Department of Housing Preservation & Development
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DINA LEVY
Commissioner

PATRICK LOVE
Deputy Commissioner

KERRY LABOTZ
Associate Commissioner

Office of Development
Division of Preservation Finance
100 Gold Street
New York, N.Y. 10038

LIHTC Investor Exit Requests: Frequently Asked Questions

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When do I need HPD consent to exit a LIHTC investor?

Projects with HPD LIHTC or current HPD regulatory agreements, mortgages, or other encumbrances that give HPD consent rights over transfers, sales, or dispositions of the project require HPD consent to exit a LIHTC investor.

When can I request HPD consent to exit a LIHTC investor?

Projects can request HPD consent to exit a LIHTC investor any time after the end of the initial 15-year compliance period. Projects may also request to exit a LIHTC investor during the initial compliance period but HPD will only consent to such a request simultaneously with closing on a Year 15 or other preservation transaction depending on the applicable program and term sheet. For more information on HPD preservation programs, please see: [Home Repair and Multifamily Financing - HPD]

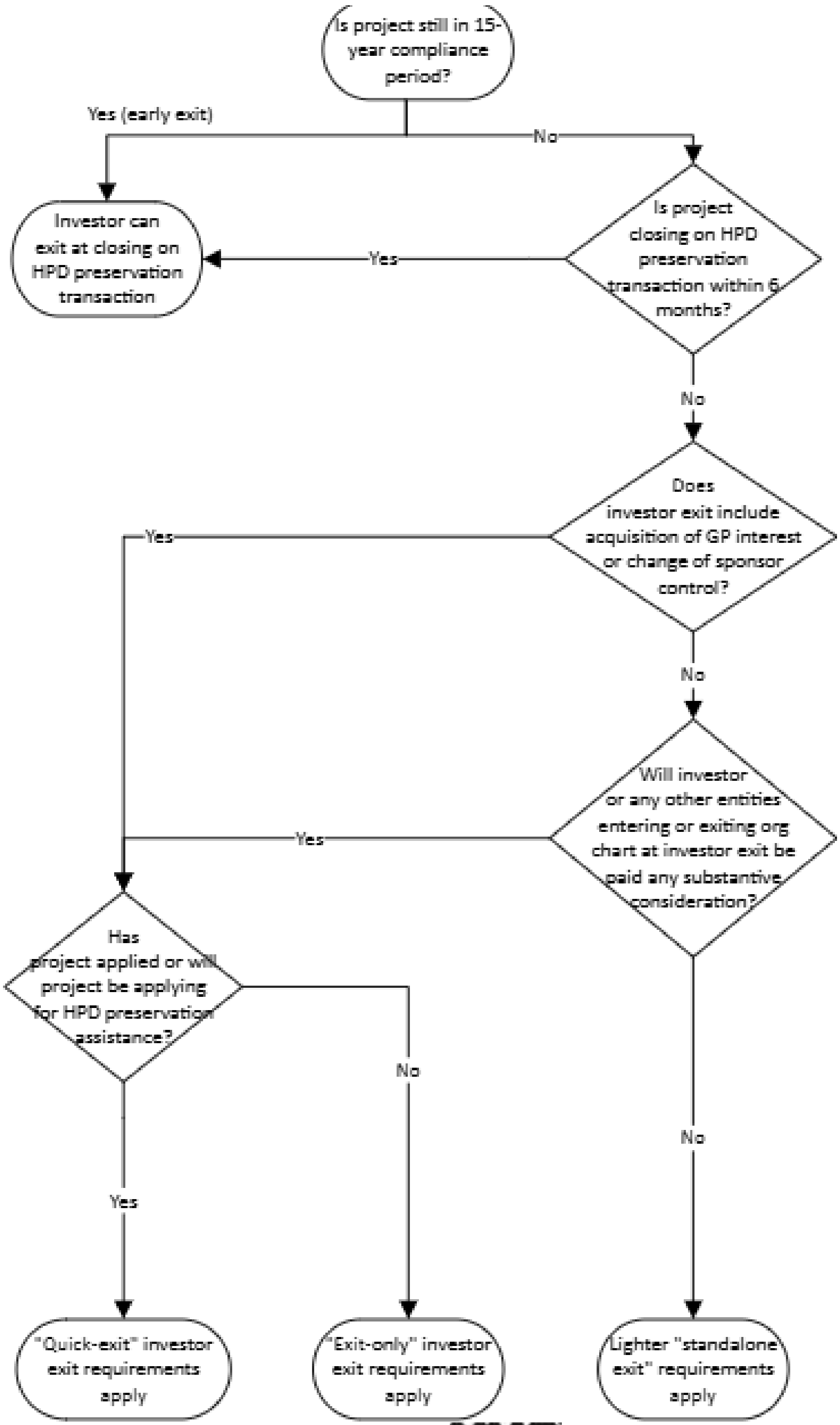
Do I need to close on a Year 15 or other HPD preservation transaction in order to exit a LIHTC investor?

HPD strongly encourages all owners, especially those with (1) expiring property tax exemptions, (2) immediate financial or physical needs, or (3) the last project-wide significant rehabilitation or construction work completed 15 or more years ago to explore and apply to HPD's preservation programs, including the Year 15 program ([LIHTC Preservation (Year 15) Program - HPD]) for projects with past LIHTC assistance that are not "HUD-assisted" (i.e. most units are assisted under a HUD project-based Section 8 or similar subsidy HAP contract) or the HUD Multifamily program ([HUD Multifamily Program - HPD]) for HUD-assisted projects.

However, HPD can approve the exit of a LIHTC investor outside of an HPD preservation transaction closing for certain projects that:

1. Have passed their 15-year initial LIHTC compliance period
2. Are not already anticipated to close on an HPD preservation transaction within the next six months.
3. Meet HPD's requirements for consent, including but not limited to the ones outlined in this document

What are HPD’s requirements for a LIHTC investor exit outside of an HPD preservation transaction?



Owners requesting a LIHTC investor exit outside of an HPD preservation transaction must provide the following documents depending on the circumstances of the exit as outlined in the chart above. As described above, when HPD is able to approve an investor exit outside of a preservation transaction, projects may be subject to lighter “standalone exit” requirements (if there is no GP interest acquisition and no substantive consideration paid to entities entering or exiting the organizational chart) or more substantive “quick-exit” or “exit-only” (depending on whether the project is seeking HPD preservation assistance) requirements otherwise.

In addition to collecting required documents, HPD will also complete internal reviews of the project, the minimum eligibility criteria previously described in this FAQ, and any new entities or individuals being added to the organizational structure at closing, and may have additional requirements or conditions based on those reviews.

<u>All requests for a LIHTC investor exit outside of an HPD preservation transaction (including standalone exit, quick-exit, and exit-only requests) must provide:</u>

1. Pre and post-exit org chart listing all entities and individuals/officers/members/shareholders
2. Request letter from your attorney for HPD consent for the exit, identifying the current limited partner and replacement limited partner, and any consideration related to the investor limited partner exit.
    a. The request must also affirmatively agree that notwithstanding any provisions to the contrary in any FDA or regulatory agreement, (1) no reserves will be released to the sponsor with the exit, (2) no reserves wil be drawn to pay for exit costs, and (3) HPD will retain control of all project reserves until the end of the regulatory agreement
3. Owner affidavit attesting to:
    a. Project has sufficient revenue to cover expenses and near-term capital, repair, and/or maintenance
    b. No open tenant harassment issues
    c. No LIHTC and HOME compliance issues
    d. Limited HPD B and C violations
    e. No DOB violations
    f. No municipal arrears (with backup documentation to support this)
    g. In good standing with agency overseeing project asset management
    h. List the total consideration to be paid to the investor and confirm that those costs will be paid with equity and will not be requested to be reimbursed as part of the budget of any future Year 15 transaction with HPD

<u>Additional required documents for quick-exit and exit-only requests are listed below:</u>

1. Current rent roll in HPD’s rent roll template
2. Audited financials for the previous three years
3. Proposed underwriting or cash flow proforma showing at least 5 years of positive cash flow post-investor exit and/or sufficient reserves to address operating deficits

<u>Further additional required documents for quick-exit requests:</u>

1. A completed Year 15 application

<u>Further additional required documents for exit-only requests:</u>

2. The owner affidavit and consent request letter referenced earlier in this document must confirm that the project will not be seeking tax exemption, City capital, or HPD debt extension assistance from HPD for at least 10 years following investor exit

3. Additional five years of cash flow projections (for a 10-year projected net positive cashflow total and/or adequate reserves to address operating deficits)
4. Breakdown of all current debt and maturity dates. HPD will complete an analysis of refinance risk for any debt, including subsidy or City capital debt, maturing within the 10 years following investor exit
5. Integrated Physical Needs Assessment (IPNA), Capital Needs Assessment (CNA), or other physical needs assessment—an assessment of any age can be submitted so long as needs for at least the 10 years following investor exit are shown
    a. The pro forma or underwriting must demonstrate availability of sufficient cash flow, reserves, and/or other sources to address the 10-year capital needs over those 10 years

Can I use HPD-controlled reserves to pay for the costs of a LIHTC investor exit outside of an HPD preservation transaction? What happens to reserves controlled by both HPD and a LIHTC syndicator after the syndicator exits?

HPD will not approve any project reserves to be used for the costs of a LIHTC investor exit occurring outside of an HPD preservation transaction. In addition, for all LIHTC investor exits outside of preservation transactions, all reserves controlled by the syndicator must remain HPD-controlled for the entire duration of the HPD regulatory agreement. All syndicator-controlled reserves will be transferred to HDC at the time of the investor exit. Owners must agree to these requirement for HPD to consent to the investor exit.

How long does it take to obtain HPD consent for a LIHTC investor exit outside of an HPD preservation transaction?

The investor exit process can generally be completed within two months of assignment to an HPD project manager and submission of all required deliverables, assuming that no significant issues arise during HPD revise and no additional requests (such as HDFC formations) are included with the request. However, please note that these requests are reviewed on a first-come, first-served basis and HPD has limited capacity to complete these reviews, so please submit requests as early as possible to minimize any delays.

How do I request a LIHTC investor exit outside of an HPD preservation transaction?

Please contact HPDYear15@hpd.nyc.gov to request a LIHTC investor exit outside of an HPD preservation transaction. Owners are encouraged to provide the required documentation listed in this FAQ along with their initial request, but this is not required for HPD to assign a project manager to the request.