



## Flexible Subsidy Loan Deferral

### Events that Require Flex Sub Loan Repayment

Many HUD projects, including Section 202 and Section 236 properties, also have secondary loans called Flexible Subsidy (Flex Sub) Loans. This program was part of HUD's effort to preserve affordable housing originally developed under earlier HUD programs. It provided loans for repairs and other purposes to owners of troubled federally assisted low- and moderate-income multifamily rental projects. Operating Assistance loans are due as a balloon payment when the HUD loan matures or is prepaid, whereas Capital Improvement loans are amortized

The Flex Sub Loan must be repaid when the following occurs:

1. Prepayment of mortgage
2. Mortgage expiration
3. Mortgage insurance termination
4. Sale of project

The repayment requirement can cause difficulty when an owner is putting together an application to prepay and refinance a loan; the cost of paying off the full Flex Sub Loan and accrued interest adds cost to the transaction.

### Owner May Request Repayment Deferral

The owner may request to defer repayment of the Operating Assistance Flexible Subsidy Loan; typically, this is done in conjunction with a request for prepayment of the primary HUD loan (that is, a Section 236 or Section 202 loan). HUD may allow repayment deferral if the owner can demonstrate that recapitalization is necessary and that there are inadequate resources to pay the Flex Sub Loan in full. Flex Sub Capital Loans, which were fully amortizing loans, under statute, cannot be deferred.

### Rules for Deferring Flex Sub Loan Repayment

On February 14, 2011, HUD issued Notice H 2011-05. Notice H 2012-04 extends Notice H 2011-05 through March 2013, and Notice H 2013-13 makes the deferral process permanent. These Notices authorize owners to receive a waiver from the FHA Commissioner to defer repayment of a Flex Sub Loan. This can make the refinancing more affordable because it allows the owner to defer the prepayment of the Flex Sub Loan and instead re-amortize the Flex Sub Loan for the term of the new loan.



## Flex Sub Loan Repayment Deferral Requirements

1. A passing score on a Real Estate Assessment Center (REAC) physical inspection
2. Compliance with fair housing and civil rights laws
3. Satisfactory Management and Occupancy Review for the prior three years
4. Compliance with audited financial statement filings
5. Mortgage kept current over prior three years
6. No outstanding defaults or violations
7. Enter into a 20-year Extended Use Agreement
8. Apply all available Residual Receipts and all Reserve for Replacements in excess of \$1,000 per unit to the Flexible Subsidy Loan balance
9. Present a case to demonstrate how deferring payment will benefit the project

## Flex Sub Deferral Proposal

The Owner's Proposal should provide the following information:

1. A copy of the current year's budget, most recent interim financial statement, and the last three fiscal years of audited financial statements.
2. Projections for 10 years post-closing of the Flexible Subsidy Loan that detail trending assumptions and any changes in operations that result in deviations from historical results.
3. A Sources and Uses Statement for the transaction and a Pro-forma Operating Statement demonstrating that all funds received in conjunction with the Flex Repayment Event will be used for project purposes.
4. Evidence of the attempts made to secure loans or grants to repay the Flexible Subsidy obligation. For example, you may apply for grants from the Federal Home Loan Bank.
5. A written statement agreeing to comply with each of the requirements listed.
6. A description of how the property is providing and will continue to provide needed affordable housing and any additional information needed to support the deferral request.

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*The owner will submit the request to the Multifamily project manager in the HUD field office. The field office will review and submit a request to HUD Headquarters for a waiver of the requirement for the Flexible Subsidy Loan to be paid in full at the time of the prepayment.*

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## References: Deferred Repayment of Flexible Subsidy Loans

1. [Preserving Multifamily Properties page](#) on HUD website
2. [Notice H 2011-05 — Deferral of a Flexible Subsidy Loan](#)
3. [Notice H 2012-04](#) extends Notice H 2011-05 through March 2013.
4. [Notice H 2013-13](#) makes the deferral process permanent.