



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5967-N-01]

HUD Approval of Requests for Transfers of Multifamily Housing Project-Based Rental Assistance, HUD-Held or Insured Debt, and Income-Based Use Restrictions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes the terms and conditions by which HUD will approve a request for the transfer of project-based rental assistance, debt held or insured by the Secretary, and statutorily required income-based use restrictions from one multifamily housing project to another (or between several such projects). The Department of Housing and Urban Development Appropriations Act, 2016 gives the Secretary the authority to approve transfer requests for fiscal years (FY) 2016 and 2017, provided that the Secretary publish a notice in the Federal Register establishing the terms and conditions for HUD approval of such transfers no later than 30 days before such notice takes effect. In FY 2016, HUD continued to utilize the FY 2015 published criteria, which covered authority enacted for both FY 2015 and FY 2016. For FY 2017, HUD continues to utilize, without revision, the published FY 2015 criteria. HUD believes that criteria established and published in FY 2015, and cross-referenced in this notice, will continue to assist project owners to determine whether a transfer is feasible given the specific circumstances of their multifamily projects.

DATES: Effective Date: **[insert date 30 days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Katherine Nzive, Director, Program Administration Office, Office of Asset Management and Portfolio Oversight of Multifamily Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6110, Washington, DC 20410; telephone number 202-402-3440 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Beginning with section 318 of the Department of Housing and Urban Development Appropriations Act, 2006 (Pub. L. 109-115, 119 Stat. 2396, approved November 30, 2005), HUD appropriations acts have contained a general provision authorizing the Secretary to approve requests from project owners for the transfer of certain rental assistance, debt, and income-based use restrictions between HUD-assisted projects. For fiscal year 2017, this transfer authority is provided under section 212 of of the Consolidated Appropriations Act, 216 (P.L. 114-113, 129 Stat. 2889, approved December 18, 2015 (Section 212). Section 212(a) states that “[n]otwithstanding any other provision of law . . . the Secretary of Housing and Urban Development may authorize the transfer of some or all project-based assistance, debt held or insured by the Secretary and statutorily required low-income and very low-income use restrictions if any, associated with one or more multifamily housing project or projects to another multifamily housing project or projects.” Section 212(b) also allows for phased transfers of project-based assistance to accommodate the financing and other requirements related to rehabilitating or constructing the project or projects to which the assistance is transferred.

HUD approval of transfers is subject to the conditions enumerated in the appropriations act for the applicable fiscal year. These statutory terms and conditions have, in general, been

consistent from one appropriations act to the next. The statutory criteria for FY 2017 is enumerated in section 212(c), which provides as follows:

(c) The transfer authorized in subsection (a) is subject to the following conditions:

(1) NUMBER AND BEDROOM SIZE OF UNITS.—

(A) For occupied units in the transferring project: the number of low-income and very low-income units and the configuration (i.e. bedroom size) provided by the transferring project shall be no less than when transferred to the receiving project or projects and the net dollar amount of Federal assistance provided to the transferring project shall remain the same in the receiving project or projects.

(B) For unoccupied units in the transferring project: the Secretary may authorize a reduction in the number of dwelling units in the receiving project or projects to allow for a reconfiguration of bedroom sizes to meet current market demands, as determined by the Secretary and provided there is no increase in the project-based assistance budget authority.

(2) The transferring project shall, as determined by the Secretary, be either physically obsolete or economically nonviable.

(3) The receiving project or projects shall meet or exceed applicable physical standards established by the Secretary.

(4) The owner or mortgagor of the transferring project shall notify and consult with the tenants residing in the transferring project and provide a certification of approval by all appropriate local governmental officials.

(5) The tenants of the transferring project who remain eligible for assistance to be provided by the receiving project or projects shall not be required to vacate their units in the transferring project or projects until new units in the receiving project are available for occupancy.

(6) The Secretary determines that this transfer is in the best interest of the tenants.

(7) If either the transferring project or the receiving project or projects meets the condition specified in subsection (d)(2)(A),¹ any lien on the receiving project resulting from additional financing obtained by the owner shall be subordinate to any FHA-insured mortgage lien transferred to, or placed on, such project by the Secretary, except that the Secretary may waive this requirement upon determination that such a waiver is necessary to facilitate the financing of acquisition, construction, and/or rehabilitation of the receiving project or projects.

(8) If the transferring project meets the requirements of subsection (d)(2),² the owner or mortgagor of the receiving project or projects shall execute and record either a continuation of the existing use agreement or a new use agreement for the project where, in either case, any use restrictions in such agreement are of no lesser duration than the existing use restrictions.

(9) The transfer does not increase the cost (as defined in section 502 of the Congressional Budget Act of 1974, as amended) of any FHA-insured mortgage, except to the extent that appropriations are provided in advance for the amount of any such increased cost.

Section 212 (e)(1) requires that HUD publish by notice in the Federal Register the terms and conditions for HUD approval of transfers, no later than 30 days before such notice takes effect. This notice is being issued in accordance with the publication requirements of section 212(e)(1). In this Federal Register notice, HUD advises that the criteria for approval of transfers are unchanged from those in effect for fiscal years 2015 and 2016 and published in the Federal Register on March 31, 2015, at 80 FR 16963.³ For the convenience of the reader, the criteria can also be found in Microsoft Word format on HUD's webpage at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/memos_letters.

¹ Subsection (d)(2)(A) pertains to housing that is subject to a mortgage insured under the National Housing Act (12 U.S.C. 1701 et seq.).

² Subsection (d)(2) defines the term "multifamily housing project."

³ See <https://www.gpo.gov/fdsys/pkg/FR-2015-03-31/pdf/2015-06776.pdf>

This notice will become effective [**insert date 30 days after date of publication in the FEDERAL REGISTER**]. HUD will begin accepting requests for transfers pursuant to this notice on or after the effective date. For questions regarding the submission or status of a transfer request, interested parties should contact their local HUD Multifamily Regional Center or Satellite Office. The list of HUD Multifamily Regional Centers and Satellite Offices is available at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hsgmfbus/abouthubspcs.

Date: January 12, 2017

Edward L. Golding, Principal Deputy Assistant
Secretary for Housing

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