

# PRIVATE HOUSING FINANCE LAW SECTION 610 REGULATORY AGREEMENT AMENDMENT STANDARD OF PROCEDURE

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## OVERVIEW

In December 2022 Governor Hochul signed the Private Housing Finance Law Section 610 (“Section 610”) into law, allowing owners of certain types of affordable housing projects to collect increased tenant- or project-based subsidies that are above the legal rent (without affecting the tenant portion). Owners must amend existing HPD rental regulatory agreements to legally collect rental assistance amounts above the legal rent.

## PROCESS

1. **NEW REGULATORY AGREEMENT PROCEDURE**: All regulatory agreements being entered into in connection with preservation financing will include the Section 610 provisions, however projects closing with Article XI-only exemptions under the Housing Preservation Opportunities will be assessed on a case-by-case basis.

No new construction projects are eligible, except for special needs new construction housing projects. Regulatory agreements being entered into in connection with special needs new construction financing will include the Section 610 provisions.

Note: Projects with only 1) Mandatory Inclusionary Housing restrictive declarations, 2) Voluntary Inclusionary Housing regulatory agreements, or 3) 421-a restrictive declarations do not qualify for the benefits under Section 610.

2. **PRE-PERMANENT CONVERSION PROCEDURE**: A limited number of projects that are currently in construction and need to amend regulatory agreements to include Section 610 provisions in order to meet requirements for conversion to permanent financing may, at the discretion of HPD, have the Section 610 language added pre-conversion.
3. **PERMANENT FINANCING CONVERSION PROCEDURE**: All projects upon converting to permanent financing *may*, at the discretion of HPD, have their regulatory agreements amended to include the Section 610 provisions.
4. **POST-PERMANENT CONVERSION PROCEDURE**: The application process summarized below is applicable to projects that have converted to permanent financing.

### Application Process for Projects with an Existing HPD Regulatory Agreement Post-Permanent Conversion

- Submission of Section 610 Amendment Application to HPD:**

Owners should submit applications as outlined on [HPD's Section 610 site](#).

□ **Review of Section 610 Amendment Application by HPD:**

The agency will review the application submitted through the site listed above and determine whether the request will be granted.

Owners will be notified if a request for a Section 610 amendment has or has not been granted.

□ **Amendment of Regulatory Agreement with HPD and Owner:**

The owner will work with the agency to amend the relevant regulatory agreement. Only projects with fully executed regulatory agreement amendments that include the Section 610 language are eligible to collect the higher rental assistance amount above legal rent approved by the rental subsidy administrator.

For publicly financed projects with rental regulatory agreements that include Inclusionary Housing units, owners will need to amend the respective Mandatory Inclusionary Housing restrictive declaration, or Voluntary Inclusionary Housing regulatory agreement, for Section 610 to apply to the Inclusionary Housing Units.

□ **Letter from HPD:**

Once the Section 610 amendment to regulatory agreement is executed, HPD will issue a letter to owner containing a rider (“Section 610 Letter”) confirming that the owner’s regulatory agreement permits collection of rental assistance amounts above the legal rent if authorized by the relevant rental assistance provider.

□ **Submission of Documents to Rental Assistance Provider:**

Following the issuance of the Section 610 Letter and execution of the Section 610 regulatory agreement amendment, owners must submit the requested documentation (inclusive of the rider attached to the Section 610 Letter) to the relevant rental assistance provider demonstrating their eligibility to collect along with any request for the higher rent, either through rent increase requests or proposed rents for newly subsidized tenancies.

Where HPD’s Department of Tenant and Owner Resources (“DTOR”) is administering the rental subsidy increase, please follow the process on [HPD DTOR’s portal](#). **Please note:** requests must be uploaded to the DTOR Portal **60 days** prior to the proposed effective date of the rent increase.

The DTOR Portal further indicates that Owners submitting requests under the provisions of Section 610 must:

1. complete a Rent Increase/Decrease Request form,
2. supply the Section 610 Letter; and
3. supply an executed renewal lease that includes the DHCR published [Section 610 lease rider](#), confirming the tenant has been notified of their rights under Section 610. Note that Section 610 cannot be applied to leases effective prior to the effective date of the regulatory agreement or regulatory agreement amendment that implemented Section 610.



□ **Review and Determination**

The agency administering the rental subsidy will review the rent proposed to determine what rent may be approved based on the criteria for that particular rental subsidy program. For example, in HPD's rental subsidy programs, DTOR will conduct a rent reasonableness review and will only approve a proposed rent up to the amount determined to be reasonable, and will not approve any rent increases for units that have open owner-responsibility Housing Quality Standards (HQS) failures.

□ **Collection of Higher Rent**

Rental subsidy agencies will generally issue a notice to the tenant and owner to indicate the approval of a new rent. Where HPD's DTOR is the subsidy administrator, such notice is referred to as the Rent Breakdown Letter; other agencies have different names. This notice typically includes the new breakdown of subsidy and tenant payments amounts. It is after receipt of this notice that the owner can expect to receive the updated payments.

## **FREQUENTLY ASKED QUESTIONS**

**1. What is the effective date that an owner can begin collecting the higher rental amount as allowed under an amended rental regulatory agreement?**

Following the execution of the regulatory agreement amendment and issuance of the Section 610 Letter, rental assistance providers will have a submission process of their own that will mirror the typical rental increase submission. For example, if a rent increase request must be received by a rental assistance provider 60 days prior to the effective date of a renewal lease, and owner meets said deadline, an owner can begin to collect upon the effective date of the renewal lease.

Generally, the policies regarding rent increases are prospective -- not retroactive or effective immediately upon regulatory agreement execution. Specifically, an owner does not collect immediately 1) upon either execution or recordation of the regulatory agreement amendment, or 2) upon issuance of the Section 610 Letter.

**2. What if an owner recently renewed leases but submitted requisite documentation to the rental assistance provider after lease execution?**

Unfortunately, we cannot accommodate retroactive applications of Section 610 regulatory agreement amendments. In those instances, owners are only able to collect the higher rent upon the next lease renewal.

**3. How does Section 610 impact rent restructuring?**

Owners that (a) have a regulatory agreement or a regulatory agreement amendment that includes the Section 610 language and (b) have received authorization to collect rents higher than the legal rents by the relevant rental subsidy administrator, are able to issue new leases with the Section 610 rider and the higher rents in conjunction with the rent restructuring.

Where a restructuring of the legal rent is in progress and the project already has a regulatory agreement including Section 610 provisions, then owners may submit requests



for rents in excess of the current legal rent at lease renewal to the rental subsidy administrator prior to the completion of the rent restructuring.

**4. What is the process for amending regulatory agreements executed with agencies other than HPD?**

Owners of properties that have an executed regulatory agreement with HDC can initiate any Section 610 request with HDC. Information on HDC's Section 610 application process may be found at: <https://www.nychdc.com/phflsec610-guidance>

For projects that are financed with New York State Division of Housing and Community Renewal 9% LIHTC or Housing Finance Agency tax-exempt bonds, please initiate any Section 610 request with New York State Homes and Community Renewal. HPD will amend its regulatory agreement (if there is an HPD regulatory agreement) upon confirmation from HCR. Information on HCR's Section 610 application process may be found at: <https://hcr.ny.gov/private-finance-housing-law-phfl-610>

**5. Is there a reserve replenishment requirement associated with HPD's consent to allow the collection of rent above the legal rent?**

Yes, if funds have been withdrawn from a replacement reserve or operating reserve and the owner collects a rent that is greater than the legal rent in accordance with Section 610, the owner is to replenish such account at a rate that is equal to the amount withdrawn up to 1/12th of the amount to be replenished per month.

**6. Once I apply for a Section 610 amendment post-permanent conversion, when can I expect to have a final amendment for recording?**

Assuming that the application has been granted, HPD will have an amendment ready for development teams within one month of their application.

