Proposed Changes for HDFC Coops
Frequently Asked Questions

I. How Will this Affect Me as a Shareholder?

HDFC coops are an important part of New York's affordable housing portfolio. The proposed Regulatory Agreement is designed to help your building stay affordable, as intended under the law that creates HDFC coops and authorizes their tax exemptions.

The Regulatory Agreement sets limits for shareholders on how much you can sell your apartment for, unless you are exempt from those restrictions (see: "What is a carve-out unit?" and "How will this affect how much I can sell my apartment for?"). A third-party monitor will verify that any purchaser meets the AMI limit. Current shareholders can keep any residential properties they already own or lease, but cannot acquire any new ones within a 100-mile radius of New York City. An incoming shareholder must not own or lease any such property either at the time of purchase of the HDFC cooperative unit or afterward. Any shareholder who inherits residential property within a 100-mile radius or in New York City will need to sell it within one year after taking ownership of the property (after probate).

The Regulatory Agreement also seeks to make sure all buildings are functional in the long run, and avoid the pattern of problems that have arisen in some HDFC coop buildings over the past thirty years. To that end, the Regulatory Agreement requires the HDFC to raise its maintenance by at least 2% every year to keep up with the increasing cost of maintenance and operation. Your HDFC's Board will determine the exact amount of maintenance increases in consultation with the property manager.

The restrictions in this Regulatory Agreement are not designed to punish shareholders. Rather, they aim to protect against mismanagement, preserve affordability, and lead to healthier HDFC coops.

What is the new Regulatory Agreement?

The proposed Regulatory Agreement is a contract between your HDFC and the City of New York. It codifies the rights and responsibilities of participating HDFC coops with the aim of ensuring the continued affordability and financial and physical viability of this critical housing stock in New York City. It also qualifies an HDFC coop to receive an enhanced tax exemption. The Regulatory Agreement is also a tool to prevent and address many of the problems that the Department of Housing Preservation and Development (HPD) has seen occur with frequency in HDFC coop buildings over the years. We believe the restrictions in this agreement will lead to healthier HDFC coops that remain permanently affordable and viable.

Who can qualify to sign the Regulatory Agreement?

Any HDFC coop can sign the proposed Regulatory Agreement, even if the building already has a Regulatory Agreement.

What are the requirements to sign?

The shareholders and the Board of Directors must vote (consistent with any requirements in the corporation's by-laws and proprietary lease) to sign the Regulatory Agreement.

What would happen if an HDFC coop refuses to sign the new Regulatory Agreement?

HPD will ask City Council to pass a resolution that would end the "DAMP cap" partial tax exemption that many HDFC coops currently have, and offer a new and more generous tax exemption for HDFCs that enter into the new Regulatory Agreement. With the exception of HDFCs that currently have a Regulatory Agreement, any HDFC that does not sign the new Regulatory Agreement would no longer receive the current DAMP cap exemption.

My HDFC has a J-51 Tax Abatement. If we opt not to sign the Regulatory Agreement, will we lose that, as well?

No. The J-51 tax abatement is based on rehabilitation work performed on the building. It is separate from the DAMP cap exemption, and will remain in place until it runs out.

If my HDFC decides not to sign the Regulatory Agreement, will it pay the same amount in taxes as the market-rate coop across the street?

Not necessarily. As a property owner, each HDFC should file a Real Property Income and Expense (or RPIE) form annually. The Department of Finance uses this form to determine the property's assessed value. In the absence of any exemption, a property's taxes are determined by multiplying its assessed value by the tax rate. If an HDFC coop files an RPIE and specifies its HDFC status, that may result in a lower assessed value and lower taxes.

How will this affect what I can sell my apartment for?

Under the new Regulatory Agreement, shareholders can sell their apartments at prices specified in a chart attached to the Regulatory Agreement that are affordable to households earning up to 110% of Area Median Income (AMI). AMI is set annually by the U.S. Department of Housing and Urban Development. In 2016, this corresponds to approximately $286,000 for a studio, $348,000 for a one bedroom apartment, $412,000 for a two bedroom, $477,000 for a three bedroom, and $540,000 for a four bedroom.

What is the limit on assets for people buying apartments?

While the income limit is set at 120% AMI (see: "How will this affect what I can sell my apartment for?"), Household assets have to be at or below 175% AMI for the year the household is purchasing the apartment. This number does not include retirement savings accounts.

Why does the new Regulatory Agreement have a limit on assets?

We have seen a number of people coming into buildings who do not make a lot of money at the time of purchase, but who have a lot of money and assets available to them. According to the law governing HDFC coops, their purpose is to provide housing for low-income people. Assets are a key part of an individual's finances, and should be taken into consideration in determining eligibility to purchase HDFC coop units.

What happens if I make more than the maximum AMI, but I already own the unit?

Maximum income is defined as 120% AMI. If you are a current shareholder of an HDFC coop unit, you'll be able to keep your unit. Income and asset restrictions apply to incoming shareholders who buy apartments after the Regulatory Agreement is signed (and to anyone who sublets a unit after the Regulatory Agreement is signed).

What is a carve-out unit?

If you paid a high price for your apartment, there is a way for you to keep the value of your unit by electing to become a carve-out unit, or a "scheduled unit." This means that the resale price limits set in the Regulatory Agreement do not apply to your unit, and prospective purchasers can have somewhat higher incomes (up to 165% of AMI) and are not subject to the household asset limit. All other parts of the Regulatory Agreement, as well as Article XI, do apply to these units.

If my building chooses not to sign the Regulatory Agreement, is it still an HDFC? What restrictions apply?

Whether your HDFC chooses to sign the Regulatory Agreement or not, your building will continue to have income restrictions and it will continue to be an HDFC. An HDFC can't sell the building to a private developer or anyone else without HPD's permission.
https://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/Effective-memos/7.16.2015_Guidance_on_HDFC_Seeking_to_Transfer_or_Sell_Property.pdf

II. Subletting and Primary Residence

What are the owner-occupancy restrictions I have heard about?

A unit in an HDFC coop should be the shareholder's primary residence. It is not a pied a terre, weekend home, seasonal residence, or investment property. It is supposed to provide affordable housing to a low income shareholder. Your driver's license, tax returns, voter registration, and any other government forms should use your HDFC address. A shareholder must sleep in the apartment at least 270 days per year and may not sublease the apartment for more than 18 months, cumulative, in any 5 year period. There are exceptions to this requirement for people on active military duty, and temporary hardship waivers can be granted for unanticipated events. Last, new shareholders cannot own or lease (and existing shareholders cannot acquire) any other residential property within a 100 mile radius of New York City.

Can I sublet my apartment?

If you are a shareholder and you have Board and Monitor approval to sublet, you may sublet your apartment to someone who meets the applicable income restrictions. You may only sublet for 18 months, cumulative, in any five year period.

Can I own other property?

If you are a current shareholder you can keep any residential property you own or lease now, but you can't acquire any new residential property within a 100-mile radius of New York City. Incoming purchasers can't own or lease residential property within the 100-mile radius, either at the time of purchasing the HDFC coop unit or afterward.

If you inherit residential property within a 100-mile radius of New York City, you will have to sell it. You will have a year from when you take title to the inherited property (after probate) to sell.

I notice that owner occupancy restrictions are strict. If I get sick and need to leave my apartment for an extended amount of time, can I get a subtenant?

In special circumstances, you will be able to get a hardship waiver for the subletting restrictions outlined in the Regulatory Agreement.

III. Managing the Building

I heard that my building will need to hire both a property manager *and* a third-party Monitor if it signs the Regulatory Agreement. What does that mean?

HPD believes that in most coops, hiring a third party manager is essential in ensuring a healthy HDFC coop. The manager will collect all charges from shareholders, subtenants, and tenants. It will also review commercial leases to make sure the coop is getting fair value for the space and make sure that HPD has also given its approval where required. HPD can waive this requirement for HDFCs that can show that they have successfully self-managed. These HDFCs will have to meet the following criteria:

1. Must maintain 6 months' maintenance cash in reserve accounts.
2. Cannot owe more than one quarter in DEP or DOF payments.
3. Cannot be behind on any mortgage payments, if applicable.
4. Cannot have HPD or DOB code violations on more than 20% of dwelling units.
5. Must have at least an 85% rate of maintenance and rent collection for the previous year.
6. Must show proof of annual Board elections for past 3 years.
7. Must have submitted all documentation required by any applicable regulatory agreement to HPD.

Hiring a third party monitor is a requirement for buildings that sign the Regulatory Agreement. The purpose of the monitor is to make sure that the building is in compliance with the affordability restrictions of the Regulatory Agreement. The monitor approves sales, leases, and subleases; issues share certificates to new shareholders; approves withdrawals from the reserve account; certifies annual elections; and approves training plans for the Board of Directors and even shareholders, if necessary.

The third party monitor also has the responsibility of helping the board determine whether a shareholder has violated a part of the Regulatory Agreement.

Why do I need a monitor?

The third party monitor will help your HDFC coop stay truly affordable and comply with the law. We do not yet have a list of third party monitors, but we expect monitors to be individuals or organizations that have a lot of experience with compliance and affordable housing. Your HDFC will be able to select which monitor it uses. We expect the list will be available by spring 2017, and you can always propose a monitor that is not on the list for HPD approval.

What is a prohibited event?

A prohibited event is something a shareholder, tenant, or subtenant does that violates the Regulatory Agreement. Here are some examples of prohibited events:

- A subtenant is over income or has not been approved by the Board and monitor.
- A subtenant is paying more than is permitted by the Regulatory Agreement.
- An apartment is sublet for more than 18 months in a five year period.
- A shareholder violates the owner occupancy requirements.

IV. Building Requirements & Signing the Regulatory Agreement

What corporate documents will have to be amended if my building opts to sign the Regulatory Agreement?

The following corporate documents will have to be amended to include provisions in the Regulatory Agreement:

- Certificate of Incorporation: Your HDFC must adopt the current HPD certificate of incorporation for HDFC coops.
- Proprietary leases: Your HDFC must change the resale policy to include the 70/30 profit split in all proprietary leases. This is to help buildings remain affordable and reduce the need for buildings to increase maintenance fees.
- By-laws: Your HDFC must amend its by-laws to reflect the Regulatory Agreement. That includes adding the new profit split and the new income restrictions, if applicable.

How much time do I have to sign the Regulatory Agreement?

From the date the City Council ends the current tax exemption, there will be at least a one year period for buildings to learn about the Regulatory Agreement and vote on it. HDFC coops that do not wish to sign the Regulatory Agreement will not see an increase in their property taxes until at least one year after the City Council resolution. All buildings are welcome to sign the Regulatory Agreement in this period, and they will receive the corresponding tax exemption upon signing the Regulatory Agreement.

Can an HDFC change its mind and sign the Regulatory Agreement after the deadline?

Yes. When that building signs the Regulatory Agreement and receives a tax exemption, that exemption will apply going forward only.

Will the income restrictions for my building change if it signs the Regulatory Agreement?

If your HDFC signed a regulatory agreement in the past: No.

If your HDFC does not have a regulatory agreement today: When it signs the proposed Regulatory Agreement, all new purchasers cannot make more than 120% of AMI.

Who is eligible to purchase a unit in an HDFC coop?

Anyone who meets the income and asset restrictions, as well as the owner occupancy requirements, is eligible to buy an apartment in an HDFC coop. But, as always, the Board of Directors must approve new shareholders.

What training classes will be offered?

HPD holds classes regularly throughout the year. We are scheduling specific classes that deal with the Regulatory Agreement. Please check the calendar tab on our website.

What is a profit split, and what does it mean under the Regulatory Agreement?

A profit split is an important way to build up a building's reserve fund. Under the Regulatory Agreement, 30% of the profit from a unit sale would go to the HDFC. The seller would keep 70% of the profit.

Having a profit split that replenishes the building's reserves helps keep maintenances low and discourages people from "flipping," or buying the apartment only to sell it at a higher cost shortly thereafter.

Why is HPD requiring me to contribute to the reserve fund?

The reserve fund is very important. It serves as a safety net for the building. If something unforeseen happens to the building (for example, if the boiler stops working in the middle of winter) there are funds to continue the operations of the building.

Do I need to sign a new regulatory agreement to keep my tax exemption even if my HDFC coop already has one in place?

No. HDFC coops that currently have regulatory agreements do not have to sign the new Regulatory Agreement to keep their tax exemption. However they will have the option to sign the new Regulatory Agreement and receive a new tax exemption that is more generous than the current DAMP cap tax exemption.

How do I check to see if my building has signed the new Regulatory Agreement, or already has a Regulatory Agreement?

A digital copy of the HDFC's regulatory agreement can be found on the Automated City Register Information System (ACRIS) (**https://acrisweb.csc.nycnet/cp/**) after it is recorded against the property (there may be a delay between the time the agreement is signed and the time it appears on ACRIS). Anyone can search for a regulatory agreement by building, block and lot (BBL) number or street address.

What are the documents that an HDFC coop must submit every year after signing the Regulatory Agreement?

- Annual Budget
- Certified financial statement for building with more than 15 units; financials statements or compilation for buildings with fewer than 15 units.
- Certification that the budget and financial statement have been distributed to shareholders.
- A Board-certified list of anyone occupying apartments (shareholders, tenants, subtenants), complete with maintenance and rent arrears.
- A Board-certified list of any sales that occurred during the year in question, complete with sales prices and income of the purchaser.
- A Board-certified list of leases and sublets in the building that were approved, entered into, or renewed during the year in question, complete with name and income of any renters and sub letters.
- A Board-certified list of any withdrawals from the Reserve Fund during the year in question.
- A certification by the Board of the annual election, with contact information for Board members; a certification that notice of the election has been distributed to all shareholders.
- Certification that the maintenance has been increased by at least 2%.
- Training plans for the previous and following years.

Why does HPD have to approve commercial leases of more than two years under the Regulatory Agreement?

HPD included this provision in the Regulatory Agreement to make sure buildings are charging competitive commercial rents. We have seen low commercial rents drive up maintenance charges and drive down the monthly income of a building.

HPD will review and approve any commercial leases that are longer than two years. We understand that many buildings are capable of charging fair commercial rents, in which case it will be a quick approval process. Occasionally, we may reach out to the HDFC and ask why it has set a specific term of the lease or commercial rent (for example, if a ten-year commercial lease did not appear to have appropriate rent escalation clauses).

What assistance is available to help with rising maintenance costs?

If you are a senior, you may be eligible for SCRIE (Senior Citizen Rent Increase Exemption).
http://www1.nyc.gov/nyc-resources/service/2424/senior-citizen-rent-increase-exemption-scrie
If you are disabled, you may be eligible for DRIE (Disability Rent Increase Exemption)
http://www1.nyc.gov/nyc-resources/service/1522/disability-rent-increase-exemption-drie-program

I don't feel my board represents the interests of the shareholders in our coop. How can I fix that?

You and your fellow shareholders are responsible for electing a board that represents your interests. If you are unhappy with your board, you should vote during the annual board elections or call a special meeting. Under the Regulatory Agreement or any other agreement, HPD won't be overseeing your building's day-to-day operations. Ensuring proper management is the responsibility of the shareholders. If you believe the Board is violating the HDFC's by-laws or proprietary lease, you should consult an attorney.

What will the new property tax exemption be, and how can I get it?

The new property tax exemption is about twice as generous as the current DAMP cap tax exemption. The exact value of the benefit will vary from building to building, but it is based on the assessed value of the building and how many residential units there are. If you have questions about what your property taxes would look like, please contact hdfccoop@hpd.ncy.gov.

I still have more questions. What other resources are available to me?

HPD has created special email address for your questions about this process: hdfccoop@hpd.nyc.gov. We are planning forums in the coming months for people to come and ask questions. If City Council approves the resolution, we will provide additional written information directly to shareholders and hold a variety of detailed events to educate shareholders and board members on what the Regulatory Agreement means for them. Additionally, HPD is also offering classes surrounding questions about the Regulatory Agreement. Please check back on this website for more information.
HPD staff is also prepared to answer your questions at the following phone numbers:

Sophie Feldman: (212) 863-7993
Luis Salguero: (212) 863-6540
Mark Matthews: (212) 863-7327