

Now & Next

Affordable Housing Alert

January 27, 2025

New York Housing Agencies release Consolidated Guidance on Private Housing Finance Law Section 610

By Abigail Patterson and Deborah VanAmerongen

Supervising agencies and subsidy providers establish new standards and procedures for the implementation of Section 610.



What's the impact?

- Owners must carefully follow the procedures of the applicable regulatory agency and subsidy providers to obtain Section 610 approval and to collect rental assistance rents.
- Owners experience ongoing administrative delays with Section 610 collections.

As discussed in our December 16, 2022, and March 8, 2023 alerts, Section 610 of the New York Private Housing Finance Law (Section 610) was adopted to permit owners of rent stabilized properties under certain circumstances to collect rents above registered legal rents for units receiving rental assistance. Initially each of the regulatory agencies adopted their own procedures for implementation, but last month, the New York City Department of Housing Preservation and Development (HPD), the New York City Department of Social Services (DSS), the New York City Housing Authority (NYCHA), the New York City Housing Development

Corporation (HDC), and the New York State Homes and Community Renewal (HCR) released [consolidated guidance](#) outlining the procedures owners must follow to charge and collect Section 610 rents, which vary depending on the applicable regulatory agency and subsidy provider. While HPD’s [Standard of Procedure](#) provides guidance on a range of project types and phases, this alert focuses on projects with existing regulatory agreements which have converted to permanent financing.

Eligibility

The property in question must 1) be subject to an existing regulatory agreement with a state or municipal agency or public benefit corporation, 2) be subject to rent stabilization, and 3) receive tenant- or project-based subsidy. The agencies have interpreted Section 610 to allow agency discretion in making the determination of whether a given project should be permitted to charge and collect Section 610 rents, and all regulatory agencies assess project financials in order to prioritize projects with the most need, whether it be financial stress and/or physical disrepair.

Application procedure

Interested owners must submit an application to the agency with a regulatory agreement affecting the property. Owners of projects with two or more regulatory agreements should apply to whichever agency provided the low-income housing tax credits (LIHTC) or tax-exempt bonds, and should take care to review all applicable regulatory agreements to identify and amend any provisions that would limit the collection of rental assistance rents in the absence of explicit language providing otherwise.

The below chart provides a summary of submission requirements.

Regulatory Agency	Submission Materials
HPD (Offices of Development and/or Asset & Property Management)	<p>Landing Page:</p> <p>Supporting Documentation:</p> <p>HPD Section 610 request form</p> <p>Note: Projects in HPD’s Asset Management portfolio must be up to date on annual submissions, including the most recent year’s project financials</p>
HDC	<p>Landing Page:</p> <p>Supporting Documentation:</p>

	<ul style="list-style-type: none"> / Most recent year’s financial statement / Current year’s budget, including a year-to-date comparison / Trailing 12-month collections showing gross potential rental revenue and gross receipts for both residential and commercial tenants / Current rent roll indicating all units/residents for which the project receives rental assistance payments
<p>HCR (9% LIHTC), HFA (4% LIHTC), and New York State Housing Trust Fund Corporation (HTFC) or HOME)</p>	<p>Landing page:</p> <p>Supporting Documentation:</p> <ul style="list-style-type: none"> / Current year’s Annual Rent Registration Online (ARRO) Rent Roll OR proof of initial registration / Copy of most recent audited financial statement / List of units you are applying for PHFL 610 rent increases / Copy of project-based voucher HAP contract(s) that includes unit details / Certified Rent Roll with tenant-based voucher information <ul style="list-style-type: none"> o OR if DHCR is your voucher administrator you may also obtain a list of your tenant-based vouchers o OR if NYCHA is your voucher administrator you may also obtain a tenant listing from the owner extranet / Copy of initial FHEPS approval letter(s) or any annual renewal letter(s) (CityFHEPS or FHEPS)

Section 610 approval is evidenced by an amended regulatory agreement authorizing the collection of rental assistance rents, and an approval letter from the regulatory agency which owners will deliver to subsidy providers during the implementation phase.



Implementation procedure

For tenant-based or project-based vouchers, owners may charge Section 610 rents only after approval of the new rent by the Section 8 administering agency (or other subsidy provider) and upon renewal of an existing lease or upon entering into a new lease, and only if 1) the date of such renewal or new lease is after the date of the regulatory agreement amendment, and 2) the lease appends the Section 610 rider required by DHCR ([Rent Stabilized Lease Notice to Tenants—Rights Concerning Legal Rents and Higher Actual Rents, RA-LR3](#)), which informs the tenant of the owner's rights under Section 610, in addition to any required rent stabilization riders.

Requests for Section 8 project-based voucher rent increases must be made in conjunction with the contract anniversary date. Owners may collect up to the payment standard for (i) the unit size payment standard or (ii) the household size payment standard pursuant to the subsidy agency's payment calculation and subject to the subsidy provider's rent reasonableness requirements, and in no circumstances may the tenant portion of the rent be modified as a result of Section 610 benefits.

For project-based rental assistance (PBRA) with HUD, the rent increase could be processed by HUD and its contract administrator at any time, but most likely would occur in conjunction with a contract anniversary date or contract renewal. The consolidated guidance provides specific instructions for each type of rental subsidy, which owners should review carefully. (Note, e.g., that some subsidy providers require notice of the intention to enter into a lease with Section 610 benefits before entering into such lease, while others will only process the request once the lease has been executed).

Lastly, upon annual rent registration with DHCR, for any units receiving project- or tenant-based assistance, owners must register the rental assistance rent in addition to the actual rent and the legal rent.

What's next?

We are monitoring the agencies' prioritization of Section 610 applications and tracking reported difficulties and delays in collecting subsidy payments even after Section 610 approval from the regulatory agency. We have noted extended delays in processing the increases in Section 8 voucher assistance payments with some Section 8 agencies.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Abigail Patterson](#)

212.940.3101

apatterson@nixonpeabody.com

[Deborah VanAmerongen](#)

212.940.3054

dvanamerongen@nixonpeabody.com

