



Instructions regarding Long Term Retention Requirements for AHP Projects using Low-Income Housing Tax Credits

Projects that receive subsidy from the Affordable Housing Program (AHP) are required to meet long term retention requirements under the regulations promulgated by the Federal Housing Finance Agency in 12 CFR Part 1291 (“AHP Regulations”), and any amendments made thereto. In accordance with these requirements, the Federal Home Loan Bank of New York (“Bank”) has the following requirements for AHP projects which include the use of Low Income Housing Tax Credits.

1) Recapture Agreement

A standardized tri-party agreement entitled [RECAPTURE AGREEMENT FOR RENTAL PROJECTS USING LOW INCOME HOUSING TAX CREDITS \(LIHTCs\)](#) must be completed and executed by authorized signatories of the Bank’s member institution (“the Lender”), the not-for-profit corporate entity (“the Sponsor”), and the limited partner (“the Owner”). A copy of this completed agreement is to be submitted to the Bank upon execution for inclusion in the project’s AHP file.

2) Note

The Lender will disburse the subsidy to the Sponsor as evidenced by the standardized document entitled [PROMISSORY NOTE FOR RENTAL PROJECTS](#). This document must be executed by an authorized signatory of the Sponsor in favor of the Lender. A copy of this completed note is to be submitted to the Bank upon execution for inclusion in the project’s AHP file.

3) Note or Contribution Agreement between Sponsor and Partnership

Because each AHP project is different, the Bank has designed its standardized agreements to be flexible and complementary to other legal agreements between the Sponsor and the Owner. Therefore, the Bank has not developed and does not require the use of a standardized Note or Contribution Agreement. Rather, the Sponsor and Owner should implement appropriate documents that describe the manner in which the AHP subsidy is transferred from the Sponsor to the project or Owner. Although not always the case, a note executed by the Owner in favor of the Sponsor is generally used. If applicable, a copy of such an executed agreement is to be submitted to the Bank upon execution for inclusion in the project’s AHP file.

4) Security Interest

The AHP Regulations require the Bank to ensure that the AHP subsidy provided by the Sponsor to the Owner be secured by a legally enforceable subordinate lien (e.g., a mortgage) on the Property for the full amount of the AHP direct subsidy. The Bank has not developed and does not require the use of a specific mortgage agreement. However, the Bank does require that the standardized rider entitled [RIDER TO SUBORDINATE MORTGAGE](#) be attached to the mortgage (or whatever security agreement is used) and executed by the Partnership in favor of the Sponsor. The executed subordinate lien, a legal property description, and the Rider thereto are to be recorded in the local county clerk’s office and a copy of the entire agreement is to be submitted to the Bank upon execution for inclusion in the project’s AHP file.

5) Assignment of Mortgage

If applicable, the Bank requires that the Sponsor assigns its interest in the mortgage (to which the standardized Rider is attached) back to the Lender. If necessary, the Sponsor shall prepare, execute, and record a legally enforceable assignment of mortgage in favor of the Lender and submit a copy of said agreement to the Bank upon execution for inclusion in the project’s AHP.