5.107 and 24 CFR 5.801, starting from the

date the Owner assumes financial responsibility for the Project (as determined by HUD) and ending on the last day of the fiscal year for the Owner, and for each successive year thereafter, the Owner shall, based on an examination of the books and records of the Owner, prepare a financial report for the completed reporting period in accordance with Generally Accepted Accounting Principles (GAAP), segmented by project, certified to by an authorized representative of the Owner, in such other form and substance as specified by HUD.

1. Except for those not-for-profit and public body Owners exempted from having their financial reports audited based on the amount of federal assistance received, as specified in OMB Circular A-133 or its successor, or otherwise exempted in writing, by HUD, the Owner shall:
  - a. engage a person or firm, licensed or otherwise permitted to practice public accounting by the governing political jurisdiction, to audit the Owner's financial report and to issue an audit report produced in accordance with Generally Accepted Auditing Standards, Government Auditing Standards, and the additional requirements appropriate for the type of ownership entity as specified in either HUD OIG Handbook 2000.04, or OMB Circular A-133, or their successors;
  - b. engage a person or firm, licensed or otherwise permitted to practice public accounting by the governing political jurisdiction, to perform an agreed-upon procedure (attestation) to compare the financial report data submitted electronically to HUD with the data contained in the Owner's audited financial report and to issue a report, in such form and substance as specified by the Department, to the Owner and HUD on the results of the procedure; and
  - c. furnish HUD, electronically via the internet, with the data contained in the owner's financial report, the audit report, and the attestation report, in such form and substance as specified by HUD within 90 days after the Owner's fiscal year end; not-for-profit and public-body Owners are required to submit electronic owner-certified (un-audited) AFS within 90 days after the end of the fiscal year and an electronic audited financial statement no later than nine months after the end of the fiscal year pursuant to OMB Circular A-133.
2. For those Owners exempted from having to submit audited financial report data, the Owner shall furnish the Department, electronically via the FASS-MF system, with the data contained in the Owner's financial report in such form and substance as specified by HUD within (90) days after the Owner's fiscal year end.

At HUD's request, the Owner shall furnish, within 10 business days, monthly occupancy reports and provide documentation and answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operations, and conditions of the property and the status of the insured or HUD-held mortgage.

- C. **Renewal of HAP contract.** If there is a Section 8 project-based HAP contract in place at the property, the Owner and Hub/PC Director must 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 2 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. The Owner will execute the Renewal Contract at or before the closing. Please note: the requirement for a 20-year Renewal Contract applies to HAP contracts only. Some Section 202 Direct Loan projects receive subsidy through a Project Assistance Contract (PAC). HUD does not have authority to renew PACs for terms longer than one year.
- D. **Timing of HAP Contract Renewal on FHA Insured Refinance Transactions.** Careful timing and coordination of Section 8 HAP contract requests, prepayment and refinance applications are critical to ensure a smooth process. In anticipation of the Section 202 Direct Loan prepayment, the Owner must submit a request to renew the HAP contract for a term of 20 years, as described in C, above. If the Owner is requesting a HAP contract rent adjustment, the Contract Renewal Request Form (Form HUD-9624) and supporting documentation must be submitted by the Owner to the Performance Based Contract Administrator (PBCA) prior to submission of the prepayment application and the FHA insured loan application. The rents and expenses submitted to the PBCA must match the underwriting in the lender's FHA insured loan application, or the lender must carefully justify any variation from these figures. If the Owner is requesting a budget-based rent adjustment as part of the HAP contract renewal request, the request to the PBCA must include the current (i.e., new, anticipated) debt service figure from the lender's underwriting for the FHA insured loan application. Should the debt service figure or any other line item in the Renewal HAP contract income and expenses change due to the processing of the FHA insured loan application, the Owner must provide the final debt service figure and other final figures to the PBCA once the FHA Firm Commitment is issued. The PBCA will include the final debt service figure in the approved rents prior to closing of the FHA loan.
- E. **Section 8 Rents.**
  - 1. **Rent adjustments.** At the time of the Direct Loan prepayment, the Owner is required to execute a 20-year Renewal Contract as described in C, above. Rents under the renewal contract are established based on the contract renewal options discussed in

the *Section 8 Renewal Policy Guidebook* (“*Renewal Guide*”).<sup>2</sup> Rents are adjusted annually in the manner prescribed in the Renewal Contract.

2. Exception project status. When a Section 202 Direct Loan is prepaid and the project is refinanced for the first time pursuant to the terms of this Notice, the refinanced 202 is initially exempt from debt-restructuring under MAHRA, regardless of whether the new financing is conventional or FHA-insured, so long as that particular loan is in place. When the HAP contract expires, the Owner may renew the HAP contract as an “Exception” project under Option 4 of the *Renewal Guide*.<sup>3</sup>
3. Current debt service. As reflected in the recently published page changes to the *Renewal Guide*: ([http://portal.hud.gov/hudportal/documents/huddoc?id=Transmittal\\_5-18-12.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Transmittal_5-18-12.pdf)), if in conjunction with the required 20 year HAP contract renewal, an Owner is submitting a budget based rent adjustment request as part of the Section 8 HAP renewal request, the Owner **must** list the current debt service in the budget. In the context of a prepayment, the current debt service is defined as the debt service that will take effect when the prepayment is completed and the new loan closes. The Owner is not permitted to use the old 202 Direct Loan debt service.
4. Impact of reduced debt service on Section 8 rents. As discussed in Section V.C, Owners are required to renew the Section 8 HAP contract for a term of 20 years, and to execute the Preservation Exhibit, as part of the prepayment approval process. Owners of Section 202 projects financed after 1974 that require HUD approval for prepayment must show debt service savings as a threshold to obtain prepayment approval (See Section VI). Owners of Section 202 projects anticipating a reduction in debt service costs as a result of the prepayment may receive a Section 8 rent adjustment to fund operational needs (eligible expenses as described in Chapter 7 of HUD Handbook 4350.1, Multifamily Project Servicing), if the rent increase can be justified under a budget-based rent increase calculation following the process described in the *Renewal Guide*, and paragraph D.4, below. However, as noted in Paragraph 3, above, the Owner must list the current (new) debt service in the Section 8 budget, where a budget is submitted as part of the 20 year HAP Contract renewal process. As a result, the Section 8 contract rents may be lower than in previous calculations with the original (higher) debt service. Owners may not list "debt service savings" as a project expense in the HAP Contract budget but may list eligible expenses in the budget.

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<sup>2</sup> The Section 8 Renewal Policy Guide may be accessed at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfhsec8](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8)

<sup>3</sup> Please see Section IX for guidance on rent setting following contract expiration that occurs following a re-refinance of a Section 202 property with an FHA insured loan.



5. LIHTC compliance fees. In cases involving the use of Low-Income Housing Tax Credits (LIHTCs), allowed project expenses may include only those usual and customary fees and expenses for operating a tax credit project, including payment of the equity syndicator's asset management fees; state allocating agency's compliance and asset monitoring fees; mandatory interest payments of up to one percent due on subordinate debt provided by a governmental lender; and deferred developer's fees, plus interest accrued at the applicable federal rate, which may be deferred for no more than 12 years. The deferred developer's fee may be included as an operating budget line item but may only be paid from surplus cash. When the deferred developer's fee is included, the project rents may not exceed market rents for comparable units in the area. At the end of the 12-year fee deferral period, the project rents must be reassessed, since the deferred fee will have been fully paid.
6. Debt service coverage. Providing for adequate Debt Service Coverage (DSC) is necessary to ensure sound mortgage underwriting and to satisfy programmatic conditions of both FHA-insured and non-FHA insured lenders and/or LIHTC syndicators. DSC may therefore be included in HAP contract budgets as part of Section 202 prepayment transactions.

For FHA-insured transactions, minimum DSC requirements are outlined in Mortgagee Letter 2010-21, in accordance with definitions of affordable and assisted projects. These FHA DSC requirements are minimum thresholds, and the DSC may exceed these minimum standards. Conventional lenders will generally require higher DSC due to the lack of FHA credit enhancement. For conventionally financed transactions, the conventional lender will determine the necessary DSC. However, please note that the Section 8 project rents must be determined according to the applicable renewal option, and constrained by market comparables or OCAF. Assuming the project performs as underwritten, DSC will result in surplus cash that may be drawn upon by the Owner at year's end to pay allowable annual distributions, Developer Fee, or deferred Developer Fee (from surplus cash, using the required form of Residual Receipts Note (form HUD-91710M, Residual Receipts Note for Nonprofit Borrowers) or Promissory Note). All remaining surplus cash must be deposited in the Residual Receipts account.

In order to ensure that Section 8 rents subject to budget based formulation provide adequate DSC to satisfy FHA and conventional lender requirements, the following requirements apply:

- a. For FHA-insured mortgages that are debt service constrained (Criteria 5 for FHA financed projects), Project Managers must ensure that the rents used in the loan underwriting equal the rents derived through the budget based Section 8 rent setting process. Using HUD's "Budget Worksheet" (form HUD-92457-A) staff must ensure that the DSC required in the underwriting is added to the full debt service. For FHA insured loans, the coverage must meet minimum FHA program thresholds for DSC and the maximum mortgage may not exceed program limits. Project Managers responsible for

setting the Section 8 budget based rents must work closely with the Asset Development staff reviewing the FHA application to ensure that the correct DSC amounts are included in the budget based rent formulation.

- b. For FHA-insured mortgages that are constrained by some other criteria (e.g. Criteria 1, 3, 4 or 10), Project Managers must also ensure that DSC for the mortgage amount derived by the controlling criteria is added to the full debt service. Again, for FHA insured loans, the coverage applicable to the controlling mortgage that is added to the full debt service must meet minimum FHA program thresholds for DSC and the maximum insurable mortgage may not exceed program limits. The lender's application for FHA insurance should include an analysis of the DSC to be included in the rent calculation. Project Managers responsible for setting the Section 8 budget based rents must work closely with the Asset Development staff reviewing the FHA application to ensure that the correct DSC amounts are included in the budget based rent formulation.
- c. For conventionally financed loans, the lender and/or LIHTC syndicator will determine the required DSC. Project Managers must obtain information on the loan underwriting from the project Owner in order to determine what DSC amount to include in the rent formulation.

Section 8 rents may be constrained, however, by comparable market rents, or OCAF.

- F. Allowable distributions. If the Section 202 project is/will be owned by a for-profit limited partnership (meeting the statutory requirements in AHEO, as amended) and the Section 202 project has a Section 8 HAP contract that imposes a limitation on distributions, the Section 202 project Owner remains subject to the six percent annual distribution limitation. This distribution is authorized on FHA insured as well as conventional transactions. The maximum annual distribution from surplus cash is six percent of the total Owner's (purchaser's) equity that is paid at the refinancing of the project. Other government funds (i.e., HOME funds, CDBG funds, etc.) will not be considered Owner's equity. LIHTC equity is not considered other government funds. LIHTC equity may qualify as Owner's equity, even if 100% of the LIHTC equity is not paid into the transaction on the date of the prepayment. Developer Fee may qualify as Owner equity only if this Developer Fee is contributed as a source of funds for closing. No distributions will be permitted based on a deferred Developer Fee.

If the Section 202 project is/will be owned by a for-profit limited partnership (meeting the statutory requirements in AHEO, as amended) and the Section 202 project has a Section 8 HAP contract that imposes no percentage cap on distributions, then upon refinance/prepayment the for-profit limited partnership may continue receiving the benefit of not having a percentage cap on distributions.

Distributions may not be listed as "above the line" expenses in the HAP Contract budget, but rather are paid from available surplus cash at the end of the project's fiscal

year. HUD does not monitor or approve how the Owner uses the allowable distribution. HUD will not consider waivers of this calculation to allow unlimited distributions to Section 202 Owners.

- G. Sale/acquisition transactions. Where HUD approval is required for a Direct Loan prepayment, and the transaction involves a sale/acquisition, there will be no restrictions on the use of sales proceeds from the transaction that flow to the selling Owner, provided that the transaction meets the requirements of this Notice. This includes LIHTC and identity-of-interest transactions.<sup>4</sup> However, HUD will carefully review the proposed use of the buyer's acquisition/rehabilitation loan proceeds coming into the project to ensure the proceeds from the new loan will be used in accordance with the Notice.

In the event of a sale of a property, a Developer Fee is allowed. The Developer Fee flows to the purchaser. The purchaser will be authorized a Developer Fee based on 15 percent of the total development. (Please see section VII.B.4 for a detailed calculation).<sup>5</sup> HUD will not monitor the use of the Developer Fee.

- H. Energy efficiency in capital repairs. In its plans for repair, rehabilitation and retrofit, as well as construction or rehabilitation of related facilities, the Owner must consider the use of "ENERGY STAR" appliances and components. If the Owner elects not to use ENERGY STAR appliances, the Owner should provide information on how the financial feasibility of "ENERGY STAR" was considered.
- I. Unit conversions. As part of the refinance, and in accordance with the policies and procedures detailed in Housing Notice 11-03, "*Conversion of Housing Units to Reduce Vacancies*," the Owner may modernize or retrofit the project structures, common areas or individual dwelling units, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable. Where the Owner can document difficulties in renting efficiency units, it may propose conversion of efficiency units into one-bedroom units.
- J. Additions. As part of the refinance, the Owner may consider the addition or rehabilitation of related facilities. This includes new structures suitable for use as cafeterias or dining halls, community rooms or buildings, or infirmaries or other inpatient or outpatient health facilities or for other essential service facilities; and structures suitable for the above uses by rehabilitation, alteration, conversion or improvement of existing structures which are otherwise inadequate for such uses. Rehabilitation plans should be developed with consideration for the purpose of extending utility of the project for frail elderly as defined in 12 U.S.C. 1701q(k)(2). The Owner must carefully consider the financial feasibility of any planned additions, in particular considering the impact that increased costs of additions may have on Section 8 rental income over the life of the new loan. Staff will evaluate on a

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<sup>4</sup> This policy is also applicable in the case of an FHA insured refinance of a Section 202 Direct Loan. See Section IX of this Notice.

<sup>5</sup> This policy is also applicable in the case of an FHA insured refinance of a Section 202 Direct Loan. See Section IX of this Notice.

case-by-case basis with consideration of the asset management of such projects.<sup>6</sup>

- K. Accessibility for persons with disabilities. The Section 202 program can offer elderly persons with disabilities a community-based living alternative to institutionalization. The nondiscrimination and equal opportunity requirements set forth at 24 CFR 5.105(a) applies to Section 202 projects. Existing projects, regardless of when they were built, are subject to the general requirement to provide program accessibility under the Department's regulations at 24 CFR part 8. Additionally, if the addition or rehabilitation of the Section 202 project results in substantial alterations in a multifamily housing project as defined by 24 CFR 8.23 of the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973, then specific accessibility requirements apply, including requiring a minimum of five percent of the total dwelling units or at least one unit, whichever is greater, to be accessible for persons with mobility impairments, and an additional two percent of the units, but not less than one unit, in such a project to be accessible for persons with hearing or vision impairments. Other alterations not qualifying as substantial alterations shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. See 24 CFR 8.23(b). Moreover, if the addition or rehabilitation results in a covered multifamily dwelling as defined at 24 CFR 100.201, then it must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619). Accessibility requirements under Titles II and III of the Americans with Disabilities Act may also apply.
- L. Acceptable project ownership. In the event of a sale, prepayment or refinance, the project must be owned and maintained by a non-profit 501(c)(3) or (c)(4) entity, or may be owned by a For-profit Limited Partnership, the sole General Partner of which is: (1) the current project Owner or another nonprofit entity; (2) for-profit corporation wholly owned and controlled by one or more non-profit entity; or (3) a limited liability company wholly owned and controlled by one or more non-profit entity. If the project is supported with a Section 8 project based rental assistance contract, where there is a sale, the sale will necessitate the Assignment of HAP Contract and HUD will review the qualifications of the new ownership in accordance with the requirements of Assignment of HAP Contracts in Chapter 13 of HUD Handbook 4350.1, *Transfer of Physical Assets (TPA)*. (However, a TPA is not required.)
- M. Use of project Resources. Pursuant to AHEO, as amended, and to the extent that such funds are available, HUD may allow a project sponsor to use any Residual Receipts held for that project in excess of \$500 per unit for the cost of activities designed to increase the availability or provision of supportive services. Pursuant to AHEO, as amended, HUD may allow a project sponsor to use any Reserve for Replacement funds in excess of \$1,000 per unit for the cost of activities designed to increase the availability or

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<sup>6</sup> If FHA financing is proposed, neither meals, infirmaries, or other facilities intended to address resident needs with Activities of Daily Living may be included in any additions. No licensed care is permitted under FHA Multifamily Mortgage Insurance program.

provision of supportive services, or for those purposes outlined in AHEO, Title I, Subsection (c) paragraphs two (2) and three (3): 1) Rehabilitation, modernization, or retrofitting of structures, common areas, or individual dwelling units. 2) Construction of an addition or other facility in the project, including assisted living facilities (or, upon the approval of the Secretary, facilities located in the community where the project sponsor refinances a project under this section, or pools shared resources from more than one (1) such project). Other allowable purposes for Reserve for Replacement funds are those listed in HUD Handbook 4350.1, *Multifamily Project Servicing*.

HUD Housing Notice 2012-14 requires Section 202 projects with a new regulation Section 8 HAP contract to use Residual Receipts in excess of \$250 per unit to off-set Housing Assistance Payments. (See HUD Housing Notice 2012-14, footnote 3). Pursuant to Housing Notice 2012-14, residual receipts in excess of \$250 per unit must be used to make HAP off-sets at all Section 202 properties with a new regulation Section 8 HAP Contract. The Owner must begin making off-sets as instructed in 2012-14.

An Owner of a Section 202 project that is planning a prepayment and refinance may use Residual Receipts funds in excess of \$500 per unit for supportive services purposes. The funds specified for use over the \$500 per unit balance must be set aside in a restricted account separate from the Residual Receipts account at the time that the prepayment application is submitted to HUD (but not before such time) so that they can be readily drawn upon pursuant to the uses approved in the prepayment request. These funds may not be accessed until closing of the prepayment. If the prepayment does not occur within 180 days of the prepayment application to HUD, these funds must be released back into the Residual Receipts account and will be subject to the HAP payment off-set policy. The Multifamily Hub/PC will review the Owner's proposed use of the segregated funds to ensure that they meet the statutory requirement of increasing the availability or provision of supportive services at the subject property, and that the use of all funds in excess of \$500 per unit is justified.

If and when the Owner submits a prepayment application that includes supportive services, the Owner may segregate funds in excess of \$500 per unit in a distinct account as described above. After these funds are segregated, off-sets required by Housing Notice 2012-14 must continue for the balance remaining in the residual receipts account (i.e., \$500 per unit to \$250 per unit). An example follows:

**EXAMPLE: Calculating Uses of Funds from Residual Receipts**

Current Residual Receipts account balance:	\$700/unit
AHEO statutory threshold:	\$500/unit
<i>Available for supportive services:</i>	<i>\$200/unit</i>
<i>Remaining balance (after segregating funds for supportive services) = \$500/unit</i>	
<i>Funds to remain in Residual Receipts account pursuant to Notice 2012-14 = \$250/unit</i>	
<i>Funds required to use for Section 8 off-sets = \$250/unit</i>	

- N. Tenant involvement in prepayment or refinance. All prepayments must meet tenant involvement requirements detailed in Section XI (Tenant Involvement in Prepayment and Refinancing) of this Notice.
- O. Environmental Review. The prepayment transaction will require an environmental review. The environmental review will be conducted by HUD Multifamily Development staff pursuant to the requirements at 24 CFR Part 50. Guidance for completion of this review may be found in Chapter 9 of the MAP Guide.
- P. Temporary Relocation. If significant repair work or substantial rehabilitation is planned as part of the Section 202 Direct Loan prepayment, the proposal may require the temporary relocation of tenants for the period of rehabilitation. To permit rehabilitation to proceed, an owner may temporarily relocate a tenant or permanently relocate a tenant within the same building or complex. 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. However, there will be no permanent displacement (i.e., permanent moves from the real property) of any tenant as a result of the proposed transaction.

In the event that the conversion will involve the temporary relocation of tenants, a relocation plan must be submitted that identifies the affected units and tenants, estimates the relocation costs and provides a timetable for the relocation. The Owner must also indicate what steps will be taken to minimize the temporary relocation of the tenants. The Multifamily Hub/PC staff will coordinate with the Hub Tenant Relocation Specialist. If necessary, the Tenant Relocation Specialist must review and approve any relocation plans.

NOTE: Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. Should a residential tenant be temporarily relocated for a period beyond one year, the Owner must contact the person and offer all permanent relocation assistance in accordance with the Uniform Relocation Act. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

For tenants that must relocate temporarily, the owner must provide:

1. Reimbursement for all actual reasonable expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent or utility costs.
2. Appropriate advisory services, including reasonable advance written notice of:
  - (a) The date and approximate duration of the temporary relocation;
  - (b) The suitable, decent, safe, and sanitary housing to be made available for the

- temporary period;
- (c) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and
  - (d) The right to the financial assistance described in paragraph 1 above.
3. All other conditions of the temporary relocation that the tenant undergoes must be reasonable.
  4. Permanent move within building/complex. A tenant who is required to move to another unit in the same building/complex must be offered reimbursement for all out-of-pocket expenses incurred in connection with the move. All other conditions of the relocation that the tenant undergoes must be reasonable. Relocating an elderly person with a disability requires locating a unit that is appropriate to their physical needs. A temporary relocation must be to an accessible unit that provides equal or greater accessibility as the current unit.
  5. A relocated tenant will be given the first right of refusal to a rehabilitated unit (the same unit or a comparable one). Further, the notification to tenants should be provided in appropriate formats as necessary to meet the needs of all including persons with limited English proficiency and formats for persons with visual, hearing, and other communication-related disabilities (e.g., braille, audio, and large type, sign language interpreters, assistive listening devices, etc.).

## **VI. Prepayments Which do Not Require HUD Approval**

This section applies to those Section 202 Direct Loans that do not require HUD consent for prepayment. Section 202 projects with original financing dates of approximately 1977 to 1982, may have a mortgage note that permits the prepayment with only a 30-day notice to HUD. No Use Agreement is required for such prepayments. An Owner may prepay the Direct Loan by submitting a 30-day notice to the Hub/PC, and notifying the project residents as described in Section XI (Tenant Involvement in Prepayment and Refinancing) of this Notice.

Typically, if the Section 202 Direct Loan does not require HUD consent for prepayment, the mortgage note, Form FHA-3432-EH (6/76) contains language similar to the following:

*“Privilege is reserved to pay the debt in whole or an amount equal to one or more monthly payments on principal next due, on the first day of any month prior to maturity, upon at least thirty (30) days prior written notice to the Payee.”*

If the Owner of such a project prepays the Section 202 Direct Loan and voluntarily agrees to the requirements listed in Section V of this Notice (including the recordation of the Section 202 Prepayment Use Agreement), the project will be initially exempted from Mark-to-Market

restructurings during the term of the financing used to prepay the Section 202 loan. The Owner may renew the HAP contract under Option 4 of the Renewal Guide.<sup>7</sup> If the Owner has a Section 8 HAP Contract renewed under Option 4, and the Owner voluntarily complies with this Notice, the Owner may continue to receive OCAF rent adjustments which may be at or above market levels. Please see the Section 8 Renewal Policy Guidebook, Chapter 6. To qualify for the Mark-to-Market exemption, the Owner must meet all requirements listed in Section V and Section VII of this Notice. Please note: If the Owner does not opt to follow the requirements listed in Section V and VII of this Notice, the project will not be exempt from Mark-to-Mark restructuring upon expiration of the Section 8 HAP contract, unless the Owner refinances the Section 202 Direct Loan conventionally prior to the expiration of the Section 8 HAP contract.

## **VII. Refinancing Resulting in Reduction in Debt Service**

This Section applies to Section 202 Direct Loan properties that require the consent of HUD prior to prepayment, and that have a Direct Loan with an interest rate greater than six percent. Typically, these are projects originally financed after 1974. Pursuant to AHEO (as amended), HUD may only approve the prepayment of a Direct Loan with an interest rate greater than six percent for the purpose of reducing the debt service payment for the project. This is typically accomplished by replacing the Direct Loan with a new loan that has a lower interest rate. Prepayments for 202 Direct Loan projects with interest rates greater than six percent must meet all of the following requirements:

### A. Reduction in debt service.

The Owner must demonstrate that the prepayment and refinance will result in a reduction in debt service payments. The prepayment application must include detailed Sources and Uses document and a summary financial analysis that demonstrates that the new loan will have a lower debt service payment than the original Section 202 Direct Loan. The reduction in debt service must be quantified (i.e., must be expressed as a specific dollar amount of savings) but there is no minimum amount of savings required. The 202 prepayment statute (AHEO) was amended to remove any reference to ongoing “debt service savings.”

For Direct Loans with an interest rate of greater than six percent, the Owner must demonstrate a reduction in debt service as a threshold requirement for HUD approval of the prepayment.

HUD will not require specific accounting of “debt service savings,” i.e., for proposed Direct Loan prepayments, debt service savings shall not be escrowed.

HUD is requiring Owners to use current debt (the new debt service to take effect at the closing of the refinance/acquisition) in Section 8 budgets as part of the 20 year HAP contract renewal request. Because the new debt service is lower, the resulting budget based

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<sup>7</sup> This exemption was authorized under Section 612(h) of the Departments of Labor, Health and Human Service and Education Appropriations Act ending September 30, 2002.



Section 8 rents may be lowered as a result of the transaction, and it is likely that a project will not be able to generate monthly debt service savings. For projects with Direct Loan interest rates above 6 percent, Owners must show in pro forma numbers that there is a lower interest rate and/or a lower loan payment – but debt service savings may not necessarily flow to the project on an ongoing basis.

B. Approved use of proceeds from the refinance.

Pursuant to AHEO, the Owner must describe how proceeds from the new loan “will be used in a manner advantageous to tenants of the Section 202 Direct Loan project being refinanced, or used in the provision of affordable rental housing and related social services for elderly persons that are tenants of the project or are tenants of other HUD-assisted senior housing [owned] by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer.”

“Proceeds” are defined as the loan proceeds that come into the project (i.e. the new loan, or other sources such as LIHTC equity or soft debt) as a result of the prepayment transaction. The Owner must provide a narrative description of the proposed use of loan proceeds, including specific dollar amounts to be used for specific purposes, and the timing of the proposed use of proceeds. The proposal must meet the requirements of this Section of the Notice.

Loan proceeds in excess of those required to pay off the Section 202 Direct Loan or other HUD approved subordinate debt (including Residual Receipts notes paid at closing) must be placed in a segregated account at the closing of the refinance transaction.<sup>8</sup> All segregated proceeds from the refinance intended for rehabilitation, retrofits, or construction at the Section 202 project or approved HUD-assisted senior housing (as described in paragraph 6, below) must be expended within five (5) years of the closing of the refinance. If the funds are not expended during this time frame, the Owner must submit a written justification of good cause to HUD, and may reprogram the funds for other approved uses. HUD must approve all proposed uses of proceeds in advance. Approval of a prepayment application will constitute approval of the proposed use of proceeds. HUD will monitor the expenditures of the loan proceeds through review of required audited Annual Financial Statements detailing the amount and use of funds in the segregated account, as described below. HUD field office Asset Management staff will review Annual Financial Statements to see that any funds not expended at closing are in a segregated account. Asset Management will also check that, at the five year mark after closing, the funds have been expended. Any material change in proposed use of proceeds after the loan closing will

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<sup>8</sup> Please note: if the Section 202 Direct Loan is being refinanced using FHA mortgage insurance, proceeds intended for use at the Section 202 property, for example as a repair escrow or completion assurance, will be escrowed and released in accordance with the MAP Guide. As described below in this Notice, Owners may structure an FHA transaction to obtain an equity take-out for the benefit of residents of other HUD-assisted senior housing. These funds must be placed in a segregated account and monitored as described in this Notice.

require HUD approval, as described in the required Section 202 Prepayment Use Agreement. Funds must be used in accordance with AHEO and the guidance below.

Allowable uses of loan proceeds include:

1. Provision of social services. Proceeds from the refinance may be used for not more than 15 percent of the cost of increasing the availability or provision of supportive services to elderly tenants of the project being refinanced, which may include the financing of service coordinators and congregate services.

HUD may request a social services plan to determine the total cost of the supportive services, the share of those costs to be funded by proceeds from the loan, and the viability of the supportive service plan. If the Owner is proposing to exceed the 15 percent threshold, the field office may submit a waiver request to the HUD Headquarters Office of Asset Management.

Pursuant to the 2010 Act, HUD may waive the 15 percent limitation as necessary to ensure that the use of unexpended amounts better enables seniors to age in place. The Hub/PC Director should carefully review the Owner's proposal for provision of supportive services and determine if a waiver is warranted. If a waiver is sought, the waiver request should be submitted by the Hub/PC to HUD Headquarters. The waiver request must detail the funds requested for supportive services and justify the need for these funds to aid existing tenants of the project to age in place.

2. Rehabilitation, modernization or retrofitting of structures, common areas, or individual dwelling units, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable. Allowable reductions in units are those defined in Housing Notice 2011-03.
  - a. Where debt service savings are anticipated, the repair work does not need to meet the threshold of substantial rehabilitation as defined in the HUD MAP Guide. A third-party Project Capital Needs Assessment (PCNA) is not required. However, the prepayment application must provide a narrative and spreadsheet providing detail on specific repair plans and costs. (Where debt service savings are not anticipated from the refinance, the repair work must involve substantial rehabilitation, as discussed in Section VIII, below).
  - b. As authorized by AHEO, Owners may reconfigure units to reduce vacancies. Such unit conversions must meet the criteria described in Housing Notice 2011-03.
3. Construction of an addition or other facility in or adjacent to the project, including assisted living facilities. With HUD approval, the Owner may

use proceeds to construct facilities for the elderly located in the community where the project sponsor refinances a project, or where the sponsor pools shared resources from more than one such project. Such projects must be located in the same geographical region as the Section 202 project (i.e. Metropolitan Statistical Area), and must be owned by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer that owns the Section 202 project. Approval of such construction or additions is subject to the terms of the proposed financing for the Section 202 project being refinanced. Staff will evaluate on a case-by-case basis with consideration of the asset management of such projects.

All facilities constructed using proceeds from the refinance must have or put in place a Use or Regulatory Agreement requiring operation as a facility for the elderly for a term at least 10 years beyond the date of closing of the Section 202 refinance, or the date of termination of the existing Use or Regulatory Agreement, whichever is later. A period of at least 10 years will be added to the receiving project's Use Agreement at the time of the Section 202 Direct Loan prepayment. An Owner may meet this requirement by extending an existing Use or Regulatory Agreement for a further term, or executing a new Use or Regulatory Agreement (sample attached as Attachment 3 of this Notice) at or before closing of the refinance. If there is or will be a restriction in place requiring the facility be used for the elderly (i.e. a LIHTC Use Restriction) for a term at least ten years beyond the date of closing of the Section 202 refinance, the Owner does not need to put in place an additional Use or Regulatory Agreement.

4. Payment to the project owner, sponsor or third party developer of a Developer's Fee (See Section V.G of this Notice) in an amount not to exceed or duplicate:
  - a. In the case of a project refinanced through the LIHTC program, the fee permitted by the LIHTC program as a percentage of acceptable development cost. The Owner's prepayment application should include evidence of the fee permitted by the program in that State.
  - b. In the case of a project refinanced through any other source of refinancing, up to 15 percent of the acceptable development cost. Acceptable development cost includes the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs. Transaction costs may include costs of third party reports such as market studies or physical inspection reports not otherwise captured in the development costs, and loan fees and closing costs, and other similar costs.
  - c. HUD will not monitor the use of the Developer Fee by the Owner.

5. Proceeds may be used to cover the payment of transaction costs related to LIHTCs or other secondary financing, provided that these funding sources are contributing to the provision of housing or social services for elderly residents of the project or other HUD-assisted elderly projects. Transaction costs may include costs of third party reports such as market studies or physical inspection reports of the project, repayment of predevelopment loans specific to the project, and payment of loan fees and closing costs. 202 prepayment transactions may include subordinate debt. Allowable secondary financing is described in Chapter 8 of the MAP Guide. Debt service on secondary financing must be paid from surplus cash and may not be listed as an expense line item in the Section 8 HAP contract budget.
6. Use of proceeds in other HUD-assisted senior housing properties. AHEO, as amended, enables the Owner to utilize loan proceeds from the refinance for the provision of affordable rental housing and related social services for elderly persons that are tenants of the Section 202 project being refinanced, *or for tenants of other HUD-assisted senior housing*. If the Owner is proposing to use proceeds for the benefit of tenants of other HUD-assisted senior housing, the prepayment application must clearly outline the proposed use of funds. Projects eligible to receive proceeds include those described in paragraph f, below.

If the Owner is proposing FHA financing, the proposed activities in other HUD-assisted senior housing may not be included in the FHA loan underwriting. Instead, the FHA loan should be structured to allow the Owner to realize an equity take-out. This equity would be available to the Owner to fund the construction of off-site facilities. On refinance transactions, equity take-outs are permitted only as discussed in the MAP Guide, Sections 8.8 and 8.13. Equity take-out is allowed under Section 223(f) if supportable, but is not allowed under new construction or substantial rehab under Section 221(d)(4), or refinancing under Section 223(a)(7). Related to equity take-outs in Section 202 sales transactions, value should be based on market rents. See Section IX of this Notice for more detail.

When the prepayment involves proposed activities in other HUD-assisted senior housing, the following requirements apply:

- a. The Owner's prepayment application must specify the project(s) that will receive the proceeds from the refinance.
- b. The project(s) must be designated as senior housing and serve only residents where the head of household is aged 62 and above. The designation as senior housing, and occupancy by residents aged 62 and above, must have been in place prior to the Section 202 Direct Loan prepayment.

- c. The project(s) must have an active program in place to provide social services for elderly residents. The program must have been operational prior to the Section 202 Direct Loan prepayment.
- d. At the time of the application for the Section 202 Direct Loan prepayment, the level of affordability of the project(s) receiving proceeds from the refinance must be at least as affordable as the Section 202 Direct Loan project being refinanced. For example, if the Section 202 Direct Loan project is restricted to households at or below 80 percent of AMI, the project to receive the proceeds must be restricted to households at or below 80 percent of AMI, or any income band below 80 percent of AMI. In no event may the affordability restriction be above the low or moderate income level currently served by the Section 202 Direct Loan being refinanced.
- e. All Section 202 Direct Loan and Section 202 Capital Advance properties are eligible to receive proceeds from the refinance. Section 202 Capital Advance projects under development are eligible if a HUD Fund Reservation for the project has been issued prior to submission of the prepayment application.
- f. Eligible properties may also include affordable senior projects that receive other HUD assistance in the form of project-based rental assistance, HUD Direct Loan, FHA mortgage insurance or a HUD Capital Advance.
- g. All project(s) to receive proceeds from the refinance must have or put in place a Use or Regulatory Agreement requiring operation of the project as affordable senior housing for a term at least 10 years beyond the date of closing of the Section 202 refinance, or the date of termination of the existing Use or Regulatory Agreement, whichever is later. A period of at least 10 years will be added to the receiving project's Use Agreement at the time of the Section 202 Direct Loan prepayment. For all projects except new 202 Capital Advance projects under development, a copy of the Use or Regulatory Agreement for the project receiving the proceeds must be submitted with the prepayment request. An Owner may meet this requirement by extending an existing Use or Regulatory Agreement for a further term, or executing a new Use or Regulatory Agreement (sample attached as Attachment 4 of this Notice) at or before closing of the refinance.
- h. Proceeds must be used to ensure the long-term viability of the receiving project, rather than addressing a short-term or stop-gap financial need.
- i. The other HUD-assisted senior housing project receiving the proceeds from the refinance must be located in the same geographical region as the

Section 202 project (i.e. Metropolitan Statistical Area), and must be owned by the private nonprofit organization project owner, private nonprofit organization project sponsor, or private nonprofit organization project developer that owns the Section 202 Direct Loan project. This may include a project for which the Owner is the General Partner of a for-profit Limited Partnership for LIHTC purposes. Acquisitions of properties that meet the criteria listed in a through h, above, are acceptable.

7. Rent reduction of unassisted tenants residing in the Section 202 Direct Loan project being refinanced. Unassisted residents may not face an increase in rents as a result of the prepayment and refinance. The proceeds from the new loan may be used to maintain affordable rents to households residing in units that are not supported by a project-based rental assistance contract. The prepayment application must detail how the loan proceeds will be used to maintain affordable rents for unassisted residents for the duration of the required Use Agreement. Please note that in certain Section 202 projects financed prior to 1975, with a Direct Loan interest rate of six percent or below, HUD may provide rental assistance to prevent displacement of unassisted elderly residents. Please refer to Section VIII of this Notice for more information on these projects.

#### C. Monitoring of proceeds from the refinance.

1. HUD must approve use of the proceeds from the refinance. The prepayment approval will constitute approval of the proposed use of proceeds.
2. Any proceeds to be used for construction, rehabilitation, retrofits, additions or unit conversions must be expended within five years of the prepayment of the Section 202 Direct Loan.<sup>9</sup> If these funds are not expended within five years for these proposed activities, the Owner must submit to the Hub/PC Director, 30 calendar days prior to the end of the five year period, good cause justification for the delay and a specific timeline for utilization of the funds. Failure to expend those funds designated for construction, rehabilitation, retrofits or unit conversion within five years with good cause will result in administrative action against the project owner by HUD.
3. As required in the Section 202 Prepayment Use Agreement, proceeds from the refinance that exceed costs to be paid at closing, including paying off the Section 202 Direct loan and other HUD-approved subordinate debt such as Residual Receipts notes, must be deposited into a segregated account and included in the Annual Financial Statements for the project.

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<sup>9</sup> In the case of an FHA-insured refinance, all repair and rehabilitation activities included in the FHA loan underwriting must be completed, and funds drawn, pursuant to the requirements of the FHA loan program.

4. The required Section 202 Prepayment Use Agreement will include requirements with respect to utilization and reporting on proceeds from the refinance. Until the proceeds from the refinance are fully expended, they will be documented in the project's Annual Financial Statements for HUD review and approval.
5. If the Owner is not in compliance with AHEO, HUD reserves the right to take necessary steps to ensure compliance with the law, which may include referral to the Departmental Enforcement Center or other actions.

### **VIII. Refinancing to Address the Physical Needs of the Project**

This Section applies to the prepayment of Section 202 projects originally financed between 1959 and 1974 with Direct Loans carrying interest rates of six percent or less. Many of these properties are in need of significant capital repairs and Owners may request a prepayment in order to obtain new financing to address the physical needs of the project. Even in a time of historically low interest rates, the refinancing may or may not result in a reduction in debt service for these projects. Therefore, an increase in debt service may result from the refinance.

HUD may approve a prepayment and refinancing of a Section 202 project that result in an increased debt service. However, HUD will only approve a transaction with increased debt service if the Section 202 Direct Loan carries an interest rate of six percent or lower and only if the transaction will address the physical needs of the project, as described below. The refinance must meet these requirements:

- A. Senior Preservation Rental Assistance Contracts (SPRAC). The proposed transaction may not result in higher rents for the unassisted residents. If the transaction is not feasible without rent increases, HUD may provide rental assistance, subject to the availability of appropriations, to those impacted tenants that would otherwise be at risk of rent increase or displacement. HUD will issue guidance on the provision of Senior Preservation Rental Assistance (SPRAC) as such assistance is made available to protect elderly residents from displacement in such transactions. Forthcoming guidance will detail the process for Owners to request and obtain SPRAC. Until this guidance is published, HUD will not entertain requests for SPRAC.
- B. Tenant Protection Vouchers. In certain cases, as described in Housing Notice 2012-03, *Guidance on Eligibility for Tenant Protection Vouchers Following Certain Housing Conversion Actions*, and in conjunction with an approved Section 202 Direct Loan prepayment, income eligible unassisted elderly residents in these Section 202 projects are eligible to receive Tenant Protection Vouchers (TPVs). The Hub/PC will work with the PIH Field Office following the process described in PIH Notice 2001-41 to request and obtain the vouchers for residents of the project.
- C. Section 8 rent increases. The refinance to complete repairs may involve an increase in Section 8 rents if such increase is necessary to support the refinance transaction. The

overall cost of providing Section 8 rental assistance for the project may not increase, except that HUD may approve mark-up-to-market or mark-up-to-budget rent increases. Owners requesting rent increases should follow the process detailed in the Capital Repair program in Chapter 15 of the Renewal Guide.

- D. Physical needs of the project. The amount of capital repairs must meet the test for “substantial rehabilitation” as defined by the MAP Guide. Substantial rehabilitation may include conversion of efficiency units to reduce vacancies under the guidelines in Housing Notice 11-03. The Owner must demonstrate the substantial rehabilitation threshold is met through one of the criteria below:
1. The Owner submits a Project Capital Needs Assessment (PCNA)<sup>10</sup> 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

  2. The Owner may submit architectural plans and specifications for the proposed substantial rehabilitation transaction (plans and specifications may have been prepared for another use, such as a loan or LIHTC application).

The submission 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 new Use Agreement, HAP Contract or SPRAC, whichever is longer. 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 rental assistance (for a definition see 24 CFR 8.3), then the Owner must include in the PCNA 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 will be required; the repairs identified in such an assessment must be integrated into the overall capital repair plan. The PCNA must address compliance with accessibility requirements. If the PCNA inspector is not experienced in this area, a separate, independent accessibility assessment may be required.

HUD recognizes that, notwithstanding good REAC scores, many older projects require significant structural, systems, or other repairs necessary to ensure the long term physical integrity of the property. HUD will consider waivers of the Notice requirement that all pre-1974 projects complete substantial rehabilitation if the Owner submits a Project Capital

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<sup>10</sup> Refer to the MAP Guide, and Housing Notice 12-27, “Revised Requirements for Project Capital Needs Assessments, Estimated Reserves for replacements and Remedies for Accessibility Deficiencies” for detailed discussion of PCNA report content.



Needs Assessment (PCNA) that evidences the project does not require substantial rehabilitation to ensure its long-term viability. The waivers must be submitted to HUD Headquarters Office of Asset Management and may be submitted as part of the prepayment request, or prior to the prepayment request. The PCNA must accompany the Hub/PC waiver request to HUD Headquarters.

- E. Use of proceeds. For prepayment and refinancing requests (not including sales transactions) where no debt service savings are anticipated, any proceeds from the refinance in excess of the cost to pay off the existing 202 Direct Loan must be approved for uses in accordance with Section VII (Refinancing Resulting in Reduction in Debt Service) of this Notice. However, where no debt service savings are anticipated as a result of the refinance, proceeds from the refinance must be used first to make the necessary repairs to the project, and then to maintain affordable rents for unassisted residents, before funds may be approved for any other uses described in Section VII. In the case of provision of rental assistance to unassisted project residents, it is possible that Section 202 households may face an increase in the tenant-paid rent. The Owner must use the proceeds from the new financing to protect residents from rent increases, throughout the household's tenure in the project. However, residents that receive TPVs, as described in paragraph B, above, may face rent increases up to 30 percent of income as required by the Housing Choice Voucher program. Project proceeds are not required to off-set this rent increase. Any remaining proceeds may be placed in escrow at closing for other approved uses as described in Section VII.

For the purposes of FHA mortgage insurance, reasonable and necessary relocation costs may be included in the calculation of mortgageable costs.

#### **IX. Using FHA Multifamily Programs to refinance Section 202 Properties**

FHA Multifamily programs - Sections 221(d) (4), 223(f), or 231 -- may be used for Section 202 properties either to refinance the Section 202 Direct Loan or to refinance a subsequent conventional or FHA-insured loan (i.e., Direct Loan previously prepaid). In addition to these programs, Section 223(a) (7) may also be used for the subsequent refinance of an existing FHA-insured loan.

- A. Refinancing Section 202 Direct Loans. The following provisions apply to underwriting of the refinance of Section 202 Direct Loans using FHA Multifamily programs.
1. Unassisted units within the project shall be processed at market rent. The processing rents used for the project-based Section 8 assisted units will be the current or to be adjusted Section 8 contract rents for the project, even if the contract rent is in excess of the market rent.
  2. The appraiser should perform a Sales Comparison Approach, with at least three comparables identified, and with explanations for any adjustments made. If the subject is located in an area where there are no reasonable comparables available, there needs to be an adequate explanation and

comparables outside of the immediate market area may be considered with appropriate adjustments. The Sales Comparison Approach is necessary for reconciliation with the value obtained through the Income Approach.

3. The appraised value may be based on above-market Section 8 contract rents or other rental assistance, unless the borrower is seeking cash out of the proposed refinance. For cash out scenarios, Criterion 3 Value must be based on market rents, regardless of the Section 8 contract rents. The following comparables may not be used:
  - a. Upscale retirement service centers with amenity packages included in the rent; or
  - b. Projects with up-front entrance or founders fees or life-care fees.

Note: Rent analyses obtained by, or performed on behalf of, the owner under the current Section 8 rent comparability contract renewal guidelines will not be considered in the FHA mortgage insurance processing. The lender may, however, obtain the appraisal, and it may be used by the owner to support the rent comparability analysis in the Section 8 contract renewal.

4. In the absence of sales of assisted properties with which to draw a comparison, capitalization rates may be derived using a band of investment and the Section 8 contract and any favorable financing specific to the application may be factored into the rate analysis. In the Income Approach, the appraiser must provide a discussion of market cap rates as well as published indexes. There must be a thorough discussion of how the equity dividend ratio was derived, given the subject will most likely be a fully subsidized project (usually with a Section 8 HAP Contract) often owned by a non-profit entity. Capitalization rates must never be below the mortgage constant.
5. Debt Service Coverage ratios and Loan to Value loan limits are to be in accordance with requirements applicable to the specific program to be used for the refinance, as spelled out in the MAP Guide.
6. Short-term or variable tax abatement should be treated in accordance with the MAP Guide.
7. A Developer's Fee is recognized to the extent that the controlling FHA program allows:
  - 221(d)(4), Not for Profit owner: Developer Fee allowed;

- 221(d)(4), For Profit owner: Builder Sponsor Profit Risk Allowance (BSPRA) allowed in lieu of Developer Fee, except:
  - Developer Fee is allowed for projects converting under the Rental Assistance Demonstration program (RAD) as detailed in PIH Notice 12-32;
- 223(a)(7): Developer Fee not allowed;
- 223(f): Developer Fee not allowed, except:
  - Developer Fee is allowed for projects participating in the Multifamily Low Income Housing Tax Credit pilot, as detailed in Housing Notice 12-01;
  - Developer Fee is allowed for projects converting under the Rental Assistance Demonstration program (RAD) as detailed in PIH Notice 12-32; or,
  - An 80 percent Loan to Value is based on market rents and valuation, and there are sufficient excess proceeds.

If allowed as described above, a Developer's Fee is recognized if the insured mortgage amount can support it, and as otherwise allowable elsewhere in this Notice.

8. As described in Section VII of this Notice, AHEO, as amended, allows Owners to use proceeds from the prepayment transaction in other HUD assisted senior housing, or for the cost of construction of additions or facilities on parcels outside of the subject project. However, these costs may not be included in the FHA underwriting. Instead, the FHA loan may be structured to allow the Owner to realize an equity take-out. This equity would be available to the Owner to fund the construction of off-site facilities. On refinance transactions, equity take-outs are permitted only as discussed in the MAP Guide, Sections 8.8 and 8.13. With equity take outs, value must be based on market (not above-market) rents. The equity out will be placed in a segregated account as described in Section VII of this Notice. "Segregated account" items for use outside the subject project may not be included in Criterion 10 Amount Based on Existing Indebtedness, Repairs, and Loan Closing Charges for Section 223(f) refinances.
9. Reserve for Replacement funds may be used to fund 3<sup>rd</sup> party reports for Section 202 refinances, up to \$20,000 and subject to Asset Management approval. Approval will be granted so long as the project has sufficient Reserve for Replacement funds to meet the needs of the project should the refinancing not be completed. Requests for a waiver to exceed the \$20,000 limit should be submitted to the Multifamily Hub/PC for review and approval.
10. Sales proceeds are allowed. Where HUD approval is required for a Direct Loan prepayment, and the transaction involves a sale/acquisition, there will be no restrictions on the use of sales proceeds from the transaction that

flow to the selling Owner, provided that the transaction meets the requirements of this Notice. This includes LIHTC and identity-of-interest transactions.

11. The income and costs of making the supportive (non-shelter) services available are not to be included in the project's underwriting, except as necessary to support up to 15 percent of the cost and expense of providing such services. The lender must separately analyze the budgets of the non-shelter service to determine the reasonableness of such costs and that they are self-supporting, from Residual Receipts or other sources. Form HUD-92013-E or a functionally equivalent presentation must be submitted with the MAP application when non-shelter services are proposed, provided this breakdown recognizes the prohibition on meals and other assisted living services in housing financed under FHA Multifamily programs.

- B. "Re-refinance" of Section 202 properties. Many properties that have prepaid the original Section 202 Direct Loan may now have new debt on the property, in the form of either a conventional or an FHA-insured loan. An Owner may wish to "re-refinance" these former 202 projects (obtain a new loan) to take advantage of lower interest rates and/or to complete repairs. Such prepayments may or may not require HUD approval and mortgagors should consult the mortgage note to determine if HUD approval of prepayment is required. The prepayment may require approval from the lender on the project. Following the re-refinance, the former 202 project must continue to operate under the terms and conditions of the recorded Section 202 Prepayment Use Agreement.

Re-refinances of 202 projects with FHA insured loans will be processed in accordance with the MAP Guide. All the provisions in this Notice related to use of proceeds, 20-year HAP contract renewals and execution of a new use agreement as described in Sections V, VII and VIII of this Notice apply only to the first refinance of a Section 202 Direct Loan. These requirements/restrictions do not apply in the case of a re-refinance.

The underwriting of the re-refinanced 202 project should be done following the same guidance given in IX.A, above for underwriting Direct Loans except that:

1. If the Section 8 HAP contract rents are above market, underwriting of Criterion 5 Debt Service should assume a reduction to market rents at the time upon Section 8 HAP contract expiration. The lender should underwrite an A piece based on market rents and operations, and a B piece based on the portion of the NOI attributable to above-market rents and operations, amortized for the period of the Section 8 HAP contract (which may be renewed prior to the refinancing for up to 20 years).
2. No Developer Fee is allowed from the proceeds of an FHA insured mortgage in the case of a re-refinanced 202 project. However, for Section 223(f) loans limited to 80 percent Loan To Value based on market rents and valuation which generate mortgage proceeds exceeding

recognized closing requirements (i.e., cash out) such proceeds may be used for any purpose, including Developer Fee.

3. Underwriting should account for the potential loss of Section 8 HAP contract “exception” status. At the time of the re-refinance, Section 202 Owners are not required to execute a 20-year HAP contract, but are encouraged to do so prior to the refinancing. Section 8 rents will be set based on the applicable Section 8 renewal option pursuant to the Section 8 Renewal Guide. If the Owner re-refinances with an FHA insured loan rather than a conventional loan, the project will no longer be exempt from Mark-to-Market restructuring. As a result, after the re-refinance, when the HAP contract expires, the Owner will lose the ability to renew the contract under Option 4. At the time of the HAP contract expiration, if the Section 8 rents are above market, the Owner will be referred to Mark-to-Market restructuring through the Office of Affordable Housing Preservation (OAHP) unless the Owner refinances again with a conventional loan prior to Section 8 HAP contract expiration. In such cases, the lender should underwrite an A piece based on market rents and operations and a B piece based on the portion of the NOI attributable to above-market rents and operations, amortized for the period of the Section 8 contract.

#### **X. Structure of the Transaction and Additional Considerations**

There is no requirement that a refinancing plan for a Section 202 Direct Loan include FHA mortgage insurance. Direct Loans may be refinanced using any third party source, including financing by State or local housing finance agencies, use of tax-exempt bonds, LIHTCs, multifamily mortgage insurance under the National Housing Act, reinsurance, or other credit enhancements, including risk-sharing as provided under Section 542 of the Housing and Community Development Act of 1992. No matter what structure, additional considerations or waivers may be required. Owners may need to request waivers for and/or consider the following:

- A. Waiver of payment of flexible subsidy debt. The Owner may request a waiver to defer payment of flexible subsidy debt as part of the transaction. AHEO, as amended, requires HUD to waive the requirement that debt for a project pursuant to the flexible subsidy program be prepaid in conjunction with a prepayment, refinancing or transfer if the financial transaction or refinancing cannot be completed without the waiver. Requests for waivers of payment of Flexible Subsidy debt should follow the policies and procedures detailed in Housing Notice 12-04, “Guidelines for Deferral of Flexible Subsidy Debt.”
- B. Subordination and/or assumption of Section 202 debt. HUD may approve the subordination of Section 202 Direct Loan debt to facilitate a transaction to preserve the affordability of a Section 202 project. In lieu of prepayment of a Section 202 Direct Loan, HUD may approve, in conjunction with the new financing for the project, the subordination of the loan for the project under Section 202 of the Housing Act of 1959, as amended, and the continued subordination of any other existing subordinate debt previously approved by

the Secretary to facilitate preservation of the project as affordable housing; or the assumption of the loan under such Section 202 in connection with the transfer of the project with such loan to a private Nonprofit organization.

Requests for subordination or assumption of Section 202 loans should follow the policies and procedures detailed in Housing Notice 10-26, "Subordination of Section 202 Debt." The existing Section 202 loan may also be assumed by a new owner in connection with the transfer of a project to a new Owner, as defined pursuant to the Housing Act of 1959, as amended. Notice 10-26 will also govern the assumption process.

- C. Rent Supplement contract. If a Section 202 project has a Rent Supplement Contract, the contract would normally terminate upon prepayment of the Direct Loan. If a Section 202 project prepays and refinances under the terms of this Notice, then the Rent Supplement Contract may continue to the original maturity date of the Section 202 Direct Loan or the expiration date of the Rent Supplement Contract, whichever is earlier. To continue the Rent Supplement Contract after the repayment of the Section 202 Direct Loan, the Owner must request a waiver of 24 CFR 215.35. Only HUD Headquarters may grant this waiver.
- D. Subsidy layering review. If the prepayment proposal contemplates the use of more than one government subsidy as a source of funds (i.e., Section 8 assistance, Rent Supplement, LIHTCs, HOME or CDBG funds, and/or other state or local government funds), the proposal must include a Subsidy Layering review.
  - 1. In all prepayment cases where the Section 202 project receives HUD Housing assistance, such as a HAP contract, and receives or is expected to receive other federal governmental assistance, such as HOME or CDBG, a Subsidy Layering Review, including either a Section 102(d) certification by HUD staff or a Section 911 certification by a Housing Credit Agency, is required.
  - 2. Where the other housing assistance includes LIHTCs, the tax credit allocating agency performs the Subsidy Layering Review.
  - 3. If the prepayment proposal does not contemplate financing through FHA mortgage insurance or HFA or GSE risk-sharing, the Subsidy Layering Review must be completed by the appropriate reviewing body prior to approval of the prepayment.
  - 4. If the prepayment proposal contemplates risk-sharing, the subsidy layering review must be performed in conjunction with the processing/approval of the risk-sharing package.
- E. Refinancing more than one 202 Direct Loan under one mortgage. If the refinancing plan includes the refinancing of more than one 202 Direct Loan property under one new mortgage, the Owner should consult the local Multifamily Hub/PC for further information on feasibility and process.

## **XI. Tenant Involvement in Prepayment and Refinancing**

HUD will not accept a prepayment request for any project under Section 202 of the Housing Act of 1959 unless the Secretary has determined that the Owner of the project has notified the tenants of the Owner's request for approval of a prepayment; and has determined that the Owner of the project has provided the tenants with an opportunity to comment on the Owner's request for approval of a prepayment, including the description of any anticipated rehabilitation or other use of proceeds from the transaction, and its impacts on project rents, tenant contributions, or the affordability restrictions for the project and that the owner has responded to such comments in writing.

- A. Pursuant to 24 CFR Part 245, at least 30 days before submitting a prepayment request to HUD, the Owner must notify the tenants in writing of its intention to prepay. The notice should include the address and phone of the local HUD office, including the specific division and/or name and phone number of a contact at the local HUD office. If HUD's permission to prepay is required, the notice must also address how the prepayment is advantageous to the tenants. Further, the notification to tenants should be provided in appropriate formats as necessary to meet the needs of all including persons with limited English proficiency and formats for persons with vision, hearing, and other communication-related disabilities (e.g., Braille, audio, and large type, sign language interpreters, assistive listening devices, etc.).
- B. The notice must be delivered directly to each unit in the project or mailed to each tenant and posted in at least 3 places/common areas throughout the project, including the project office.

*Note: In a project greater than 4 stories, the notice may be served either by delivery to each unit or by posting. If the posting method is used, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located.*

1. The tenants (including any legal or other representatives acting for the tenants individually or as a group) have the right to inspect and copy the materials that the Owner is required to submit to HUD for a period of 30 days from the date on which the notice is served to the tenants. Any tenant comments must be available in the project office during normal business hours for public reading and copying.
2. The tenants have the right, during this period, to submit written comments on the proposed prepayment to the Owner and the local HUD office. Tenant representatives may assist tenants in preparing these comments.

- C. Upon completion of the tenant comment period, the Owner must review the comments submitted by the tenants and their representatives and prepare a written evaluation of the comments. Any negative comments must be addressed in the request for prepayment. The Owner must then submit the following materials to the local HUD office:
1. A copy of the Owner's Notification to the tenants;
  2. Copies of all the tenant comments;
  3. The Owner's evaluation of the tenant comments; and
  4. A certification by the Owner that it has complied with all of the requirements of 24 CFR 245.410, 245.415, 245.416 through 245.419, as applicable, and 245.420.

## **XII. Process to Request Prepayment Approval**

- A. Consultation with HUD staff. An Owner considering prepayment should consult with its Housing Project Manager in the appropriate Hub/PC before submitting the prepayment request. This meeting should address the following topics:
1. Whether or not the Section 202 Direct Loan can be prepaid without HUD approval.
  2. Tenant notification requirements.
  3. The terms and conditions of the Use Agreement, if applicable.
  4. Section 8 Contract issues resulting from prepayment, including contract renewal requirements and rent increase requests.
  5. Whether the unassisted tenants of the project may be eligible to receive Tenant Protection Vouchers or Senior Preservation Rental Assistance following the prepayment (pre-1975 projects only).
  6. Benefits to the tenants of the prepayment.
  7. Requests for waiver of prepayment of Flexible Subsidy debt, if applicable.
  8. Requests for waiver of termination of Rent Supplement contract, or provision of vouchers to Rent Supplement contract units, if applicable.
  9. Disposition of Replacement Reserves and Residual Receipts, if applicable.



10. Proposed use of proceeds from the transaction, including any proposal to use the proceeds for the provision of housing and supportive services in another HUD-assisted project.
11. The type of refinancing and other subsidies in the transaction, including Low Income Housing Tax Credits and other sources.

B. Owner submission requirements:

1. A written request to the appropriate Hub/PC  
<http://www.hud.gov/offices/adm/hudclips/forms/files/9808.doc>;
2. A copy of:
  - a. The mortgage and mortgage note;
  - b. Original Housing Assistance Payment Contract/Rent Supplement or Rental Assistance Contract;
  - c. Regulatory Agreement;
  - d. Owner's Notification to the tenants;
  - e. All tenant comments and the Owner's written evaluation of the comments;
  - f. Any other use agreements/restrictions, subordinate loans that may be in place.
3. Details of the proposed repairs/rehabilitation of the project (including a PCNA or plans and specifications, for pre-1975 projects only).
4. List of households currently residing in Section 8 or Rent Supplement assisted units, if any.
5. List of any commercial renters/leases, vendors that may be in place.
6. If applicable, statement regarding application for FHA mortgage insurance or Risk Sharing Program.
7. Additional documents.
  - a. A detailed narrative explaining why the proposal is advantageous to the tenants.
  - b. A detailed narrative justifying the future use of the rental assistance being provided to the project.

- c. A description of the proposed use of the proceeds from the refinance, including a Sources and Uses statement.
- d. Draft copy of the Use Agreement to be recorded at the time of prepayment.
- e. Required waiver requests, i.e. Flexible Subsidy loan payment waiver.

### **XIII. HUD Processing**

- A. Prepayment request processing. Multifamily Hubs/PCs must assess a Section 202 prepayment request within 30 days of receipt of the complete package (or within appropriate timeframes if the transaction involves FHA mortgage insurance) using the following steps:
  - 1. Review the prepayment submission using this Notice as a guide.
  - 2. Document the review through the completion of the review checklist provided as Attachment 5 of this Notice.
  - 3. Coordinate application processing with the appropriate Multifamily field office Development staff, if the project is applying to refinance with FHA mortgage insurance.
  - 4. If the Hub/PC believes the prepayment merits approval, it should prepare a memorandum for the HUD Headquarters Office of Asset Management providing an analysis of the prepayment application and presenting a recommendation it be approved. This submission should include all items listed in Section X (Structure of the Transaction, Additional Considerations) of this Notice and the completed review checklist (Attachment 5).
  
- B. The Headquarters Office of Asset Management will review the Hub/PC office submission and approve or reject the prepayment request based on the requirements of this Notice. The following steps are required after approval is granted:
  - 1. The field office must submit a copy of the recorded Use Agreement to the Headquarters Office of Asset Management, Business Relationships and Special Initiatives Division.
  - 2. The field office must update iREMS to record the date of the prepayment approval, the status of the Section 202 Direct Loan, and the term and expiration date of the Use Agreement.
  
- C. Final Processing. The Hub/PC contacts the Ft. Worth Accounting Center to determine the correct payoff amounts for the Direct Loan and (if applicable) the Flexible Subsidy/Help Loan(s). The Hub/PC notifies the Owner of:

1. The Department's approval of the prepayment request. The approval letter shall reference the final prepayment proposal that was agreed to by HUD and the project Owner.
2. The payoff date and amount for the Section 202 Direct Loan and, if applicable, the Flexible Subsidy or HELP Loan(s).
3. Request evidence for the recordation of the Use Agreement.

#### **XIV. Additional Information**

No provision of this Notice may be waived by any Hub/PC Director, unless indicated otherwise in the Notice. The Office of Multifamily Housing Programs in HUD Headquarters may grant waivers of this Notice, for good cause. Be advised that individual project level actions are subject to the various environmental regulatory requirements of 24 CFR 50, 51, and 55. Additionally, proposals submitted must meet the environmental requirements detailed in the MAP Guide, Chapter 9.

If you have any questions regarding this Notice, please contact your local HUD Field Office or the Desk Officer in the Office of Asset Management, Headquarters.

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Carol J. Galante  
Assistant Secretary for Housing-  
Federal Housing Commissioner

*The information collection requirements contained in this document are pending approval 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 number 2502-0554. 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.*

#### **Attachments**

- 1 - [Use Agreement For Section 202 and 202/8 Projects that require HUD's approval to prepay their direct loan](#)
- 2 - [Preservation Exhibit](#)
- 3 - [Use Agreement for "Constructed addition or other facility for the elderly in or adjacent to the project, including assisted living facilities"](#)
- 4 - [Use Agreement for "Other HUD-Assisted Senior Housing"](#)
- 5 - [202 Prepayment Review Checklist](#)