

April 24, 2023

To HUD's Asset Management Team:

On behalf of the national Preservation Working Group (PWG), thank you for the opportunity to comment on HUD's draft notice "Approval and Processing of Requests to Bifurcate Contracts," posted to the drafting Table on March 22. We appreciate HUD's use of the Drafting Table as a transparent element of the policy development process and we hope our comments are helpful as you finalize this notice.

About the Preservation Working Group

PWG is a national coalition of housing owners, developers, advocates, tenant associations, state and local housing agencies, and others dedicated to the preservation of multifamily housing for low income families. PWG seeks to address threats to our nation's affordable housing stock – including expiring rental assistance, conversion to market rate use, deteriorating physical and financial conditions, increasing climate risk, and inequitable housing policies – and advance solutions to protect these homes and the people who live in them. In doing so, we seek to ensure that this housing remains safe, affordable, and accessible to low-income households into the future. We advocate for strong federal, state, and local program administration and increased resources, identify and disseminate best practices, and share information that protects, enhances, and preserves existing multifamily affordable rental homes to foster agency for residents. You can learn more about PWG and its members here: <https://nationalhousingtrust.org/our-work/policy-innovation/preservation-working-group>

Renewal Options in HAP Contract Bifurcations

PWG appreciates HUD's efforts to establish clear standards and process steps to reduce administrative burdens on owners and other stakeholders undertaking HAP contract bifurcations. We are concerned, however, that the draft language at V.A.2. (Page 2, lines 34-35) appears to change current practice by preventing otherwise-eligible properties from accessing market-level rents, including as-improved rents, in the context of a bifurcation:

All resulting HAP contracts not subject to a Mark-to-Market Use Agreement will be renewed under Option 2 with an OCAF rent increase, Option 4, or Option 5 depending on project eligibility.

But for this new language, under current program rules, the owner of an otherwise qualifying project would have the right to renew its HAP under Option 1 mark-up-to-market (including Ch.15, as applicable) or Option 2 budget-based renewal. It is unclear why these options should be barred simply because an owner is undertaking a bifurcation.

This change is concerning because the exclusion of Option 1 or Option 2 budget-based renewals would have a significant, negative effect on many projects which are otherwise eligible to mark below-market rents up to market through these renewal options in order to finance renovation (or, in some cases, reconstruction/replacement) work.

In current practice, many larger projects undertake contract bifurcations in connection with the LIHTC recapitalization of HAP-assisted projects – to facilitate multi-phase revitalization work (necessitated by resident relocation needs, financing constraints, or other issues), or to support separate LIHTC financings in the same project. In such projects, the ability to get the HAP rents adjusted to the post-

rehab (or new construction) market rents is critical to financial viability, since mortgage proceeds supported by market debt are a critical capital source for construction work.

The narrower menu of renewal options proposed in the draft notice will have detrimental effects on project viability. Without this access to RCS-based market-comparable rents, many successful past revitalization efforts employing bifurcation would not have been viable – nor would a significant number of impactful Choice Neighborhoods revitalization projects, both completed and in the active development phase.

We urge HUD to amend the final notice to clarify that projects undertaking contract bifurcation may access any renewal option for which they are eligible in the normal course of events – including Option 1 and Option 2 budget-based renewals.

Thank you for your consideration. PWG sincerely appreciates the opportunity to share our perspective and encourages HUD's Asset Management team to reach out to Laura Abernathy, Senior Director of State & Local Policy at National Housing Trust (labernathy@nhtinc.org), to discuss our concerns and suggestions in more detail with PWG.

Signed,

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