23-961 - Additional requirements for rental affordable housing
The additional requirements of this Section shall apply to rental affordable housing on a generating site or MIH site for the entire regulatory period.

(a) Tenant selection

(1) Upon rent-up and any subsequent vacancy for the entire regulatory period, affordable housing units shall only be leased to and occupied by low income households, moderate income households and middle income households, as applicable for generating sites, or to qualifying households, as applicable, for MIH sites. No lease or sublease of an affordable housing unit shall be executed, and no tenant or subtenant shall commence occupancy of an affordable housing unit, without the prior approval of the administering agent.

(2) A tenant may, with the prior approval of the administering agent, sublet an affordable housing unit for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the monthly rent that could be charged to the sublessor in accordance with the regulatory agreement.

(3) A low income household or qualifying household may rent an affordable housing unit that is restricted to occupancy by moderate income or middle income households, or by qualifying households of higher income levels, provided that the administering agent determines that such low income household or qualifying household is able to utilize rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, as amended, to afford the applicable monthly rent.

(b) Monthly rent

(1) Unless alternative provisions are established in the regulatory agreement or guidelines for MIH sites, the regulatory agreement shall provide that each affordable housing unit shall be registered with the Division of Housing and Community Renewal at the initial monthly rent established by HPD within 60 days following the rent-up date and shall thereafter remain subject to rent stabilization for the entire regulatory period and thereafter until vacancy. However, the regulatory agreement may permit an alternative date by which any affordable housing units that are vacant on the rent-up date shall be registered with the Division of Housing and Community Renewal at the initial monthly rent established by HPD.

(i) However, any affordable housing unit of preservation affordable housing or substantial rehabilitation affordable housing that is both occupied by a grandfathered tenant and subject to the Emergency Housing Rent Control Law on the regulatory agreement date shall remain subject to the Emergency Housing Rent Control Law until the first vacancy following the regulatory agreement date and shall thereafter be subject to rent stabilization as provided herein.

(ii) The regulatory agreement shall provide that upon each annual registration of an affordable housing unit with the Division of Housing and Community Renewal, the legal regulated rent for such affordable housing unit shall be registered with the Division of Housing and Community Renewal at an amount not exceeding the maximum monthly rent. However, the regulatory agreement shall provide that this requirement shall not apply to an affordable housing unit occupied by a grandfathered tenant until the first vacancy after the regulatory agreement date.
(2) Unless alternative provisions are established in the regulatory agreement or guidelines for MIH sites, the regulatory agreement shall provide that the monthly rent charged to the tenant of any affordable housing unit at initial occupancy and in each subsequent renewal lease shall not exceed the lesser of the maximum monthly rent or the legal regulated rent. However, the regulatory agreement shall provide that these requirements shall not apply to an affordable housing unit occupied by a grandfathered tenant, until the first vacancy after the regulatory agreement date.

However, for supportive housing units or affordable independent residences for seniors on MIH sites, the monthly rent may exceed the maximum monthly rent, provided that it does not exceed the HUD Fair Market Rent for such unit, and that the monthly rent, less rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, does not exceed the lesser of the maximum monthly rent or the legal regulated rent.

(3) Within 60 days following the rent-up date, the administering agent shall submit an affidavit to HPD attesting that the monthly rent registered and charged for each affordable housing unit complied with the applicable monthly rent requirements at the time of initial occupancy.

(4) Each year after rent-up, in the month specified in the regulatory agreement or the guidelines, the administering agent shall submit an affidavit to HPD attesting that each lease or sublease of an affordable housing unit or renewal thereof during the preceding year complied with the applicable monthly rent requirements at the time of execution of the lease or sublease or renewal thereof.

(5) For any affordable housing unit subject to rent stabilization, the applicable regulatory agreement shall provide that the lessor of an affordable housing unit shall not utilize any exemption or exclusion from any requirement of rent stabilization to which such lessor might otherwise be or become entitled with respect to such affordable housing unit, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of rent stabilization, due to:

(i) the vacancy of a unit where the legal regulated rent exceeds a prescribed maximum amount;

(ii) the fact that tenant income or the legal regulated rent exceeds prescribed maximum amounts;

(iii) the nature of the tenant; or

(iv) any other reason.

(6) Unless alternative provisions are established in the regulatory agreement or guidelines for MIH sites, the regulatory agreement and each lease of an affordable housing unit shall contractually require the lessor of each affordable housing unit to grant all tenants the same rights that they would be entitled to under rent stabilization without regard to whether such affordable housing unit is statutorily subject to rent stabilization. If any court declares that rent stabilization is statutorily inapplicable to an affordable housing unit, such contractual rights shall thereafter continue in effect for the remainder of the regulatory period.

(7) Unless alternative provisions are established in the regulatory agreement or guidelines for MIH sites, the regulatory agreement shall provide that each affordable housing unit that is occupied by a tenant at the end of the regulatory period shall thereafter remain subject to rent stabilization for not less than the period of time that such tenant continues to occupy such affordable housing unit, except that any occupied affordable housing unit that is subject to the Emergency Housing Rent Control Law at the end of the regulatory period shall remain subject to the Emergency Housing Rent Control Law until the first vacancy.

(c) Income
(1) Each affordable housing unit on a generating site shall be leased to and occupied by low income households, moderate income households or middle income households, as applicable, for the entire regulatory period. Each affordable housing unit on an MIH site shall be leased to and occupied by qualifying households for the entire regulatory period.

(2) The administering agent shall verify the household income of the proposed tenant prior to leasing any vacant affordable housing unit in order to ensure that it is a low income household, moderate income household, middle income household or qualifying household, as applicable.

(3) Within 60 days following the rent-up date, the administering agent shall submit an affidavit to HPD attesting that each household occupying an affordable housing unit complied with the applicable income eligibility requirements at the time of initial occupancy.

(4) Each year after rent-up, in the month specified in the regulatory agreement or the guidelines, the administering agent shall submit an affidavit to HPD attesting that each household that commenced occupancy of a vacant affordable housing unit during the preceding year, and each household that subleased an affordable housing unit during the preceding year, complied with the applicable income eligibility requirements at the time of initial occupancy.

d) Affordable housing plan and MIH application

The following shall apply to affordable housing plans:

(1) An affordable housing plan shall designate the initial administering agent, include the agreement with the initial administering agent, state how administering agents may be removed, state how a new administering agent may be selected upon the removal or other departure of any administering agent, include the building plans, state the number and bedroom mix of the affordable housing units to be developed, rehabilitated or preserved, indicate how tenants will be selected at rent-up and upon each subsequent vacancy of an affordable housing unit, indicate how the household income of each prospective tenant will be verified prior to such household’s initial occupancy of an affordable housing unit and include such additional information as HPD deems necessary.

(2) An affordable housing plan shall demonstrate the feasibility of creating and maintaining affordable housing in accordance with Section 23-90 (INCLUSIONARY HOUSING), inclusive, including that:

(i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the affordable housing;

(ii) affordable housing units will be leased to eligible households by a responsible administering agent at rent-up and upon each subsequent vacancy; and

(iii) tenants will be selected in an equitable manner in accordance with laws prohibiting discrimination and all other applicable laws.

(3) A copy of any proposed affordable housing plan shall be delivered to the affected Community Board, which may review such proposal and submit comments to HPD. HPD shall not approve a proposed affordable housing plan until the earlier of:

(i) the date that the affected Community Board submits comments regarding such proposal to HPD or informs HPD that such Community Board has no comments; or

(ii) 45 days from the date that such proposal was submitted to the affected Community Board.
The following shall apply to MIH applications:

(4) An MIH application shall designate the initial administering agent, where applicable, and include the building plans, state the number, bedroom mix and monthly rents of the affordable housing units to be developed or converted, and include such additional information as HPD deems necessary to ensure the satisfaction of the requirements of Section 23-90, inclusive.

(5) A copy of any MIH application shall be delivered, concurrently with its submission to HPD, to the affected Community Board.

(e) Special requirements for rental preservation affordable housing

The additional requirements of this paragraph (e), shall apply to rental preservation affordable housing:

(1) all of the dwelling units, rooming units and supportive housing units in the generating site, other than any super's unit, shall be affordable housing units that are leased to and occupied by low income households for the entire regulatory period;

(2) on the regulatory agreement date, the average of the legal regulated rents for all affordable housing units in the generating site that are occupied by grandfathered tenants shall not exceed 30 percent of the low income limit divided by 12;

(3) on the regulatory agreement date, HPD shall have determined that the condition of the generating site is sufficient, or will be sufficient after required improvements specified in the affordable housing plan and the regulatory agreement, to ensure that, with normal maintenance and normal scheduled replacement of capital elements, the affordable housing units will provide a decent, safe and sanitary living environment for the entire regulatory period;

(4) on the regulatory agreement date, HPD shall have determined either that no capital element is likely to require replacement within 30 years from the regulatory agreement date or that, with regard to any capital element that is likely to require replacement within 30 years from the regulatory agreement date, a sufficient reserve has been established to fully fund the replacement of such capital element;

(5) except with the prior approval of HPD, monthly rents charged for affordable housing units shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a generating site, even though such increases may be permitted by other laws; and

(6) such affordable housing shall comply with such additional criteria as may be specified by HPD in the guidelines.

(f) Special requirements for rental substantial rehabilitation affordable housing

The additional requirements of this paragraph, (f), shall apply to rental substantial rehabilitation affordable housing:

(1) such affordable housing shall be created through the rehabilitation of a generating site at a cost per completed affordable housing unit that exceeds a minimum threshold set by HPD in the guidelines;

(2) on the regulatory agreement date, the average of the legal regulated rents for all affordable housing units in the generating site that are occupied by grandfathered tenants shall not exceed 30 percent of the low income limit divided by 12;

(3) on the regulatory agreement date, HPD shall have determined that the condition of such generating site is
sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the
#regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital
elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the
entire #regulatory period#;

(4) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to
require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital
element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient
reserve has been established to fully fund the replacement of such #capital element#;

(5) except with the prior approval of #HPD#, #monthly rents# charged for #affordable housing units# shall not be
increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection
with qualification as a #generating site#, even though such increases may be permitted by other laws; and

(6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the
#guidelines#.