ABA Forum on Affordable Housing and Community Development Law

REFINANCING AND REPOSITIONING SECTION 202 PROJECTS

May 24, 2019

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Section 202

- Amended by the Supportive Housing Act of 2010.
- Limits renting to low income elderly households.
- Direct Loans or Capital Advances.
- Direct Loans generally ran from 1959-1990.
  - Projects financed from 1959 to 1974 had low interest rates, little or no subsidy assistance.
  - Projects financed from 1974-1990 had market rate interest rates, rental assistance on some or all of the units.
Section 202 Refinancing
Processing Prepayment and Refinance of Section 202 Direct Loans under H-2013-17

ABA Forum on Affordable Housing and Community Development
May 24, 2019
Watt Taylor
Applicability of H2013-17
(issued May 30, 2013)

- Applies to all prepayments, refinances and sale/acquisition of Section 202 Direct Loans for which HUD’s approval of loan repayment is required.
- For Owners with section 202 Direct Loans which do not require prepayment approval, they need not comply with the Notice, but can elect to voluntarily comply.
- Where FHA-insured refinances are occurring in conjunction with the prepayment, the Notice provides additional guidance for underwriting Section 202 properties.
- Notice does not apply to Section 202 capital advance projects or Section 811.
Requirements for all Section 202 Direct Loan Prepayments where HUD approval is required

- Owner must enter into Section 202 Prepayment Use Agreement.
  - Agreement will require continued operation of the project for at least 20 years following the original maturity of the Direct Loan
  - The terms of operation must be at least as advantageous to existing and future tenants as required under the Direct Loan
  - Use Agreement must be recorded in superior position to any new financing (special rules for project refinanced using FHA-insured and Low Income Housing Tax Credits).
- Owner is required to submit annual audited financial reports to HUD.
Requirements for all Section 202 Direct Loan Prepayments where HUD approval is required

- If there is an existing Section 8 project-based HAP Contract in place, Owner must terminate existing Contract and enter into new 20-year Renewal Contract, which includes “Preservation Exhibit”.

- Owner must coordinate HAP Contract renewal and any requested rent adjustments with Section 202 prepayment and FHA-insured application, if such financing will be utilized with Section 202 prepayment.
Requirements for all Section 202 Direct Loan Prepayments where HUD approval is required

- As for rent adjustments requested in conjunction with 20-year Renewal contract, Section 8 Renewal Guide is applicable. Factors mentioned regarding rent adjustments, include:
  1) Exception Project Status,
  2) Current Debt Service,
  3) Impact of reduced debt service on Section 8 rents,
  4) LIHTC compliance fees, and
  5) Debt Service Coverage.
Requirements for all Section 202 Direct Loan Prepayments where HUD approval is required

• As for distributions for a for-profit limited partnership, if the Section 8 HAP Contract contains limitations on distributions, then that limitation continues after prepayment and refinancing. (If no limitation on distributions in the Section 8 HAP Contract, then no limits on distribution after prepayment and refinancing.)

• With sale/acquisition transactions, there are no restrictions on the use of sales proceeds. A more careful review by HUD will be undertaken as to buyer’s acquisition/rehabilitation proceeds. Further, there are restrictions as to the type of ownership, i.e. 501(c)(3) or (4) nonprofit of limited partnership the sole General Partner of which is existing Owner or other nonprofit.
Refinancing Resulting in Reduction of Debt Service

- Projects with an interest rate greater than six percent are eligible to submit a request for prepayment. The Owner must show a reduction in debt service payments, although no minimum amount of savings is required.

- Reduction in debt service may cause reduction in Section 8 rents.

- Refinancing proceeds must be used in a manner most advantageous to the tenants of the project being refinanced, or used for related social services for the elderly tenants or are elderly tenants of other HUD-assisted senior housing owned by private nonprofit organization project owner. Funds must be expended within 5 years of the Section 202 prepayment.
Refinancing to Address Physical Needs of the Project

- Projects financed between 1959 and 1974, with an interest rate of six percent or less may request prepayment in order to address the physical needs of the project, even if the refinancing in conjunction with the prepayment for this purpose results in an increase in debt service.

- In order to address the requirement that rents for unassisted residents may not increase, HUD has provided for Senior Preservation Rental Assistance Contracts (SPRAC) per Notice H2018-02 or Tenant Protection Vouchers (TPV) as described in H2012-03.
Refinancing to Address Physical Needs of the Project

• HUD would consider rent increase, under the Capital Repair program described in Chapter 15 of the Renewal Guide

• Scope of spatial repairs must satisfy the requirements for “substantial rehabilitation” under the MAP Guide and need to be supported either by
  1) a Project Needs Capital Assessment (PCNA) or
  2) submittal by the owner of architectural plans and specifications for the proposed substantial rehabilitation.

• Where there is no reduction in debt service when undertaking capital repairs, there are certain limitations as to any proceeds from the refinance.
Using FHA Multifamily Programs for Refinancing

• The Notice provides various underwriting guidance such as what rents to be utilized for unassisted units or Section 8 contract rents in excess of market rent, as well as allowable Developer’s Fee, depending on the FHA program utilized.

Re-Refinance of Section 202 Properties

• Through the Re-refinance, the Owner will potential lose Section 8 HAP Contract exception status, which could cause a reduction of rents for projects which have above-market rents, at the time of the next contract renewal.
Tenant Involvement in Prepayment and Refinancing

• Notice of Owner’s intent to submit prepayment request must be provided to tenants, along with their ability to review the materials to be submitting to HUD in support of the prepayment request as well as the ability to make comments on the proposed prepayment. All supporting documents regarding the notice and copies of tenant comments are to be provided with or before the prepayment request.

Process to Request Prepayment Approval

• HUD strongly recommends that Owners consult with their HUD Account Executive before submitting prepayment request.

• Owner submission requirements identified in Notice, as well as checklist included as attachment to Notice.

• HUD processing calls for a review of the complete package within 30 days of submittal. In addition, HUD HQs approval required before final approval is granted.
NEW LONG-TERM RENTAL ASSISTANCE CONTRACTS FOR PRESERVATION OF PRE-1974 SECTION 202 DIRECT LOAN PROPERTIES

ABA Forum on Affordable Housing and Community Development
May 24, 2019
Minnie Monroe Baldwin, Senior Advisor
Office of Recapitalization
Pre-1974 Section 202 Properties

1959 - 1974

- Non-Profit Sponsor
- Direct Loan
  - 3-3.75% Interest
- Originally No Rental Assistance

DID YOU KNOW?

- There are 78 Remaining Pre-1974 Section 202 properties with 8,800 Units.
- Most of these loans will mature between 2019 and 2024.
- The portfolio has an aging in place population with an increasing need for services.
- Most of these Direct Loans/properties have never been recapitalized despite being in service for over 40 years.
This discussion focuses on HUD's tools to address these challenges:

- **Lack of rental assistance**
- **Limited rents**
- **Expiring affordability restrictions**
- **Rehab needs**
Overview

Preservation Options
• Available tools that can be used to preserve pre-1974 Section 202 Direct Loan properties and extend affordability of the units.

Prepayment / Refinance
• Guidance for the Prepayment and Refinance of Section 202 Direct Loans in Notice H 2013-17.
• Access to Project-Based Vouchers (PBVs) or Senior Preservation Rental Assistance Contracts (SPRAC), as described in Notice H 2018-02.

Matured / Maturing Loans
• Guidance in Notice PIH 2019-01/H-2019-02, describing opportunities for obtaining Project-Based Vouchers (PBVs) when Section 202 Direct Loans mature.

Q&A
• Q & A
Preservation Through Prepayment & Refinance

Notice 2013-17

• Provides HUD’s prepayment requirements; most Pre-1974 Direct Loans require HUD’s permission to prepay.
• Outlines the Owner’s submission requirements.
• Details the approval process.

Notice H-2018-02

• Sources of rental assistance:
  1) Prepayment triggers Tenant Protection Vouchers for unassisted units that were occupied within last 24 months (made available by PHA as Project-Based Vouchers)
  2) SPRAC assistance is reserved for unassisted units not qualifying for TPVs
• Outlines Owner’s submission requirements.
• Identifies roles and responsibilities at HUD and with the Public Housing Authorities (for PBVs).
Preservation Through Prepayment & Refinance
Focus on Project-Based Vouchers (PBVs)

• PHA and Owner may “project base” vouchers, providing rental assistance at the property level.
• Owner contracts with Public Housing Authority (PHA), not with HUD.
• Rent limit: rents set at lower of “reasonable rents” or 110% of FMR.
• Contract term: up to 20 years, subject to appropriations; may be extended another 20 years.

• PHA manages waiting list.
• Owner may screen voucher holders referred by PHA.
• PBVs are:
  • Exempt from competitive selection requirements
  • Do not count against PHA’s PBV program cap
  • Exempt from income-mixing requirements
  • Tenant consent is not required to project-base tenant protection vouchers
Preservation Through Prepayment & Refinance
Focus on Senior Preservation Rental Assistance Contract (SPRAC)

- Per Notice H 2018-02, SPRAC can cover units at property that are not covered by PBV contract or do not receive any other form of assistance.
- Long-term 20-year contract, subject to appropriations, supports financing against income stream; same rules as project-based Section 8.
- Initial Rents: Lesser of Rent Comparability Study (RCS) or 150% of Fair Market Rents (FMR).

- SPRAC funding is first-come, first-served.
- HUD is the contract administrator.
- Guidance: https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh/sprac_contracts
Preservation Through Prepayment & Refinance

Summary of Preservation Process Through Prepayment with PBV and SPRAC

1. Owner Contacts Office of Recapitalization by Email to sprac@hud.gov (Including SPRAC Interest, if Applicable)
2. Concept Call Held
3. Owner Submits Waiver Requests & Prepayment Application
4. Recap Initiates Prepayment Approval Processing
5. Recap & HUD PIH Coordinate on Voucher Funding
6. PHA Selected and Determines Initial Number of PBVs
7. Prepayment Approved
8. Subject to Funding Availability and Unit Eligibility, SPRAC may be Awarded
Cape Cod Apartments
Falmouth MA

- Built 1971
- 83 Total Units
  - 71 Unassisted
  - 12 Assisted HAP contract
Cape Cod Apartments
Prepayment Example

Owner’s Request
• Prepay Direct Loan
• Waive requirement to complete substantial rehab
• Approve plan for use of proceeds
• Tenant Protection Vouchers (TPV)
• SPRAC, if/as needed

HUD Preservation Package
• Approvals:
  – Prepayment
  – Waiver of sub rehab
  – Fund TPVs/SPRAC
Special Conditions:
  – Execute 20-year Elderly Use Agreement, and 20-year renewal of HAP Agreement
Preservation for Matured/Maturing Mortgages

Notice PIH 2019-01/ Notice H 2019-02

• Provides eligibility criteria for rental assistance (TPVs): at-risk tenants in low-vacancy areas.
• Outlines Owner’s submission requirements.
• Discusses roles and responsibilities for HUD and Public Housing Authorities.
Matured/Maturing Mortgages Requirements

- Property must be located in a low-vacancy area.
  - For more please review this [list of low-vacancy areas](#).
- Mortgage must have matured in the 5 years prior to the owner’s submission or will mature within 180 days from Owner’s submission.
- Owner submits basic property information and documents.
- Owner may request project-based vouchers or tenant based vouchers (i.e., tenant-based). PHA must be willing to administer voucher contract.
Matured/Maturing Mortgages Requirements (cont.)

Owner must identify:

- At-Risk Tenants with Rent Calculations
- Not-At-Risk Tenants with Rent Calculations
- List of Ineligible Tenants (Failed to Provide Income Information)
Summary of Preservation Process for Matured/Maturing Mortgages

1. Owner Requests Subsidy to Office of Recapitalization
2. Initial Eligibility Determination
3. Owner Submission Reviewed
4. PHA Selected
5. Recap and PIH Coordinate on Funding
6. Request Approved
7. PBVs or Tenant-Based Vouchers Issued
Hot Topics

• SPRAC Eligible Units
  – Units not permitted on PBV
  – 5-Unit Minimum

• Tenant Portion Rent
  – Assisted Residents
  – Unassisted Residents

• Housing Choice Voucher Holders
  – Convert to PBV
    • Resident Consent Needed [https://www.hud.gov/sites/documents/PIH2013-27.PDF]
Resources

Notice H 2013-17
Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans

Notice H 2018-02
Refinancing of Pre-1974 Section 202 Direct Loans and Subsequent Issuance of TPVs or SPRACs

Notice PIH 2019-01/H 2019-02
Funding Availability for Set-Aside Tenant-Protection Vouchers – Fiscal Year 2017 Funding

Overview of Guidance
Key Concepts For Preservation Of Pre-1974 Section 202 Direct Loan Properties

See also HUD’s website on Pre-1974 Section 202 Direct Loan Preservation at:
https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh/mf_sprac

To contact Recap with any questions and/or to request a concept call, please send a message to Pre1974Section202@hud.gov
Thank you for participating!

Please send additional questions to Pre1974Section202@hud.gov
Section 202 Preservation/Refinancing

ABA Forum of Affordable Housing
May 24, 2019
The Supportive Housing for the Elderly Act of 2010 states that:

The prepayment [of the 202 Direct loan] may involve refinancing of the loan if such refinancing results in –

(A) A lower interest rate on the principal of the loan for the project and in reductions of debt service related to the loan.

This is required for 202 Direct Loans that have an interest rate =/>6%, the post-1974 projects.

Some times, due to the amount of rehab required and the current amount of debt, you cannot show any reduction in debt service with a prepayment.
Notice 2010-06 is available only when refinancing is not feasible.

However, Recapitalization is still needed to provide capital improvements and emergency repairs.

HUD will allow preservation proposals in which the existing 202 Direct Loan’s outstanding debt (or a portion thereof) is subordinated to new debt financing.
Requirements:
• Subordination is necessary to achieve long-term preservation.
• Owner must demonstrate that the existing 202 Direct loan and new financing can be repaid.
• Owner/buyer must file 2530 and be approved.
• Owner must otherwise meet statutory requirements of the Law.
• Rent increases allowed, as long as no equity take-out occurs.
• New Use Agreement recorded in first position that extends 20 years beyond original 202 Direct loan maturity date.
• Have 60+ REAC and Satisfactory MOR; no mortgage defaults; no fair housing or civil rights violations.
• Repair plan that demonstrates project’s physical needs will be met through this subordination transaction.
Payment Modifications may include:

- Recasting loan as surplus cash loan with annual payments.
- Requiring interest only payments and then balloon.
- Reducing interest rate and/or lengthening term.
- Requiring lump sum payment at refinance closing to resize loan.

HUD is flexible as long as project is preserved for long-term.

**Owner can receive developer fee.**

Apply through Regional/Satellite Office with final approval by HUD Headquarters.
There are between 1.5 to 2.6 Million “extremely low-income” Seniors.
3.5 Million elderly live below the poverty line.
Senior population is expected to double by 2035.
Section 202 Program created approx. 400,000 units of elderly housing serving very low-income Seniors.
There are 10 Seniors on the waiting list for every Section 202 unit that becomes available.
Only 34% of Seniors who qualify for rental assistance are able to receive such assistance.
Of those with worst-case housing needs, more than 1.8 million are Seniors.
Opportunities / Advantages

- Perform much-needed rehabilitation/modernization of aging Section 202 properties
- Replace high interest debt with lower-interest debt
- Attract new equity investment (e.g., LIHTC) to fund repairs and services
- Protect the Option 4 HAP Contracts and extend the 202 Use Restrictions
- Obtain potential rent increases to fund repairs and services -- “post-rehab” market rent levels (or preservation of existing above-market rents)
- Increase distributions to project owner
- Subordinate Section 202 when there are insufficient proceeds to pay-off the 202 Direct Loan
- Use project equity, residual receipts and reserves
- Sell the 202 project and retain the proceeds
Considerations to Preservation

• What is extent of renovations needed?

• Will refinancing provide sufficient funds to reposition project well into the future?

• Nonprofit may lose control of project or its operations with LIHTC investor.
  – Numerous 202s were developed by small local nonprofits that may not understand or want to go through the tax credit and syndication process, or don’t have the wherewithal on their own to manage a major rehab.

• Is nonprofit tired of running property and desires to sell it to another owner to operate?
  – Priorities of nonprofit owner may have changed and want to use sales proceeds for purposes other than this project.
Structuring the Preservation Transaction

For profit developers can work with nonprofit owners to aid them for guarantees required with LIHTC Acq-Rehab transactions.

Pleasant Acres Elderly Housing LP
New Owner

GP LLC
General Partner
0.005%

Happy Investor Corp.
Investor LP
99.99% Interest

Developer Friend LLC
Special Limited Partner
0.005% Interest
Guarantor

Friendly Developer
Manager
0.00% Member

The Acres Nonprofit, Inc.
100% Member

Pleasant Acres Elderly Housing LP
New Owner
Conversion of Efficiencies to 1 bedroom units can occur at the same time as long as done in conformity with HUD Notice H 2011-03, “Policies and Procedures for the Conversion of Efficiency Units to One-Bedroom Units.”

Owner demonstrates conversion warranted by:

- local market demands
  - Evidence of marketing efforts
  - Aver. Vacancy rates for efficiencies at least 25% for 24 months.

- Results in long-term financial and physical repositioning
  - 1.1 DSCR
  - No increase in budget authority through conversions
Deferred Payment of Flex Sub Loans and 202 Preservations: HUD Notice 2011-05

Operating Assistance Flex Subsidy Loans are required to be paid at transfer of Project, refinancing, prepayment or loan maturity.

HUD Notice codifies the waiver process to defer repayment.

Owner must demonstrate recapitalization is necessary, there are not sufficient resources to pay the FlexSub loan in full and deferred repayment is needed to achieve long-term Project preservation.

Requirements:
• Record Use Agreement in first position that extends affordability 20 years beyond original maturity date.
• Amortize/Re-amortize FlexSub Loan, including capitalizing deferred interest.
• Apply all Residual Receipts and RfR funds over $1,000 per unit to FlexSub Loan balance at closing.
• HUD may reduce interest rate, but not below 1%; extend term to maturity date of new financing.
• Owner required to apply 15% of any LIHTC developer fee or deferred developer fee and 15% of maximum annual distribution to FlexSub Loan balance.
• With refi, no equity take-out or other fees permitted.
Section 202 Elderly projects are “exception” projects under the Section 8 Renewal Guide (Option 4), meaning that they are not subject to Mark-to-Market Restructuring (Option 3).

In 202 Prepays, new Owner is required to renew the HAP contract for 20 years under the options available to the owner in the Renewal Guide.

Owner may renew under Option 4 and keep the Section 8 based upon budget-based rent or can renew under Option 2 and receive a yearly OCAF adjustment.

However, Owner may also chose to renew the existing HAP Contract under Option 1-B (Discretionary Mark-up-to-Market) and obtain a rent increase up to 150% of the fair market rent. Alternatively, Owner can renew under Chapter 15 (Preservation) and Option 1-B of the Renewal Guide and obtain post-rehab rents at the time of prepayment or when rehab is completed.

Both Option 1-B and Chapter 15 require that the current rents be below market rents and that a rent comparability study be performed. All options other than option 4 require rent comparability studies to adjust rent to market rent over 5 years, which means that rents may decrease or increase over 5 years.
Timing and Coordination is important between the FHA financing process and the 202 Prepayment process.

- Submission of HAP Contract Renewal
- Need to match rents and expenses submitted to the Project-based Contract Administrator to those used for FHA loan underwriting.

Use an experienced FHA MAP lender who has financed 202 Prepayment Projects
Westgate Towers – Transaction Highlights

• 50 unit mid-rise in downtown Denver. Constructed 1991. HUD 202 with 100% HAP
• Recapitalized using:
  • $4,875,000 Tax Exempt Loan
  • $3,973,575 LIHTC Equity
  • $4,945,639 seller note financing
  • $387,124 deferred developer fee
• Total Development cost of $14,370,105 or $287,402 per unit
• Construction was $71,020 per unit. Acquisition was $144,973 per unit
• Considered 223f/PILOT but rehab scope exceeded 40K per unit
• Closing timeframe did not allow 221d4
• Perm Mortgage Rate decreased to 4.35% from 9.25%
• Used Option 2 Renewal – Budget Based Rent Increase, new 20 year HAP, chapter 15
• Rent increased not to exceed market, per Rent Comp Study
Query: What if?

1) As we know, the Project must leave the tenants in no worse shape than prior to the refinancing?

2) **Scope of Rehab and Repositioning Project as viable place to live in comparison to more modern dwellings require additional cash for long-term sustainable productivity well into the future, at least 2050 or beyond!**

3) **Statute does not require or prevent a preservation project from injecting capital into the project more than once, . . . Just like . . .**

4) **Statute does not specify or require a specific period of time under which the project’s debt service has a savings of at least $1.**
Query: What if?

- Why couldn’t One use bridge financing that could even wrap up the assets of the sponsor in this project, to be replaced with either a
  - Section 241(a) Supplemental Refinancing with all proceeds going into work and materials to recapitalize the project, take care of its physical needs, or
  - Take out with LT tax-exempt bonds with taxable tail to take out the bridge financing; however,
    - Overall scope of rehab recapitalizes and repositions property with Seniors through at least 2050 or 2075, thus, repayment increases a bit ($50-$100/month);
  - CAN YOU DO IT?
    - IT REPOSITIONS THE PROPERTY
    - IT TAKES CARE OF ITS AGE AND WEAR AND TEAR
    - IT ALLOWS FOR NEW LIFE TO BE BREATHED INTO A SPACE
References

• Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)
• Section 811 of the American Homeownership and Economic Opportunity Act of 2000
• Section 202 Supportive Housing for the Elderly Act of 2010
• 24 CFR Part 891.530
• HUD Notice H 2013-17, issued May 30, 2013, Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans
• HUD Notice H2010-26, issued December 20, 2011, Subordination of Section 202 Direct Loans
• HUD Notice H 2011-03, issued February 1, 2011, Policies and Procedures for the Conversion of Efficiency Units to One-Bedroom Units
• HUD Notice H 2012-3, issued February 24, 2012, Guidance on Eligibility for Tenant Protection Vouchers Following Certain Housing Conversion Actions
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