New York Private Housing Finance Law Section 610: Process Guidance for Owners

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Consolidated Information From:

New York City Department of Housing Preservation and Development
New York City Department of Social Services
New York City Housing Authority
New York City Housing Development Corporation
New York State Homes and Community Renewal

Topics:

I: Background
II. Requesting a Section 610 Regulatory Agreement Amendment
III. Rent Increase Request Processes

I. Background

What is Private Housing Finance Law (PHFL) Section 610?

Section 610 of the PHFL, signed into law in December 2022, permits owners of eligible buildings with active regulatory agreements executed with a unit of local government, with rent stabilized units, and with tenants of those units receiving a rent subsidy (either project- or tenant-based, federal or local) to collect rents beyond the legal regulated rent, subject to a rent reasonableness determination and subsidy funding availability.

City and state regulatory agencies approve, at their discretion, applications to amend affordable housing regulatory agreements to allow owners to collect increased rents under Section 610. Section 610 of the PHFL is intended to help the most financially troubled, regulated affordable housing developments in the respective housing agencies' portfolios by allowing rental subsidy programs to pay reasonable rents above the legal regulated rent, without affecting the tenant's portion of the rent.

The maximum possible rent increase is the subsidy payment standard. For units with tenant-based subsidy, the rent amount requested cannot exceed the lesser of the payment standard for (i) the unit size payment standard or (ii) household size payment

standard, pursuant to the subsidy agency's payment calculation and subject to the subsidy provider's rent reasonableness requirements.

Nothing under PHFL 610 permits the owner to request modification of contract rents that increases the tenant's portion of rent.

Which New York Agencies are Involved in Implementing Section 610?

City and state *regulatory agencies* approve, at their discretion, amendments to affordable housing regulatory agreements that allow 610 rent increases.

Subsidy provider agencies review individual rent increase requests, determine whether they are reasonable under subsidy program rules, and at their discretion, approve and administer the higher rents.

Regulatory Agencies:

- New York City Housing Preservation and Development's Offices of Development and/or Asset & Property Management (**HPD**)
- New York City Housing Development Corporation (**HDC**)
- New York State Division of Homes and Community Renewal 9% LIHTC division (**HCR**)
- New York State Housing Finance Agency 4% LIHTC division (**HFA)**
- New York State Housing Trust Fund Corporation HOME funds division (**HTFC**)

Subsidy Provider Agencies:

- New York City Department of Social Services/Human Resources Administration (**DSS/HRA**):
    - CityFHEPS
    - FHEPS
    - HASA
- New York City Housing Authority (**NYCHA**):
    - NYCHA Tenant-Based Section 8/Housing Choice Voucher
    - NYCHA Tenant-Based Section 8/Emergency Housing Voucher
    - NYCHA Project-Based Section 8 (NYCHA PBV)
- HPD's Division of Tenant and Owner Resources **(HPD DTOR)**:
    - HPD Tenant-Based Section 8/Housing Choice Voucher
    - HPD Tenant-Based Section 8/Emergency Housing Voucher
    - HPD Project-Based Section 8 (HPD PBV)
    - NYC 15/15 Supportive Housing Rental Subsidy
    - HPD Continuum of Care grants (Shelter Plus Care, Mod SRO, Mod Rehab)

- New York State Homes and Community Renewal directly administers its Section 8 Housing Choice Voucher Program in New York City through the **Subsidy Services Bureau**.

II. Requesting a Section 610 Regulatory Agreement Amendment

Remember: Not all projects are eligible to request a Section 610 amendment, and even after requesting the amendment, it is at the regulatory agency's discretion (e.g. HPD, HDC, DHCR, HFA, HTFC) to grant it. The sources of subsidy that support increased rents are not unlimited nor necessarily immediately available, so the regulators and subsidy providers must regularly evaluate and prioritize budget, pipeline, and projects' level of need. Generally, the agencies prioritize amending regulatory agreements for projects with the greatest need, particularly projects demonstrating financial stress or in urgent need of repair.

To request a regulatory agreement amendment, your property must have rent stabilized units and an active affordable housing regulatory agreement with HPD, HDC, HCR, HFA, or HTFC.

Step 1. Identify the regulatory agency to contact, depending on your regulatory agreement.

Step 2. Follow the steps in the section for the relevant regulatory agency below.

NYC HPD Regulatory Agreements:

A. Go to HPD's website for instructions.

NYC HDC Regulatory Agreements (or where HDC has issued bonds or provided subsidy or for joint regulatory agreements with HDC and HPD):

A. Go to HDC's website for instructions.

NYS HCR/HFA/HTF Regulatory Agreements (9% LIHTC from HCR,4% LIHTC or Tax-Exempt Bonds from HFA, or HOME funds through HTF):

A. Go to HCR's website for instructions, including:
    1. Fill out an HCR PHFL 610 request form
    2. Email documents to PHFL610@hcr.ny.gov:
        - Copy of most recent audited financial statement (for a full fiscal year)
        - Current year's ARRO Rent Roll OR proof of initial registration

➔ ***Note for jointly-funded projects between NYS HCR and NYC HPD:***

Apply for an amendment from the agency that provided the low-income housing tax credits from (LIHTC) or tax-exempt bonds.

*For example, if the project received resources from **NYS HCR** and received LIHTC from **NYC HPD**, you must get an amendment to your HPD regulatory agreement because the provisions governing rent stabilization are contained in that agreement. In this case, if you apply to HCR and are found eligible, HCR will transfer your application to HPD to amend the regulatory agreement. HCR will notify you if your application is conditionally eligible and confirm the date of its transfer to HPD.*

Step 3. If/after regulatory agreement receives PHFL 610 amendment:

A. You (owner/landlord) will receive an amended regulatory agreement.

B. The regulatory agency will issue an approval letter stating that, pursuant to PHFL Section 610, you are permitted to request rents above the legal regulated rent for tenants/units with rental subsidy. However, nothing under PHFL Section 610 permits you to request modification of contract rents that increases the tenant's portion of rent.

C. For units with tenant-based subsidy, the rent amount requested cannot exceed the lesser of the payment standard for (i) the unit size payment standard or (ii) household size payment standard pursuant to the subsidy agency's payment calculation, subject to the subsidy provider's rent reasonableness requirements.

You must follow the appropriate subsidy provider agency's procedure for requesting lease renewals and rent increases, and only for tenants whose leases begin or renew after the date of the Section 610 amendment.

D. Standard language for Section 610 approval letters is subject to change as needed for clarification or to reflect policy or procedural updates. Regulatory agencies will make best efforts to contact owners regarding consequential changes to policy or procedures and to maintain updated information on their websites.

➔ *Tips from the field:*

- *Make sure you have signed leases from your tenants that include the Section 610 lease rider notifying them of their rights before submitting your rent increase request to the subsidy provider (Rent Stabilized Lease Notice to Tenants – Rights Concerning Legal Rents and Higher Actual Rents, RA-LR3, available at https://hcr.ny.gov/tenant-owner-forms)*

- *Signed leases are necessary for higher rents to be approved.*

III. Rent Increase Process: FAQ for Owners and Landlords

1. Q: I received my Section 610 amendment and approval letter. When can I expect the rent increases?

a. You may only request rent increases for new and renewed leases that begin after your regulatory agreement amendment is executed. If your Section 610 amendment is finalized in the middle of a lease-up, you must wait until the following lease renewal cycle to request an increase for any tenants already leased.

b. Subsidy provider agencies (NYCHA, HPD DTOR, DSS, HCR Subsidy Services Bureau) process rent increase requests in the order they are received, and processing time can vary depending on volume of requests and agency capacity. The agencies work as quickly as possible to process requests, but it may take several months for new rent amounts to begin coming in.

2. Q: How do I request the rent increase?

Note: For units with tenant-based subsidy, the rent amount requested cannot exceed the lesser of the payment standard for (i) the unit size payment standard or (ii) household size payment standard pursuant to the subsidy agency's payment calculation and subject to the subsidy provider's rent reasonableness requirements. Nothing under PHFL 610 permits the owner to request modification of contract rents that increases the tenant's portion of rent.

Next steps depend on what kind of rental subsidy it is.

a. It's a tenant with a CityFHEPS, FHEPS, or HASA tenant-based voucher:

i. DSS guidance documents are available online:

1. Section 610 FAQ for Tenants (DSS-52)
2. Section 610 FAQ for Landlords (DSS-52a)
3. Section 610 Tenant Information Summary spreadsheet (DSS-52b)

ii. When to request:

1. At time of tenant's subsidy renewal

iii. CityFHEPS - how to request:

1. Owners/landlords can email requests with the Section 610 Tenant Information Summary and required documents (below) to CityFHEPSrentincrease@hra.nyc.gov
2. Tenants can request online through AccessHRA

3. Tenants can request via email by sending documents (below) to CityFHEPSrenewal@hra.nyc.gov

iv. FHEPS – how to request:

1. Owners/landlords can email requests along with the Section 610 Tenant Information Summary and required documents (below) to FHEPSrentincrease@hra.nyc.gov
2. Tenants can request online through AccessHRA
3. Tenants can submit request and documents (below) via caseworker

v. HASA – how to request:

1. Tenants can submit request and documents (below) via caseworker

vi. What documents does the tenant or owner/landlord need to submit for CityFHEPS, FHEPS, and HASA rent increases?

1. Section 610 approval letter from regulatory agency for the tenant's address
2. Fully executed new lease with the NYC Lease Rider for Rent Stabilized Tenants
3. HCR Section 610 Lease Rider notifying tenants of their rights (*Rent Stabilized Lease Notice to Tenants – Rights Concerning Legal Rents and Higher Actual Rents, RA-LR3, available at https://hcr.ny.gov/tenant-owner-forms*)
4. If owner/landlord (not tenant) is submitting, the Section 610 Tenant Information Summary spreadsheet (DSS-52b.xlsx)
5. A Landlord Utility Information Form (DSS-8q). *This form is only required if the subsidy is CityFHEPS or FHEPS that moved in prior to 2021 and the landlord has never submitted a Landlord Utility Information Form to the Agency.*

vii. What happens after the tenant or owner/landlord submits the request and documents for CityFHEPS, FHEPS, or HASA?

1. DSS reviews the renewal and increase requests.
2. Rent reasonableness will be considered for FHEPS and CityFHEPS increases. (HASA is subject to a different set of policies.)
    a. If DSS finds the proposed rent to be unreasonable, they will notify the owner/landlord or tenant via email or, if

applicable, communicate with the tenant with assistance from a Community-Based Organization. They will communicate what a reasonable rent would be.

b. Owners/landlords may respond by submitting market comps back to DSS, if they disagree with the rent reasonableness determination.

3. Once DSS has approved the new rent, it will go into effect for the renewed lease.
4. Owners/landlords may request status updates, if needed, from the same source to which they submitted the initial request (e.g., CityFHEPSrentincrease@hra.nyc.gov or FHEPSrentincrease@hra.nyc.gov).

b. It's a tenant with a NYCHA tenant-based Section 8 voucher.

i. **NYCHA guidance**: https://www.nyc.gov/site/nycha/section-8/lease-up-lease-renewal-process.page

ii. **When to request increase***:*

1. At least 60 days prior to the effective date of the new lease.
2. New tenants:
   a. To take advantage of Section 610 for a new tenant, you must submit the rental package with the new rent amount *before* the tenant rental is processed.
   b. For new rentals that were approved for a move-in at a lower rent, you may request the higher Section 610 rent at the next lease renewal.
3. Existing tenant lease renewals:
   a. To request a Section 610 increase at the lease renewal, you must submit the request *with the lease renewal request*.
   b. If the paperwork for a Section 610 increase is not received and the lease renewal is approved, you may request the Section 610 rent at the next lease renewal.

iii. How to request increase (NYCHA tenant-based Section 8):

1. Submit a completed "Landlord Request for Lease Renewal Approval" form and all required documents at least 60 days prior to the effective date of the new lease.

a. NYCHA Owner Extranet is the fastest way to submit the form.

b. You may also submit in-person, at a Walk-in Center (WIC), or via mail.

iv. What documents does the landlord need to submit (NYCHA tenant-based Section 8)?

1. Approval letter from the regulatory agency e.g., NYC HPD, HDC, NYS HCR, HFA, HTFC; and/or
2. The new or amended regulatory agreement that includes Section 610 language
3. Copy of the rent stabilization lease renewal form indicating the new rent and lease term
4. Copy of the HCR lease rider specific for Section 610 increases, notifying tenants of their rights (*Rent Stabilized Lease Notice to Tenants – Rights Concerning Legal Rents and Higher Actual Rents, RA-LR3, available at https://hcr.ny.gov/tenant-owner-forms*)
5. Copy of the NYC Lease Rider for Rent Stabilized Tenants
6. Signed Housing Choice Voucher Housing Assistance Payments Contract *(only if there are changes or if provided/requested by the Housing Authority);* and
7. Signed Lead-Based Paint Disclosure Form *(only if not previously submitted for buildings constructed prior to January 1978)*.

v. What happens after the request and documents are submitted to NYCHA (NYCHA tenant-based Section 8)?

1. NYCHA checks rent reasonableness on affordablehousing.com and communicates the result to the owner. If affordablehousing.com comps are lower than the proposed rent, re-submission with market comps may be required.

    a. If the requested rent is not determined reasonable (too high), NYCHA will respond to the owner with a "Final Letter to the Landlord Documents for Requesting Lease Renewal" notice to notify the owner of what rent would be reasonable and options for the lease renewal

    b. The owner may resubmit their response within 30 days to continue the lease renewal process

i. After 30 days, the owner must initiate a new rent increase service request

2. NYCHA will complete processing and approve the lease renewal with payments beginning on the effective date of the approval

c. It's a **NYCHA project-based Section 8 (NYCHA PBV)** Housing Assistance Payment (HAP) contract.

i. **NYCHA guidance:** https://www.nyc.gov/site/nycha/section-8/lease-up-lease-renewal-process.page

ii. When to request (NYCHA PBV):

1. PBV: To request a 610 increase at PBV HAP anniversary date, you must submit the request with the contract rent change request.

2. If the paperwork for a Section 610 increase is not received and the lease renewal is approved, you may request the Section 610 rent at the **next** PBV HAP anniversary date.

iii. How to request increase (NYCHA PBV):

1. Submit by email to lakesha.miller@nycha.nyc.gov, in-person, or at a Walk-in Center (WIC)

iv. What documents does the landlord/tenant need to submit (NYCHA PBV)?

1. Approval letter from the governing agency e.g., NYC HPD, NYS HCR, HDC, HFA, and/or the exhibit to the new or amended regulatory agreement that includes Section 610 language

2. Owner's letter on company letterhead requesting contract rent increases for the development

3. Copy of latest HCR Rent Roll

v. What happens after the request and documents are submitted (NYCHA PBV)?

1. NYCHA checks rent reasonableness on affordablehousing.com and communicates the result to the owner. If affordablehousing.com comps are lower than the proposed rent, re-submission with market comps may be required.

a. If the requested rent is not determined reasonable (too high), NYCHA will correspond via email and phone to notify the owner of what rent would be reasonable and options for the lease renewal

b. The owner may resubmit their response within 30 days to continue the lease renewal process

2. NYCHA will complete processing and approve the increase request with payments beginning on the effective date of the HAP's anniversary date and send an approval to the owner.

d. It's a tenant with HPD tenant-based Section 8:

i. HPD guidance:

1. https://www.nyc.gov/site/hpd/services-and-information/phfl-section-610.page
2. HPD Section 610 Standard of Procedure

ii. **When to request increase***:* 60 days prior to the proposed effective date of the rent increase. Note that Section 610 cannot be applied to leases effective prior to the effective date of the regulatory agreement or regulatory agreement amendment that implemented Section 610.

iii. **How to request increase (HPD tenant-based Section 8):**

1. Use HPD's DTOR Owner Portal

iv. What documents does the landlord need to submit (HPD tenant-based Section 8)?

1. Section 610 approval letter from regulatory agency
2. Completed Rent Increase/Decrease Request form (optionally including market comps)
3. Executed renewal lease that includes the HCR published Section 610 lease rider, confirming the tenant has been notified of their rights under Section 610 (*Rent Stabilized Lease Notice to Tenants – Rights Concerning Legal Rents and Higher Actual Rents, RA-LR3, available at https://hcr.ny.gov/tenant-owner-forms)*
4. NYC Lease Rider for Rent Stabilized Tenants (https://hcr.ny.gov/form-ralr1) showing new rent amounts and tenant's portion

v. What happens after the rent increase request and documents are submitted (HPD tenant-based Section 8)?

1. In HPD's rental subsidy programs, DTOR conducts a rent reasonableness review and only approves a proposed rent up to the amount determined to be reasonable

2. If the requested rent is not determined reasonable (too high), HPD DTOR responds to the owner with information on what rent would be reasonable
    a. The owner may resubmit the increase request in the owner portal within 30 days without losing their place in line
    b. After 30 days, the owner must initiate a new rent increase request
3. When the rent increase is approved, the new payments are dated from the effective date

e. **It's HPD project-based Section 8 (HPD PBV):**

i. **When to request increase (HPD PBV):** PBV rent increases must be requested for all contract units at the HAP contract anniversary date. Owners should submit rent increase request 60 days prior to the contract anniversary

ii. **How to request increase (HPD PBV):**

1. Email PBV@hpd.nyc.gov requesting a rent increase

iii. What documents does the landlord need to submit (HPD PBV)?

1. Updated HPD PBV rent roll
2. Section 610 approval letter/regulatory agreement with amendment
3. Comps (optional)

iv. What happens after the request and documents are submitted (HPD PBV)?

1. DTOR Owner Services will review, conduct a rent reasonableness check, determine the approved rent, and issue the approval notice.
2. Within 30 days of the approval notice, the owner must upload each new lease through the DTOR Owner Portal, including:
    a. Rent increase request form
    b. Lease
    c. Section 610 lease rider, confirming the tenant has been notified of their rights under Section 610 *(Rent Stabilized Lease Notice to Tenants – Rights Concerning Legal Rents*

and Higher Actual Rents, RA-LR3, available at https://hcr.ny.gov/tenant-owner-forms)

d. NYC Lease Rider for Rent Stabilized Tenants showing new rent amounts and tenant's portion (https://hcr.ny.gov/form-ralr1)

f. It's a NYS HCR Section 8 Housing Choice Voucher:

Contact the HCR Subsidy Services Bureau in NYC:
nyshcr.sm.nycsection8@hcr.ny.gov

Subsidy Services Bureau

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