ENTERPRISE’S YEAR 15 TOOLKIT
NYU CAPSTONE
## CONTENTS

### Introduction to the Year 15 Toolkit

<table>
<thead>
<tr>
<th>Page</th>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Section One</td>
<td>Preparing for Year 15</td>
</tr>
<tr>
<td>16</td>
<td>Section Two</td>
<td>Overview of Year 15 Program Options</td>
</tr>
<tr>
<td>22</td>
<td>Section Three</td>
<td>Completing the Year 15 Program</td>
</tr>
<tr>
<td>35</td>
<td>Section Four</td>
<td>Additional Financing and Upgrade Options</td>
</tr>
<tr>
<td>41</td>
<td>Appendix A</td>
<td>Definitions</td>
</tr>
<tr>
<td>49</td>
<td>Appendix B</td>
<td>Energy Efficiency Financing Options</td>
</tr>
<tr>
<td>51</td>
<td>Appendix C</td>
<td>ENERGY STAR No- and Low-Cost Checklist for Saving Energy and Water in Multifamily Housing</td>
</tr>
</tbody>
</table>
FOREWORD

About Enterprise Community Partners, Inc.

Enterprise works with partners nationwide to build opportunity. We create and advocate for affordable homes in thriving communities linked to jobs, good schools, health care and transportation. We lend funds, finance development, manage and build affordable housing, while shaping new strategies, solutions and policy. For more than 30 years, Enterprise has created 340,000 homes, invested nearly $18.6 billion and touched millions of lives. Since our New York office opened in 1987, we have created or preserved more than 49,000 affordable homes for 114,000 residents, and have committed over $2.9 billion in equity, grants, and loans to community development projects.

About NYU Wagner Capstone

This toolkit was created as part of the Urban Planning Capstone program at the Robert F. Wagner Graduate School of Public Service at NYU by Alan Leung, Ali Levine, Cea Weaver and William Vidal with Faculty Advisor Kei Hayashi. NYU Wagner’s Capstone provides provides students with both a critical learning experience and an opportunity to perform a public service. Over the course of an academic year, students in Capstone work in teams with faculty oversight to address challenges and identify opportunities for nonprofit, governmental, health-related, urban planning, and international agencies. Visit http://wagner.nyu.edu/capstone

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INTRODUCTION
TO THE YEAR 15 TOOLKIT
The Importance of Year 15

Year 15 is an important moment in the lifecycle of Low-Income Housing Tax Credit (LIHTC) projects. Year 15 is the last year of the initial tax-credit compliance period and generally, limited partner(s) — i.e., the investor(s) — will seek to exit the project at the start of Year 16. As a result, Year 15 provides an opportunity for the sponsor to recapitalize the project, sell it, or extend its affordability. If, at the original construction closing and start of the project, the Department of Housing Preservation and Development (HPD) provided the tax credit, gap financing and/or subsidies such as tax exemptions, then HPD may need to provide consent to the transfer in ownership interest at Year 15.

HPD’s Year 15 Program

HPD created the Low-Income Housing Tax Credit Portfolio Preservation Program, most commonly known as the Year 15 Program, to make sure that LIHTC projects remain in good physical condition, financially viable and affordable over the long-term. This program is available to all owners of LIHTC properties within New York City at the end of their initial tax credit compliance period, i.e., the end of Year 15. Most recently, the program has been expanded to include projects that were originally developed through state low-income housing tax credits. HPD works with project sponsors to develop a strategy for the future of the project, while also providing technical assistance. Through their assessment, HPD and the project sponsor may find that additional funding is necessary to improve a portfolio’s physical or financial condition. The project sponsor may also determine that it could benefit from a joint venture with an experienced affordable housing operator. HPD will work with sponsors to identify the most appropriate course of action, including but not limited to: mortgage modifications and extensions, securing additional subsidies, leveraging conventional financing through private lenders, resyndicating the project through low income housing tax credits and securing real estate tax benefits. It is important to remember that at Year 15, even if a project sponsor is not planning on requesting additional subsidies or tax benefits from HPD, the LIHTC project is required to go through the Year 15 Program; this is because the majority of LIHTC projects financed in New York City cannot complete investor exit without HPD’s approval.

Purpose of the Toolkit

This toolkit is a guide to the Year 15 Program. Year 15 is an important juncture in the lifecycle of Low-Income Housing Tax Credit projects, and HPD administers the Year 15 Program to assist projects with this transition. Many challenges may arise

INTRODUCTION TO THE YEAR 15 TOOLKIT
throughout the Year 15 repositioning process that are best addressed well ahead of time, starting as early as Year 10. This toolkit will provide guidance on the following:

- An outline of steps that sponsors must complete for their project leading up to and in preparation for Year 15
- Financing options available through HPD’s Year 15 Program
- A step-by-step guide to completing the Year 15 Program application process with HPD and potential funders
- A summary of funding sources available to complete repairs and capitalize the project

How the toolkit is organized

- Section 1 covers the “preparation” stage leading up to Year 15: the questions that a sponsor should be asking, the documentation that should be on hand and resources for planning for Year 15.
- Section 2 provides an overview of the options available through HPD’s Year 15 Program, as well as a decision tree that is intended to assist sponsors to determine which option best suits their project.
- Section 3 outlines the steps to completing the Year 15 Program application process.

When is Year 15?

The 15-year initial compliance period starts the first year that the tax credit investor claims the LIHTC tax credit. The investor can claim the tax credits either the first year that the project sponsor places the building in service or the following year. If the LIHTC project has multiple buildings, the project sponsor must calculate the Year 15 clock separately for each building because each building may have been placed in service at different times.
What Is LIHTC?

The Low-Income Housing Tax Credit (LIHTC) is a Federal tax program established in 1986 to leverage private capital and investor equity for the production of affordable housing. Under the program, the federal government allocates tax credits to states based on a set formula and states, in turn, allocate the credits to affordable housing developers. The developers can then use the tax credits to raise capital to rehabilitate an existing property or build new affordable housing units by selling the credits to investors, who redeem the credits with the Internal Revenue Service (IRS). Developers often rely on syndicators, such as Enterprise, to find institutional investors. Nationally, the LIHTC program has generated more than 2.2 million units of rental housing.1 Of these 2.2 million units, 104,569 are located in New York City.2

In New York City, the State allocates its own tax credits as well as assigns credits to two City agencies—the New York City Department of Housing Preservation and Development (HPD) and the New York City Housing Development Corporation (HDC). HDC only awards 4% tax credits, which are allocated as-of-right with bond financing, while HPD awards 9% credits on a competitive basis. The 9% awards are based on the City’s Qualified Allocation Plan (QAP).3 Once a developer is awarded tax credits and partners with an investor, the investor will receive the tax credits in yearly installments, in exchange for providing equity into the development of the project. These installments are conditioned on the project complying with Federal requirements about tenant eligibility, rent restrictions, annual tenant income certifications, vacancy turnovers, and other markers. If the project does not comply with these requirements during the first 15 years, the Federal government can recapture the tax credits. This first 15-year period is known as the initial compliance period. LIHTC projects allocated credits post-1989 are also subject to a 15-year additional extended use period, starting in Year 16 and ending in Year 30. Most LIHTC projects are subject to a federally mandated 30-year regulatory period.4

LIHTC deals are typically owned by a Limited Partnership, consisting of a partnership between investors and project sponsors. This relationship, known as the “Limited Partnership,” generally consists of two entities: the “Limited Partner,” the investor—typically represented by a Syndicator—and the “General Partner”—or sponsor—who oversees day-to-day operation of the property. The limited partner is generally a passive partner whose primary objective is to ensure the property is well managed so that the investor can receive the agreed-upon tax benefits from the IRS. The general partner and the syndicator generally work together to ensure compliance with tax credit requirements for the first 15 years of the project. At the end of Year 15, most investors will seek to exit the partnership.
because they will have realized the full tax benefits. General partners, or project sponsors, likely have a longer term interest in the provision of affordable housing. In New York City, general partners are a diverse group of for-profit housing developers, neighborhood-based entrepreneurs, and community based not-for-profit organizations.

The relationship between the general partner and the limited partner is outlined in the limited partnership agreement (LPA) (see Section 1 for further details on limited partnership agreements). The general partner and the investor enter into the partnership with the expectation that it would end after 15 years. This transfer in partnership control and investor exit is known as the Year 15 disposition process.


3 For more information about the City’s QAP plan, visit HPD’s website: http://www1.nyc.gov/site/hpd/developers/lihtc-qualified-action-plan.page

4 U.S. Department of Housing and Urban Development. (2012). What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond? Available at www.huduser.org
SECTION ONE:
PREPARING FOR YEAR 15
SECTION ONE: PREPARING FOR YEAR 15

Introduction

This section of the toolkit provides a roadmap to prepare for the Year 15 disposition process. It reviews relevant documents and questions that the sponsor should answer to move smoothly through the process. For a comprehensive list of important terms and definitions, refer to Appendix A. A more detailed timeline and guide to completing the Year 15 process is outlined in Section 3.

This Section Will Cover:

- Key stakeholders
- When developers should begin to prepare for Year 15
- Important planning questions
- Important documents
- Key issues that guide Year 15 decision-making

STEP 1: KNOW THE STAKEHOLDERS

The Year 15 process, also referred to as the disposition process, involves many stakeholders and it is important for project sponsors to be aware of the different actors and their roles.

General partner/Sponsor

The general partner, or project sponsor, is the entity that operates the property and that will likely own the project after the investor exits, unless the project is sold to a third party.

Limited partner/Investor

The limited partner is the co-owner of the project as per the LPA, and will seek to exit the partnership at the start of Year 16. The syndicator represents the investor. Because the limited partner is a co-owner and because its consent is necessary to complete the disposition process, it is important to understand the investor’s objectives well ahead of time.

Joint venture partner

At Year 15, some project sponsors form a joint venture (JV) with a third party to move through the disposition process. Under certain circumstances detailed in Section 3 of the toolkit, the project sponsor may choose to or be required to form a joint venture at Year 15. A joint venture can be mutually beneficial, as it can allow a non-profit group without housing expertise or financial strength to maintain involvement in the project, or allow a for-profit developer access to greater tax exemptions or subsidies. If a project sponsor decides to pursue a joint venture, it should identify potential joint venture partners early in the process.
Lenders

LIHTC projects may carry mortgages issued at the start of the project by private lenders, such as a commercial bank, or public lenders, such as HPD. The Year 15 Preservation Program offers opportunities for project sponsors to take on new private or public debt. Whether or not this option is taken, the existing mortgagees, i.e., the lender(s), must consent to changes in the property’s control or ownership.

Regulatory Agencies

New York City LIHTC deals may be subject to regulatory agreements from HPD, HDC, the Department of Housing and Urban Development (HUD), and/or New York State Department of Housing and Community Renewal (HCR). Regulatory agreements contain many requirements such as income limits for renters, the renter selection process, how and when funds generated by the project can be distributed and the duration of these restrictions. HPD’s regulatory agreements usually specify that the ownership or control of the project cannot be changed without the approval of the supervising regulatory agency, and that the units are subject to New York State rent regulation, which is governed by the State’s Department of Housing and Community Renewal (HCR). HPD is a critical partner to engage early in the Year 15 planning process, as the agency is the administrator of the Year 15 Program. The City can provide valuable guidance and assistance in preparing and completing the application process.

Residents

Although residents do not have a formal role in the Year 15 disposition process, they are critical stakeholders in every LIHTC project. The ultimate objective of the LIHTC program is to provide high-quality affordable housing to low-income families. Due to the pressing affordable housing crisis in New York City, HPD has an additional stake in prolonging the affordability of LIHTC units for the residents, and a primary objective of the Year 15 Program is the preservation of affordable units. Residents provide crucial support to the LIHTC disposition process by allowing access to apartment units and cooperation with the Capital Needs Assessment or Green Physical Needs Assessment. Communication with residents is also key if a project needs to adjust rental income. Finally, residents are required to do yearly income certification and verification, and a project must be in compliance with this requirement to complete the Year 15 process.

Syndicators

When a syndicator is involved, the syndicator oversees the limited partner’s investment in the project and is a central resource in the disposition process and in submitting an application to the Year 15 Program.

The syndicator knows the property well because it has monitored its status for the past 15 years and can serve as a resource for the disposition process and the Year 15 Program. Enterprise Community Investment Inc. and National Equity Fund, Inc. are two of the largest syndicators in New York City and work as Technical Assistance Providers to the Year 15 Preservation
Program.

Closing attorney

Both the disposition process and the Year 15 Preservation Program application process involve substantial legal documentation. It is important to select and involve a closing attorney early in the process to prepare and review these documents (see Section 3 for a specific timeline). If a project sponsor waits to consult a closing attorney until the last minute, the transfer of the property may be delayed and the deal may have to be restructured to avoid negative tax repercussions and comply with the federal laws that govern LIHTC projects. If the transfer of ownership will involve a joint venture partner, then it is particularly important to consult an attorney at the start of the process.

STEP 2: DETERMINE WHEN TO START PREPARING

Starting early is the key to successfully managing the Year 15 disposition process. Just how early a project sponsor should start preparing depends on the health of the project and the sponsor’s capacity to manage the Year 15 process. A project’s health is impacted by its physical and financial condition: Is the project cash flowing? Are there many vacancies, municipal violations, or tenants with outstanding arrears? Depending on the answers to these questions, the project sponsor should start planning between Year 10 and Year 13. All projects should begin the Year 15 disposition process well in advance; more challenged properties will have to start the planning process early, in Year 10, while projects that are operating well can wait until Year 13. The overall goal of the Year 15 Program is to ensure the project is operating well for the long term. Sponsors with projects in poor health can use the Year 15 process to identify recurring issues and determine how to address them. Table 1 gives some examples of projects in poor, moderate, and good health.

<table>
<thead>
<tr>
<th>Poor Health</th>
<th>Moderate Health</th>
<th>Good Health</th>
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<tr>
<td>YEAR 10 -11</td>
<td>YEAR 12</td>
<td>YEAR 13</td>
</tr>
<tr>
<td>Negative cash flow and/or low reserves; high capital repair needs; municipal arrears; Department of Buildings (DOB)/HPD/Environmental Control Board (ECB) violations</td>
<td>Moderate capital needs; either negative cash flow or low reserves; low administrative capacity</td>
<td>Good physical conditions with low capital needs; healthy reserves and positive cash flow; low vacancy rate and compliance with agency agreements</td>
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Note: In some instances, a project may be past Year 15 and not have started or completed the Year 15 process. In this case, the project sponsor should still take the time to evaluate their options and follow the steps outlined in the Toolkit.
STEP 3: EVALUATE PROJECT NEEDS

To effectively move through the Year 15 process and facilitate efficient investor exits, project sponsors should have clear answers to the following questions about their LIHTC project, their overall portfolio, and their organizational purpose. These questions fall into four general categories: 1) organizational capacity and mission, 2) overall project health, 3) Year 15 disposition strategy and 4) logistics.

Organizational Capacity and Mission:

- What is the organization’s mission? Some sponsors took on LIHTC projects 15 or more years ago but have since evolved in their priorities. Does the organization want to continue to own and operate low-income and affordable housing?
- Does the organization have the administrative capacity to commit resources to completing the Year 15 process and operate the project going forward? At Year 15, it is crucial that the project sponsor has the staff capacity to develop and implement a disposition plan, clear building violations, meet with syndicators and HPD, oversee physical needs assessments, assess the project’s health and determine the project’s needs.
- What is the organization’s overall financial health? Are financials strong enough to secure financing commitments?
- Does the organization have good relationships with responsible lenders? Does it have arrears or outstanding debt on other projects?

Project Health

- Are there outstanding violations with the Department of Buildings (DOB), HPD, the Environmental Control Board (ECB), or HOME/LIHTC Compliance Monitoring? This should be investigated for both the relevant LIHTC project and the project sponsor’s entire portfolio.
- Are there outstanding municipal arrears (tax liens, water and sewer, etc.) on the LIHTC project and/or the project sponsor’s entire portfolio?
- Are there outstanding loan arrears or servicing arrears?
- What are the project’s capital needs?
- Are there high vacancies in commercial and/or residential units? Are many tenants in arrears?
- Is the cash flow sufficient to operate and maintain the project?
- Have rent increases been enacted?

Strategy

- Are the current reserves accounts sufficiently funded to cover anticipated capital repairs?
- If the project receives tax exemptions or abatements, when will they expire and will the project generate enough cash flow at that point to pay for property taxes?
- Do the rents need to be restructured and, if so, by how much?
- Can operational expenses be decreased by performing energy retrofits?
- Can operational expenses be decreased by refinancing?
- Are there other properties within the sponsor’s portfolio
that could be bundled with the property to achieve broader preservation goals?

- What additional subsidy is needed to perform capital repairs?
- Are there existing units set aside for formerly homeless households, and does this level meet HPD minimum requirements for an extended affordability term?

**Logistics**

- Who are the contacts at HCR/HPD/HDC's asset management division?
- Who is the syndicator contact?
- What are the project sponsor’s legal obligations to investors and to the City?
- Does the Limited Partnership Agreement (LPA) specify a purchase price at Year 15 and provide the project sponsor with either a right of first refusal or a buyout option?
- Does the LPA require the project sponsor to obtain an independent appraisal at Year 15?
- What consent(s) does the project sponsor need from the limited partners, lender or city agency to exit? What is needed to obtain consent?
- When do the loans become payable? Are there balloon payments or large deferred interest payments due?
- Are there transfer taxes associated with the Year 15 plan? If so, is there sufficient cash flow or reserves to pay potential transfer taxes?
- What are the closing documents that are required to finalize Year 15 disposition?
- Are there servicing requirements associated with the project sponsor’s mortgage?
- Should the project sponsor need a joint venture partner, what is the strategy to identify and engage a partner?

The final crucial question the sponsor needs to answer is: “Am I aware of the options available at Year 15?” This question should be on every project sponsor’s mind from the start of the Year 15 process. HPD’s Year 15 Program provides three general options: repositioning, private debt, and resyndication. Every deal is unique, and the answers to the above questions are crucial in identifying the best option. Each option is discussed in further detail in Sections 2 and 3.

**STEP 4: LOCATE AND KNOW YOUR DOCUMENTS**

LIHTC projects are complicated transactions with multiple legal documents and regulatory requirements. Legal documents and regulatory agreements that were entered into fifteen years ago are critical to the investor exit process. The project sponsor must be aware of its legal obligations and the regulatory requirements in these documents at the start of the Year 15 process. The Limited Partnership Agreement (LPA) provides guidance on the sponsor’s responsibilities to the limited partner. The project sponsor should review the entire agreement early in the Year 15 process and pay close attention to the following sections:

- Consent Requirements
- List of Partners
- Purchase Price
- Buyout Option
- Right of First Refusal
• Allocation of Profits and Losses
• Distribution of Capital Proceeds
• Substitution Agreement and Assignment of Limited Partner’s Interest
• Dissolution of Partnership
• Financial Projections

In addition to the LPA, the project sponsor should familiarize itself with any mortgage or loan documents, paying close attention to whether lender approval is required for any deed or partnership changes. The project sponsor should also review any agreements (regulatory, funding and disbursement) with city agencies to check for both compliance and logistical requirements for completing the Year 15 process.

Lastly, it is important to remember that the above list only concerns existing legal documents. The Year 15 disposition process will generate more legal documents that the project sponsor must also carefully prepare and understand. This is why it is highly recommended that the project sponsor retain a closing attorney early in the process (see Section 3 for a specific timeline).

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**Purchase Price, Buyout Options and Right of First Refusal**

The limited partnership agreement will specify how to calculate the value of the partnership, and this *purchase price* in turn determines the value of the investor’s share. Although each LPA may vary, it will contain a variation of the following options:

**Buyout Option:** gives the general partner the right to purchase either the property or, depending on the LPA, the limited partner’s share. The purchase price is usually the greater of fair market value or taxes plus unpaid benefits.

**Right of First Refusal** gives a qualified project sponsor the right to purchase the property before a third party can. The purchase price is set by Section 42(i)(7)(A) of the Tax Code and is equal to debt plus taxes.

- **Taxes** refer to all federal, state and local taxes attributable to the sale, which may include exit taxes incurred by the existing partner, i.e., the investor(s).

- **Debt** refers to any outstanding mortgage there may be on the property. The debt will equal the outstanding principal of the mortgage plus unpaid interest.
SECTION TWO:
OVERVIEW OF YEAR 15 PROGRAM OPTIONS
SECTION TWO:
OVERVIEW OF YEAR 15 PROGRAM OPTIONS

Introduction

HPD’s Year 15 Program includes multiple options to finance capital needs and access tax benefits to maintain the physical and financial viability of LIHTC projects. These options are outlined in three term sheets, each aimed at projects with varying physical and financial need. The sponsor should consult HPD’s website because term sheets change regularly. Although HPD may act as a gap filler in any financing structure, HPD will first leverage existing reserves and/or private conventional debt.

- Repositioning: for projects with moderate capital needs, a subsidy of up to $15,000 in capital eligible work is available for each dwelling unit (DU).
- Private Debt: for projects with strong financials, this hybrid option allows the project sponsor to seek a combination of HPD subsidy and private financing.
- Resyndication: for projects that have extensive capital needs the project sponsor may apply for 4% tax credits to recapitalize and repair the project.

Sponsors may additionally choose to decouple the project without participating in the Year 15 Preservation Program; a brief overview of that option will also be presented below.

This Section Will Cover:

- An overview of the options available through the Year 15 Program
- Issues to consider in deciding which Year 15 Program option to select
- A decision tree to help select a Year 15 Program option

A majority of project sponsors that participate in the Year 15 Program use the repositioning option. Below is a breakdown of the options project sponsors selected as of Fiscal Year 2014.

Source: NYC Department of Housing Preservation and Development
Repositioning

Overview

Repositioning is an opportunity for project sponsors to strengthen the long-term physical and financial viability of their building(s). By Year 15, the project may need or soon require significant capital repairs, tax exemptions or abatements may be expiring, and reserve accounts may need to be recapitalized. Conversely, the building may be in sound physical condition, generate a positive cash flow, and hold ample reserves. In either case, HPD can provide a number of benefits in exchange for entering into a new 30-year regulatory agreement at Year 15, which will extend the project’s affordability requirements to Year 45.

Potential Benefits of Repositioning:
- Extension of tax exemptions
- Loan restructuring: mortgage extensions, modifications, and workouts
- Release of excess reserves to sponsor for well-operating projects that do not need additional HPD subsidy
- Restructuring of rents to restore a positive cash flow
- Loans up to $15,000 per dwelling unit at below-market rates to perform capital repairs
- Up to $70,000 per project for construction monitoring
- Subject to HPD funding availability, fees associated with the repositioning process such as capital needs assessments, legal and asbestos fees can be paid from project reserves or loan proceeds

Typical Project Profile

- Projects with strong cash flows and reserves that are seeking an extension of tax exemptions
- Projects with positive cash flows but insufficient reserves to cover needed or projected capital repairs
- Projects with negative cash flows, insufficient reserves, and in need of capital repairs. These projects may be required to partner with an experienced developer and, through a joint venture, access the assistance available through repositioning

Private Debt

Overview

Private debt is an option for projects that have strong underlying financials and moderate physical needs. The private debt program is modeled after HPD’s Participation Loan Program (PLP), in which a private “participatory” lender provides a first mortgage. HPD provides secondary “gap” financing if there is a difference between the anticipated funding sources and need.

A private debt project may also entail the layering of additional government subsidies and tax incentives. Most features available under the repositioning term sheet are also available through private debt, such as: ability to modify or extend mortgage terms, renew tax incentives and extend affordability.
Benefits of a Private Debt Agreement

- Eligibility up to $15,000 per dwelling unit subsidy from HPD and any additional supportable debt from a private lender
- Developer fee for non-profits
- Extension of tax exemptions
- Loan restructuring: mortgage extensions, modifications and workouts
- Restructured rents to meet ongoing and projected debt obligations and reserve set asides
- Combination of multiple existing portfolios to leverage private debt and improve operations
- Up to $70,000 per project for construction monitoring

Typical Eligible Projects

- Projects with healthy cash flow and moderate capital repair needs
- Project sponsors seeking to leverage multiple portfolios to improve operations
- Project sponsors seeking to maintain an ownership stake but transfer the operation of the project to a joint venture partner that can recapitalize the project

Resyndication

Overview

Resyndication is an option for projects that need significant capital repairs. Eligible sponsors must submit a new round of applications for 4% percent tax credits. In addition to the equity raised through tax credits, resyndication deals may involve the layering of additional subsidies and tax-exempt bond financing from either the City or State mortgage finance agencies.

To qualify for resyndication, a project must have capital needs greater than $15,000 per dwelling unit and contain at least 300 units in the resyndication portfolio. In addition, the current project sponsor is required to have taken the maximum allowable rent increase as outlined by the Rent Guidelines Board in the preceding two years leading up to Year 15. Resyndication is available to both projects with well-managed projects that have high capital-repair needs and challenged projects; however, HPD may require project sponsors of challenged portfolios to partner with a third-party that has an established track record of owning and operating LIHTC projects. The owner should consult with HPD early in the process to determine whether a joint-venture partnership will be required.

Benefits of Resyndication

- Address items of deferred maintenance, upgrade or repair critical systems and consider energy efficiency upgrades
- Pay interest arrears and mortgage balloon payments
- Replenish project reserves and restore a portfolio’s financial health
- Loan restructuring: mortgage extensions, modifications and workouts
- Restructure rents to improve cash flow and ensure the long-term viability of project
- Benefits of a joint venture partnership with an experienced...
third party
• Capital infusion in excess of $15,000 per dwelling unit
• Leverage economies of scale by combining portfolios

**Typical Project Profile**

- Projects with negative or poor cash flow, insufficient reserves and in need of significant capital repairs
- Projects with positive cash flows but insufficient reserves to cover necessary capital repairs in excess of $15,000 per dwelling unit

**Decoupling**

Decoupling is only a potential option for projects that do not need additional tax, financing, or funding to perform all needed capital repairs and operate the building(s) through the extended compliance period. Sponsors pursuing decoupling only seek HPD permission to change the control of the project so that the LIHTC investor can exit the project. Decoupling is only a viable option for projects that have strong cash flow, sufficient reserves, limited capital repair needs, and can pay unabated property taxes.

In determining whether to decouple, a project sponsor must consider the following two critical factors:

- Will the building need significant capital repairs before Year 30 and is the projected cash flow from the regulated rents and the reserves sufficient to pay for these capital repairs?
  » Although a project may have a positive cash flow and some reserves, neither may be sufficient to cover the projected cost of capital repairs before Year 30. If this is the case, then the building should restructure its public loans so that it can seek private debt.
- When will the project’s tax exemption/abatement expire and is present cash flow sufficient to pay the full amount of property taxes owed?
  » If the tax exemption/abatement will expire before the end of the extended regulatory period at Year 30 or other regulatory periods, then the building may not be able to afford to pay full taxes and needs to pursue repositioning to obtain an extension of its tax exemption/abatement.
Decision Process for Selecting a Year 15 Option

The following diagram will assist the project sponsor in determining which of the Year 15 options is available based on the project’s profile and the project sponsor’s strategic plan. The decision process starts with the physical and financial condition of the building. After deciding which option to follow, the project sponsor should factor its strategic plan at each step of the decision-making process.
SECTION THREE:
COMPLETING THE YEAR 15 PROGRAM
SECTION THREE: COMPLETING THE YEAR 15 PROGRAM

Introduction

This section of the toolkit outlines the steps project sponsors must take to complete the Year 15 application process. The section highlights both general factors that all project sponsors should consider, and specific challenges, factors, and requirements for each Year 15 option.

This Section Will Cover:

• Program application steps
• Common challenges
• Common requirements for all of the Year 15 options
• Details for each Year 15 option, including timeline, eligibility factors and specific challenges

<table>
<thead>
<tr>
<th>Task</th>
<th>Suggested Start</th>
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| Internal Financial Audit:  
  • Cash flows  
  • Operating and capital reserves  
  • Capital accounts and projected exit taxes  
  • Operating and maintenance costs  
  • Rent levels and required rent increases  
  • Status of loans  
  • Tax, utility or other arrears for project and whole portfolio  
  • Accounts Receivables | Year 10 |
| Internal Capital Needs Evaluation | |
| Establish a strategic plan for managing the project after Year 15 based on sponsor goals and physical and financial status of project | Year 11 |
| Resolve all outstanding violations and arrears throughout the sponsor’s portfolio:  
  • HPD, DOB and ECB violations  
  • Water, sewer, tax and mortgage arrears  
  • IRS and HUD compliance | |
| Identify and understand relevant legal documents, focusing on the terms of the:  
  • Limited partnership agreement  
  • Financing and regulatory agreements | Year 12 |
| Verify accuracy of Certificates of Occupancy for block and lot number, number of floors, unit count and use of spaces | |
| Verify that rents are registered with DHCR | |
| Verify that the project sponsor has filed annual RPIEs (Real Property Income and Expense statement) with the NYC Department of Finance | |
### Common Requirements for All Year 15 Options

**Homeless set-aside through extended compliance period**

Projects going through repositioning are required to maintain their current homeless set asides except in the following situations:
- If projects currently have a 100% homeless unit requirement, the project can reduce down to at least 30% homeless unit requirement
- If projects currently have no homeless units, they are required to reserve at least 10% of the total units for homeless households

<table>
<thead>
<tr>
<th>Year 13</th>
<th>Year 14</th>
<th>Year 15</th>
<th>Year 16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retain a HPD-approved provider to perform a green physical needs assessment (GPNA) of building structure and systems; a project sponsor can apply to have a provider added to the pre-approved list.</td>
<td>Verify compliance with elevator and NYC Local Law 11 building facade inspections.</td>
<td>Review certificate of incorporation and determine if it is compliant with requirements of the potential tax exemption (with the exception of Homeless set-aside through extended compliance period).</td>
<td>Obtain certified rent roll and DHCR registration.</td>
</tr>
<tr>
<td>Verify status of 501c3 organizations.</td>
<td>Determine if HPD will require asbestos testing.</td>
<td>Verify general partner’s status is in good standing in NYS Department of State’s database.</td>
<td>Obtain audited financial statements with notes for the past three years.</td>
</tr>
<tr>
<td>Obtain copy of property and liability insurance certificate.</td>
<td>Obtain copy of property and liability insurance certificate.</td>
<td>Prepare disclosure forms, including campaign finance disclosure forms for:</td>
<td>Obtain consent from all the private lenders/mortgagees for the proposed change in ownership or control.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• New entities that will have ownership/control interest.</td>
<td>Close.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Individual disclosures for all board members of new entities.</td>
<td></td>
</tr>
</tbody>
</table>
Rent registration and stabilization

- Regardless of which option the project sponsor selects, all units will be subject to New York State Rent Stabilization laws.
- Repairs using HPD financing will not be eligible for Individual Apartment Increases (IAIs) or Major Capital Improvement (MCI) increases.
- Vacancy and luxury decontrol is not permitted through the new HPD extended compliance period.

Common Challenges

The following are common challenges project sponsors may face while completing the disposition process and the Year 15 Program application. Challenges specific to each option are discussed in the next part of this section.

- One of the first steps and challenges in preparing for Year 15 and HPD’s application process is to locate and understand the project’s legal and financial documents. The legal documents will typically spell out the terms for dissolving the project partnership and other management details.
- The project sponsor should develop a clear long-term strategy based on the organization’s goals, as well as the physical and financial status of the project. A clear strategy will allow the sponsor to determine the optimal ownership structure and program option at Year 15. See Specific Challenges for repositioning to learn more about different ownership structures. Project sponsors are encouraged to consult with HPD’s Asset Management Division in determining their strategy.
- Obtaining reports and completed forms from third parties can sometimes be challenging. The project sponsor should allocate additional time to obtain third-party reports and/or bids from vendors, such as asbestos vendors.
- Sponsor review can be a lengthy process and involves multiple administrative steps. This process includes the review of: the proposed changes in control and related disclosure forms, the formation of new entities and tax exemption applications. Sponsors looking to create a new Housing Development Fund Corporation (HDFC) or to apply for a new 420-c tax exemption will need to set aside time to gather all the necessary documents and submit them to HPD. The project sponsor should consult their closing attorney to identify and prepare the needed documents. The project sponsor should also set sufficient time aside to complete the needed disclosure forms, as board members may be reluctant to disclose the needed information. Project sponsors can inquire with HPD about forming a housing subcommittee to decrease the burden.

**KEY LEGAL DOCUMENTS**

- Limited partnership agreement
- Regulatory agreements (city and/or state)
- Notes
- Mortgages
- Funding and disbursement agreements
- Deed
- Land disposition agreement
- Leases
- Nominee agreements
- Certificates of incorporation
- Tax documentation—W9, EIN, 501(c)(3)
on board members.

• The Year 15 disposition process involves multiple taxes, including transfer taxes. Both New York City and New York State impose a tax when a real property interest or a controlling interest in an entity owning real property is conveyed from one party to another. The city allows certain exemptions from the transfer tax, but Year 15 disposition deals are typically subject to the state tax. HPD does not allow the project sponsor to use Year 15 Program funds or project reserves to pay city or state transfer taxes, so the project sponsor must find another source of funding. The exit of the investor, i.e., the limited partner, may also trigger exit taxes. Exit taxes are owed when the limited partner’s capital account is negative at the time of the Limited Partner’s exit. At this juncture, the status of the limited partner’s capital account is a primary concern, as the IRS taxes capital gains and there may be no project funds to pay the exit tax. Exit taxes that result from capital gains can be considerable.

• The clearing of outstanding violations and arrears is a condition of the Year 15 Program. HPD requires that the project sponsor cure violations and pay arrears relating to the project and its whole portfolio. Because the clearing of violations and arrears applies to the entire portfolio, the general partner should start the clearing of violations and arrears at Year 10. HPD’s Asset Management Division is a useful resource to clear violations and to address other compliance issues, such as reporting requirements and outstanding escrow accounts dating back to the construction of the project.

Application Details for Each Year 15 Option

The following are specific details and challenges related to each of the Year 15 options: Repositioning, Private debt, Resyndication and Decoupling.

Repositioning

Application Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>February - March</td>
<td>Order GPNA from HPD-approved provider</td>
</tr>
<tr>
<td>May</td>
<td>Kick-off meeting</td>
</tr>
<tr>
<td>July</td>
<td>Preliminary submission: Part I of application</td>
</tr>
<tr>
<td></td>
<td>• Includes sponsor request letter with project description, capital needs assessment and last three years of audited financials</td>
</tr>
<tr>
<td></td>
<td>• Year 15 Program staff will review preliminary submission, and if preliminary underwriting indicates that the project could need funding for capital work, HPD will contact the applicant to schedule a site inspection</td>
</tr>
<tr>
<td>August</td>
<td>Submission of Part II of application</td>
</tr>
<tr>
<td>October</td>
<td>Application cure period</td>
</tr>
<tr>
<td>November</td>
<td>Announcement of selected projects and submission of Part III of application</td>
</tr>
</tbody>
</table>
**Checklist and Application**

- The repositioning term sheet provides for a $15,000 technical assistance fee; often the syndicator, who has extensive knowledge of the property, will serve as the Technical Assistance Provider.
- All submissions must be reviewed by the Technical Assistance Provider prior to submission.
- HPD requires electronic submissions.
- Copies of the repositioning term sheet, application and checklist, which is part of the application, are included in the Appendix of the Toolkit and are available on HPD’s website.
  The project sponsor must check the website to make sure HPD has not updated and changed these documents.

**Key Application Factors:**

- Capital repair needs of approximately $15,000 per unit.
- Ability to financially and physically manage the project.
- Underwriting terms.
- Compliance with the homeless set aside.
- Outstanding violations and arrears at the project and portfolio level.

**Specific Challenges:**

- Satisfying the specific underwriting requirements for a repositioning subsidy. The underwriting requirements include but are not limited to vacancy rates, minimum reserve requirements, maintenance and operating cost standards, and rent levels. The project sponsor must ensure that the project meets these requirements. Further details are provided on HPD’s repositioning term sheet.
- The repositioning subsidy awarded may not cover all the costs of the needed capital repairs. Each fiscal year, HPD receives a fixed budget for Year 15 Program subsidies, and HPD may not have sufficient resources to fully fund all applicants. As a result, the project sponsor may apply for alternative sources of funding. Potential other sources of funding are discussed in Section Four of this toolkit.
- Selecting an ownership/control structure. The investor exit and the disposition process involves a change in control and possibly ownership of the LIHTC project. Depending on the objectives of the project sponsor, there are three primary ownership/control structures. The project sponsor should consult their attorney to determine which structure to choose.

The three primary ownership options can be seen in the diagram on the next page.

In Model A, the general partner wants to continue managing the project and retains an ownership interest. The limited partner is replaced with an HDFC or other not-for-profit entity primarily for tax purposes. In Model B, the general partner collaborates with an experienced affordable housing operator. In Model C, the general partner pursues resyndication. All three scenarios involve a change in control or a change in ownership.
Limited Partnership

General Partner(s)

Limited Partner(s)

Initial Model

Limited Partnership

General Partner(s)

HDFC or other not-for-profit entity

Model A

LP is dissolved and interest of GP and LP is conveyed to a third party who can structure project multiple ways

Limited Partnership

General Partner(s)

HDFC or other not-for-profit entity

Equal

Third Party

Model B

Limited Partnership

General Partner(s)

HDFC or other not-for-profit entity

Project Sponsor

Joint venture partner

Model C

YEAR 15 TOOLKIT FOR NEW YORK CITY
ENTERING INTO A JOINT VENTURE

Joint ventures offer a number of benefits such as access to capital and management support but also raise a number of issues that the general partner should discuss with its closing attorney at the start of the process. Some of these issues include:

• Choosing the right partner
• Clearly defining the need and objective of the joint venture
• Agreeing to the division of responsibilities with the new partner
• State and federal restrictions that not-for-profits must consider to maintain their status
• Compliance with the related party rule: a general partner seeking resyndication cannot have more than a 50% ownership in the new partnership
• Tax documentation

• Completing the 420-c or Article XI application process by the closing date. The choice of ownership structure is partly determined by the type of tax exemption the general partner would like to pursue. There are two main real property tax exemptions: 420-c of the New York State (NYS) Real Property Tax Law and Article XI of the NYS Private Housing Finance Law. The project sponsor should consult its attorney, syndicator and HPD in selecting the appropriate tax exemption. If the tax exemption application is not finalized by the closing date, the project sponsor may face temporarily higher tax rates. Once the exemption is finalized, the City will retroactively apply it.

• Negotiating the scope of work. Based on the green physical needs assessment submitted, HPD will prepare a scope of work. To ensure that the scope of work addresses the project’s needed repairs, the project sponsor must carefully oversee the preparation of the GPNA. Due to limited funds, HPD may not be able to include all the repairs recommended in the GPNA in the scope of work. The project sponsor should work with HPD to ensure the final scope of work includes the repairs that are a priority.

• Finding five qualified bidding contractors. Applicants seeking a capital subsidy from HPD without private debt must have five contractors that they would be willing to work with submit sealed bids for the approved scope of work. HPD will then select a contractor to perform the work based on the bids. If there is an extensive scope of work, the project sponsor can submit bids from general contractors, who will then sub-contract out each type of work. The initial general contractor bids submitted to HPD, however, must be for the whole scope of work. It can be challenging to find five contractors depending on the type of work and the project sponsor’s overall construction experience.
CASE STUDY: WEBSTER-RYER REPOSITIONING DEAL

The Webster-Ryer project is a scatter-site development composed of 68 units in five buildings, with 2 units reserved for superintendents. The project originally had a 30 percent homeless allocation. In addition to its LIHTC allocation, the project also received a subsidy through HPD’s Article 8 program and federal HOME funds.

The project received its initial allocation of Low Income Housing Tax Credits (LIHTC) in 1995, but it did not go through the disposition process until 2014, nearly five years after the typical disposition point in a tax credit project’s lifecycle. At the time of disposition, the project sponsor, Fordham Bedford Housing Corporation (FBHC), was completing dispositions for three other tax credit projects in its portfolio. Webster-Ryer was in fair financial condition but could not afford the significant capital improvements and exit fees and taxes required to complete disposition. As a result, FBHC sought assistance from HPD’s Year 15 program.

**Financial Position**

At the time of closing, the Webster-Ryer project was operating with a net positive cash flow and approximately $450,000 set aside in reserve accounts. This was a relatively healthy financial position for a project of its type and size, but it was not enough to fund the total cost of repairs and upgrades, as well as the taxes and fees due upon investor exit.

**CNA Results**

FBHC completed a capital needs assessment (CNA) that identified a wide range of deferred maintenance, repairs and required capital improvements. After HPD’s scope review, the agency determined that the project needed about $600,000 in capital work and $80,000 in maintenance. This included new roofs on all five buildings, as well as a new elevator, compactor and windows in the largest building.

**Final Deal**

In the final agreement, HPD provided a first loan of $485,000 for capital improvements for the largest building, with HDC providing a second loan of $100,000 to fund the maintenance work and replacement reserves. The funds from the HPD first loan could not be applied to the smaller buildings due to their size and the amount of capital work needed (i.e., they did not meet the threshold for capital eligibility), but FBHC was able to use the HDC loan to fund upgrades and repairs in the remaining four buildings. HPD required that an operating reserve account of approximately $200,000 be maintained throughout the term of the loan. In addition, HPD modified the existing Article 8 and HOME mortgages, extending the maturity dates when possible.
Private Debt

Application Schedule

Year-Round

Proposals for Private Debt are accepted on a rolling basis. The proposal should be a one-page letter with a summary of the project and the proposed terms of the deal. It should include a pro forma, a green physical needs assessment from an HPD-approved provider, audited financial statements from the past three years and private lender information.

Checklist and Application

- Technical Assistance Fee as well as Signage Fee for all Private Debt Applications. The Signage Fee is $100 per building. These fees are mandatory for all borrowers regardless of tax status
- There may be an HPD Commitment Fee of 1% and a Closing Fee of 0.5% for the portion of the mortgage funded by HPD. Funds from the Federal HOME program are exempt from the Commitment Fee. These fees are waived for non-profit sponsors
- Project proposal should be reviewed by the Technical Assistance Provider prior to submission
- HPD requires electronic submissions
- The Private Debt term sheet is available on HPD's website. The project sponsor must check the website for the most up-to-date terms

Key Application Factors

- Qualify for conventional bank financing
- Ability to financially and physically manage the project
- Underwriting terms
- Needed funds to pay equity
- Begin removing outstanding violations and arrears at the project and portfolio level
- Compliance with homeless set-aside requirements
- Can combine tax credit projects with non-tax credit affordable projects, but should be majority tax credit projects

Specific Challenges

- The challenges for the Private Debt application are similar to the challenges outlined above for Repositioning. If the project sponsor cannot independently access private funding, finding a joint venture partner can be challenging
- Project sponsors interested in pursuing Private Debt must be able to gain credit approval and secure a loan commitment from a conventional lender. Sponsors are advised to consult with a bank early in the process to determine feasibility
Resyndication

**Application Schedule**

<table>
<thead>
<tr>
<th>Year-Round</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposals for resyndication are accepted on a rolling basis. The proposal should be a one-page letter with a summary of the project and the proposed terms of the deal. It should include a pro forma, a green physical needs assessment from an HPD-specified provider and audited financial statements from the past three years.</td>
</tr>
</tbody>
</table>

**Checklist and Application**

- Project proposal should be reviewed by the Technical Assistance Provider prior to submission
- HPD requires electronic submissions
- The Resyndication term sheet is available on HPD’s website. The project sponsor must check the website for the most up-to-date terms

**Key Application Factors**

- Must have at least $15,000 per unit need in hard costs, excluding maintenance. Projections for required capital work must be based on a green physical needs assessment and approved by HPD
- The project must have taken the allowable rent increases as prescribed by the Rent Guidelines Board for the two years prior to Resyndication finance closing
- Have a minimum of 300 dwelling units in the proposed resyndication portfolio
- Can combine tax credit projects with non-tax credit affordable projects to achieve minimum unit count, but should be majority tax credit units
- No more than 25% of the units can be from projects at or beyond Year 15 of the initial tax credit compliance period. City- and state-assisted tax credit projects are exempted.
- The project sponsor must be aware of related party rules in which there can be no more than a 50% common interest between the former and new LIHTC owner (with exceptions)
- With certain challenging portfolios, HPD may require the project sponsor to partner with a third-party that has an established track record of owning and operating LIHTC projects. The project sponsor should consult HPD in selecting a joint-venture partner
- Ability to financially and physically manage the project as well as comply to the underwriting terms
- Address and work on clearing outstanding violations and arrears at the project and portfolio level
- Compliance with homeless set-aside requirements

**Specific Challenges**

- Sponsors must identify new investors due to the IRS requirement that an unrelated party have at least a 50% ownership stake in the limited partnership that is awarded the new credits.1 (Exceptions apply)

1 *Section 42(d) of the Internal Revenue Code.*
• With certain challenging portfolios, the project sponsor will likely have to enter into a joint venture. Finding a suitable partner will depend on market conditions and economic climate
• Refer to Repositioning section for challenges regarding underwriting and selecting an ownership structure

Decoupling

Application Schedule

<table>
<thead>
<tr>
<th>July</th>
<th>Preliminary submission—Part I of application</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Includes sponsor request letter with project description, capital needs assessment, and last three years of audited financials</td>
</tr>
<tr>
<td>August</td>
<td>Submission of Part II of application</td>
</tr>
</tbody>
</table>

Key Application Factors

• Present and projected cash flow
• Status of reserve accounts and loans
• Municipal arrears
• Projected capital repairs
• Outstanding violations
• Portfolio wide arrears and violations

Specific Challenges

The primary challenges to decoupling are that the project would not receive additional subsidy or real estate tax exemption.

Checklist and Application

• A project sponsor seeking to decouple must submit a repositioning application and the items in Part I and II of the repositioning checklist. HPD requires the submission of the application and requested documentation to assess the financial and physical viability of the project.
• All submissions should be reviewed by the Technical Assistance Provider prior to submission.
• HPD requires electronic submissions.
• The application and checklist—which is part of the application—are available on HPD’s website. The project sponsor must check the website for the most up-to-date terms.
FOCUS ON RESYNDICATION

Identifying a Joint-Venture Partner

One of the key challenges to completing resyndications is finding an appropriate joint-venture partner. Identifying the appropriate joint-venture partner begins with assessing the sponsor’s strengths, weaknesses, core competencies and organizational goals. A strong joint-venture partner will add value to the partnership by providing complementary services and expertise. For example, project sponsors that primarily specialize in social service provision could partner with an organization experienced in housing development and property management. The joint-venture partner can also help a sponsor meet investor guarantees by providing a large balance sheet, performance bonding and a successful track record of working on similar projects.

Negotiating the Partnership

Successful joint-venture partnerships begin at the negotiating table. It is critical for a project sponsor to identify its post-resyndication goals and organizational interests so that it can be clear about what it is trying to achieve. The better the sponsor can articulate its goals, the more likely it will achieve a favorable deal structure. For example, one project sponsor was committed to maintaining control of its project portfolio throughout the post-resyndication period but did not have the development or financial capacity to complete the project on its own. The project sponsor negotiated a deal with a joint-venture partner that would allow the sponsor to resume full ownership of the portfolio if the project met certain financial goals within a pre-defined time window post-resyndication. In the interim period, the sponsor would maintain its managing partner status and have control over the day-to-day operations.

Assembling a Project Portfolio

Resyndication requires a total project portfolio with 300 units or more. For many project sponsors, this means combining several affordable housing projects (funded through tax credits or other subsidies) into a single, large portfolio. Given the large scope of these projects, it is even more critical for the project sponsor to begin a comprehensive portfolio assessment prior to Year 15. Each tax credit project that comprises the portfolio will be governed by its own partnership agreement making it critical to understand the details of each existing agreement before further action is taken.

Accounting for Project Finance and Condition

Taking stock of a resyndication portfolio’s financial and physical condition can be challenging based on the size and distribution of the projects. As with conventional repositioning and private debt deals, a resyndication project sponsor must clear all water, sewer, tax and mortgage arrears from the sponsor’s portfolio. Additionally, all tenants must income recertify because resyndications involve a new allocation of tax credits.
SECTION FOUR:

ADDITIONAL FINANCING AND UPGRADE OPTIONS
SECTION FOUR: ADDITIONAL FINANCING AND UPGRADE OPTIONS

Introduction

The unique challenges presented by the New York City market often require LIHTC sponsors to take on additional subsidy in order to make their project viable. Developers may face capital needs beyond what Year 15 funds can support. Mission-based developers may seek to house extremely low-income families, leading to more limited cash flow. Sponsors may also want to integrate energy efficiency or resiliency measures to make their buildings safer, more affordable and more durable to extreme weather. Often these improvements are outside of the scope of the existing Year 15 Program’s allowable measures and require additional financing. The following section is split into two parts: 1) a summary outlining why a sponsor may want to consider resiliency and efficiency measures; and 2) an outline of additional subsidy programs that sponsors often layer on at disposition.

This Section Will Cover:

- The benefits of energy efficiency and resiliency upgrades
- Opportunities for additional funding through various subsidy programs and financing arrangements
- Additional regulations associated with these programs

Incorporating Energy Efficiency and Resiliency into a Portfolio at Year 15

Year 15 of a LIHTC project presents an opportunity for assessing the state of a project or portfolio and understanding what a building owner might see for the future of their property. During this process, energy efficiency and resiliency measures should be considered. These measures can extend the lifespan of a project, save money for a building owner and/or tenants, and reduce the amount of damage one’s building may sustain during an extreme weather event.

Why Energy Efficiency?

Energy efficiency measures are increasingly becoming standard in many buildings. Depending on the metering arrangement, such measures can increase affordability for tenants and save money for building owners. The installation of modern and efficient appliances, building management systems, and insulation can increase the value and long-term viability of a building. The Enterprise Green Communities website can provide additional guidance. Included in Appendix C is the United States Environmental Protection Agency (EPA) checklist, which provides no- and low-cost fixes that increase building energy efficiency and reduce costs.
**Important Steps**

HPD now requires that all properties receiving an HPD loan or subsidy perform Green Physical Needs Assessments (GPNAs). A GPNA combines the traditional CNA with an energy audit and will ensure that important energy efficiency measures are incorporated into the scope of work. HPD will cover the additional cost of the GPNA through the Year 15 Program up to a certain amount. In addition to covering the cost of the GPNA, in a repositioning deal, HPD has committed to covering the incremental costs of certain energy efficiency upgrades, particularly low-cost measures that are included in the scope of work. If the full cost of the energy efficiency upgrade cannot be funded through the Year 15 Program, a number of other financing and rebate programs can help offset the additional cost. These programs are outlined in Appendix B.

**Why Resiliency?**

Integrating resiliency measures into a project is another way to ensure the long-term viability of a building. Superstorm Sandy revealed that many multifamily buildings were unprepared for the high winds and flood levels that threatened essential building systems. Affordable multifamily housing is especially vulnerable—when disaster strikes, low-income residents have less access to resources to help them recover. Short-term displacement can lead to long-term homelessness, short-term business closures can lead to a neighborhood-level economic downturn, and disruption of community services can lead to an extended loss of service continuity. Loss of rental income due to evacuation and property damages can have a tremendous impact on the ability of housing owners to provide affordable housing. There are many steps that a building owner can take to mitigate these risks, which is especially important as extreme weather events are projected to increase in frequency. Enterprise’s *Ready to Respond: Strategies for Multifamily Building Resilience* provides tools for building owners to identify their hazard exposures, assess their risk and determine their resiliency strategies.

Enacting resiliency measures can also be crucial to reducing flood insurance premiums. Due to recent changes to the National Flood Insurance Program (NFIP), flood insurance premiums are set to increase dramatically in the coming years. All buildings that lie within the 100-year floodplain and have federally-backed mortgages are required to purchase flood insurance. Properties without resiliency features may face significantly higher premiums than properties that have taken flood mitigation measures.

In New York City as of 2015, there are currently 132 pre-Year 15 LIHTC buildings that lie in the flood zones. Sponsors of these buildings should carefully consider opportunities for including resiliency measures as a part of the Year 15 evaluation.

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3Ibid.
Additional Subsidy Programs

In the section below, we provide an overview of the most common programs that LIHTC developers use. The programs are divided into tax exemption programs and loan programs.

**Tax Exemption Programs**

This Enterprise-created guide provides a detailed summary and comparison of New York City’s most common residential tax exemption programs. A brief overview of the programs used during the Year 15 process can be found on this page.

**420-c:** A full or partial tax exemption for low-income housing developed with tax credits
- **Lead Agency:** HPD approves, NYC Department of Finance (DOF) administers
- **Eligible Properties:** Owned for at least 30 years by an entity that is at least 50% controlled by a 501(c)(3) or (4) non-profit or charity organization
- **Additional Requirements:** Shared spaces in the building—community rooms, parking—are limited in the fees that can be charged for programming. Community facilities must be used in a way that programming is affordable to people making 60% of the area median income (AMI) or less
- **Length of Benefit:** 30 Years minimum to 60 years maximum

**J-51:** A tax abatement and exemption for renovating multifamily apartment buildings
- **Lead Agency:** HPD approves, NYC Department of Finance (DOF) administers
- **Eligible Properties:** Multi-family buildings that are undergoing major capital work, lofts or non-residential spaces converted to residential units
- **Additional Requirements:** Developers must complete capital work in a timely fashion and apply for the benefit within 36 months of beginning work. All apartments in the project are subject to rent stabilization for the duration of the J-51 benefit. The landlord must also waive 50% of the rent increases allowed by rent stabilization as a result of the work. Limited Major Capital Improvement (MCI) increases allowed
- **Length of Benefit:** 10 years or 30 years with a 4-year phase out, effectively 14 or 34 years

**Article XI:** A full or partial tax exemption for multifamily properties
- **Lead Agency:** HPD initiates; City Council approves; DOF administers
- **Eligible Properties:** Buildings that are owned by a Housing Development Fund Corporation (HDFC). HDFCs are either resident controlled limited equity cooperatives or rental buildings affordable to low income people owned by a non-profit organization
- **Additional Requirements:** Projects receiving an Article XI tax exemption should consult their HPD regulatory agreement. HPD determines the level of tax benefit necessary to allow the project to meet its goals (i.e. low income housing). The City Council has 120 days to approve the exemption
- **Length of Benefit:** The duration of the tax benefit is usually concurrent with the term of the HPD regulatory agreement, typically 30 years
APPENDICES:

A. DEFINITIONS

B. ENERGY EFFICIENCY FINANCING OPTIONS

C. ENERGY STAR NO- AND LOW-COST CHECKLIST FOR SAVING ENERGY AND WATER IN MULTFAMILY HOUSING
APPENDIX A: DEFINITIONS

704b Analysis
An analysis of the capital accounts of the partners, minimum gain generated by the project and the potential impact on the allocations to the partners as a result of such analysis.

8609 Form
IRS document that is filed with a partnership tax return, for each year during the Compliance Period, declaring the amount of tax credits for each building and the placed in service date. This is issued after construction is completed and all costs are accounted for.

Accruing Interest
Interest calculated on the unpaid principal balance of a loan at the rate stated in the loan documents.

Adjusted Basis
The cost basis of a building including any capital improvements minus depreciation.

Affordability Restrictions
Recorded tenant income and rent restrictions that are placed on a project by a city, state (including the state credit allocating agency), bank or other lender of funds to a project. These restrictions are monitored by designated credit agencies and are enforceable for a set period of time. The restrictions bind the property and are assumed by any purchaser of the property.

Allocation Date
Date the tax credits are allocated to the owner. Found on IRS form 8609.

AMI (Area Median Income)
Statistical expression used to calculate income guidelines for various projects funded under affordable housing programs. “Area” refers to the Census Bureau’s definition of a metropolitan statistical area. For example, the median income for New York City in 2015 was $86,300 for a family of four, meaning that half of the population of New York City makes above this amount and half makes below it.
**Amortization Period**  
The period of time over which debt is reduced by regular payments of interest and principal. If the amortization period equals the Term of the debt, then the loan is a fully amortizing loan and will be repaid in full as of the maturity date; if not, then a Balloon payment will be due.

**Assignment/Assumption of Debt**  
One party assumes the liability of another party.

**Balloon Payment**  
The amount of a loan that is unpaid at the end of its term (the unpaid balance). This occurs if the amortization period is greater than the term.

**Basis Point**  
One one-hundredth of a percentage point (.01%).

**Buyout Option**  
The option giving the General Partner the right to purchase the Limited Partner’s interest in the partnership at the Buyout Price.

**Buyout Price**  
The greater of (i) Fair Market Value of the limited partner's interest or (ii) [unpaid benefits under some agreements plus] all federal, state and local taxes incurred as a result of the sale of the limited partner's interest.

**Capital Account**  
The amount of capital contributed by a partner to a partnership increased by any income, gains and other increases and reduced by losses, distributions and other decreases allocated to that partner.

**Capital Contribution**  
Equity (either cash or property) that is paid into (or transferred to) a partnership by a partner.

**Capital Gain**  
The amount of gain recognized as the result of the sale of a capital asset.

**Capital Improvements**  
Physical work that is completed on a project and is reflected as a capitalized expense.

**Capital Loss**  
The amount of loss recognized as the result of the sale of a capital asset.

**Capital Needs Assessment (a.k.a. CNA)**  
An inspection completed by an architect or engineer which identifies physical work that a project may need and/or a timeline of when repairs and capital improvements may be necessary. The report would typically include a schedule of roof replacement, water heaters, HVAC, etc.
Capitalization Rate (cap rate)
The rate used by an appraiser to determine a project’s value under the income approach. The project’s Net Operating Income (NOI) is divided by the capitalization rate to derive the project’s market value.

Charitable Contribution
A tax deduction that is taken when a taxpayer donates cash or property to a non-profit entity. In a tax credit project, the limited partner may donate its interest, if there is value in the project.

Compliance Period
Begins the first year tax credits are taken for each building and ends December 31st of the fifteenth year thereafter. The owner can elect on the 8609 to begin taking credits the year the building is Placed In Service (PIS) or the following year. At the end of Year 15, the IRS will no longer require compliance monitoring because the tax credit compliance period will expire. For those projects that are bound by extended use restrictions, the IRS has authorized the state housing agencies to create their own compliance monitoring rules for the duration of the extended use period. As of this date, state housing agencies are considering how to implement compliance monitoring rules, and these rules are expected to vary state by state. Example: Building PIS 10/01/87 and owner elects to begin credit period in 1988. The Compliance Period ends 12/31/02

Credit Period
The ten-year period over which the low-income housing tax credit is usually taken. It generally begins on the date a property is placed in service, but a taxpayer may elect to start the credit period in the year following the year the low-income housing tax credit property is placed in service. Note that deferring the credit will extend the compliance period an additional year.

Deficit Restoration Obligation (DRO)
Provision in the partnership agreement requiring one or more partners to infuse capital into the partnership to restore negative capital account balances upon liquidation of the partnership or partner’s interest.

Dissolution
The process of unwinding a partnership.

Disposition
The transfer or sale of an item, including a partnership interest or partnership property, reserves and other partnership assets.

Disposition Bond
A bond that may be posted to avoid credit recapture upon disposition of the property or partner’s interest prior to the end of the compliance period.

Disposition Budget
The general partner should prepare a disposition budget to project expenses related to acquiring the partnership assets including staff time, deferred maintenance issues, legal and accounting, refinancing costs, and other transaction related costs required to transitioning the property for new ownership.
Equity
Cash or property contributed to a partnership by a partner. The partner receives a like amount of capital account credit for its contribution.

Exit Taxes
When the cumulative tax losses claimed by an investor exceed the amount of capital invested, then the investor will recognize a gain at the time of disposition of the property or investor’s interest in the partnership. This gain is taxable, and will result in a tax liability, which is referred to as an “exit tax,” meaning the taxes due when the investor exits the partnership.

Extended Use Agreement
An agreement between the owner and housing credit agency extending the low-income housing restrictions an additional 15 (or more) years beyond the initial Compliance Period. Federal extended use agreements are required for LIHTC projects with credit allocations after 1989, and many states impose additional extended use restrictions.

Fair Market Value (FMV)
The value of the partnership assets determined by a third party appraisal.

Fiduciary Responsibility
The responsibility of a person or company (syndicator) to act for the benefit of a beneficiary (investor), within the scope of the relationship.

Foreclosure
An action by a lender to judicially sell property in order to satisfy its debt caused by the failure of a party to make required payments on a mortgage loan. Upon foreclosure, title to the property transfers to the purchaser at the foreclosure sale.

Fair Market Value (FMV)
The value of the partnership assets determined by a third party appraisal.

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An action by a lender to judicially sell property in order to satisfy its debt caused by the failure of a party to make required payments on a mortgage loan. Upon foreclosure, title to the property transfers to the purchaser at the foreclosure sale.
Forgiveness of Debt
The entity holding claim to a debt/loan acknowledges and waives its right to repayment of that debt. Forgiveness of debt is income to the party whose obligations have been released.

Gross-up Factor
A method of calculating the income tax cost to an exiting partner whereby the limited partner’s income tax incurred upon exiting or dissolving a partnership is multiplied by a factor to account for the tax on the income that the limited partner will receive when the general partner pays the limited partners exit tax (i.e., 135% where the tax rate is 35%).

Hard Debt, 1st Mortgage, Must Pay Debt
Any debt or liability incurred by the partnership with required payments regardless of cash flow.

HOME Funds
Federal funds that may be granted or loaned to a project from a city or state government. If a loan, the interest rate, term and amortization period may vary per project.

HOME Compliance Period
For rehabbed units, the Compliance Period is 15 years and for new construction, 20 years. Tenant files are required to be maintained for an additional 3-year period after move-out. The Partnership should confirm with their local HOME administrator on the monitoring requirements in years 16-20. It is assumed that HOME agencies will monitor HOME units after year 15.

Internal Rate of Return (IRR)
The IRR for an investment is the discount rate at which the total present value of future cash flows equals the cost of the investment.

Land Use Restriction Agreement (LURA)
The document containing Affordability Restrictions and other restrictions placed on the project.

Limited Liability Company
A state law ownership entity comprised of one (in certain states) or more members, which in a tax credit deal is formed for the sole purpose of owning real estate. Limited Liability Companies are disregarded entities for state and federal tax purposes so the losses, credits and profits are passed through to the partners based upon their respective interests.

Limited Partner
The limited partner is typically an investor or investors, or a fund made up of investors, who own up to 99.99% of the interests in the limited partnership. The limited partner(s) look to the general partner of the partnership to oversee the day to day operations of the partnership. The limited partnership is a vehicle for investors to receive a return on their investment in the form of tax credits, loss benefits and residual value upon disposition.

Limited Partnership
A state law ownership entity comprised of a general partner and one or more limited partners, which in a tax credit deal is formed for the sole purpose of owning real estate. Limited partnerships
are disregarded entities for state and federal tax purposes so the losses, credits and profits are passed through to the partners based upon their respective interests.

**Limited Partnership Agreement**
A comprehensive agreement between the limited partner and general partner that reflects the duties, rights, fiduciary obligations and responsibilities of the partners. The Partnership Agreement is the definitive guide to financial requirements and oversight of the operation and disposition of the partnership assets. Partnership Agreement requirements vary by syndicator and by investment funds.

**Low-Income Housing Tax Credit (LIHTC)**
The federal tax credit allowed by Section 42 of the Internal Revenue Code that leverages private capital and investor equity to produce affordable housing. See page 7 of this guide for more information.

**Lower Tier**
Refers to the property-level operating partnership or limited liability company whose partners or members are partnerships, generally referred to as Upper Tier Partnerships.

**Member**
A non-managing member is typically an investor or investors, or a fund made up of investors, who own up to 99.99% of the interests in the Limited Liability Company. The non-managing member(s) look to the managing member of the company to oversee the day to day operations of the company. The limited liability company is a vehicle for investors to receive a return on their investment in the form of tax credits, loss benefits and residual value upon disposition.

**Minimum Sales Price**
Applies to Qualified Contract terms for projects with Extended Use Agreements. Per Section 42(h)(6) of the Code, the Minimum Purchase Price for a 100% low-income building equals the outstanding indebtedness secured by the building, plus adjusted investor equity in the building, plus other capital contributions less cash distributions. (Adjusted investor equity means the amount of cash invested with respect to the project increased by the cost of living adjustment for the calendar year.) Until further regulation by the IRS, subject to clarification and interpretation on a state by state basis.

**Minimum Gain (704b)**
The amount by which nonrecourse debt secured by the Property (land and buildings) exceeds adjusted basis in the security property.

**Non-Recourse Debt**
Debt for which no one can be held personably liable (i.e., no partner bears economic risk of loss). So, the creditor’s only remedy upon default is usually to foreclose upon the property that secures the debt.

**Operating Reserves**
Funds set aside for a project to utilize if the project is unable to meet its cash flow needs or does not have the funds available to
pay for a Capital Improvement.
Note: Reserves are assets of the partnership and may be available for distribution to the partners upon sale of the property, unless they are collateral for existing loans. Through negotiation, reserves may be donated to the nonprofit sponsor, expensed as a fee, capitalized into the property or used to pay exit taxes. Some partnership agreements provide for an Exit Tax Reserve to pay exit taxes.

**Outstanding Debt**
The sum of all debt secured by the Project including accrued interest, that is due and payable at the end of the Compliance Period. Note: Although a loan may have a 30 year term, upon a transfer, including at year 15, all debt must be repaid, assumed or forgiven, unless the lender approves assumption of the debt by the new owner.

**Placed In Service Date (PIS)**
The date the building is ready for occupancy, usually evidenced by a Certificate of Occupancy.

**Reallocation**
Changing the allocation of taxable deductions or benefits during the Compliance Period. One method to reduce exit taxes to a limited partner is by reallocating losses from the limited partner to the general partner.

**Recapture of Tax Credits**
The owner is obligated to maintain the required percentage of low-income units in the project, and by building, through annual tenant income certifications and rent restrictions. Failure to meet this obligation can result in the filing of form 8823 (LIHC Agencies Report of Noncompliance or Building Disposition) with the IRS and the recapture of credits for the unqualified units. General partners are generally obligated to provide tax credit guaranties if any units fall out of compliance. Foreclosure on the Project or sale of the Project (or a partnership interest) before the end of the Compliance Period can also cause recapture unless a bond is posted and the Project remains low-income.

**Replacement Reserves**
Reserves, usually funded from current cash flows, established to replace long-lived items on the property. See discussion of Operating Reserves.

**Residual Value**
The value of an interest or real estate after all costs of sale (including repayment of all mortgages) have been deducted.

**Resyndication**
The process of applying for new tax credits once a project’s Compliance Period is over.
Note: The IRS allows projects to receive new tax credits following the end of the Compliance Period if they are eligible under the State’s Qualified Allocation Plan (QAP). Some State QAP’s provide special set asides to preserve affordability. The IRS has special regulations regarding the ownership structure with resyndicated projects and the Sponsor should consult with their attorney and/or CPA to review the requirements.
Right of First Refusal
A right offered to tenants (in co-operative form or otherwise), a resident management corporation, a qualified non-profit organization or a government agency, which allows the holder the right to purchase the real property (real estate) at a Minimum Purchase Price. The Minimum Purchase Price is equal to the principal amount of indebtedness secured by the property (other than indebtedness incurred within the 5-year period ending on the date of the sale to the purchaser), and all Federal, State, and local taxes attributable to such sale. This right may or may not require an offer from a third party to purchase the real property. Statutory authority for the right of first refusal is contained in Sec. 42(i)(7) of the Code, which applies to projects with LIHTC tax credits allocated after 1989.

Sale of Limited Partner Interest
The limited partner’s interest is sold or transferred to another party. The sale of the interest may be as little as $1.

Sale of Real Estate
The sale of the real estate owned by the partnership. After the real estate is sold, the partnership may be dissolved. This may cause an assessment of transfer taxes. Any reserves associated with the project are assets of the partnership, not part of the real estate, and may be available for distribution at dissolution.

Sponsor Debt
A loan made to a project from a sponsor. Typically these are 2nd, 3rd, or 4th mortgages that are cash flow contingent and have accruing interest.

Syndicator
This corporate entity raises capital from corporations for investment in housing qualifying for Low-Income Housing Tax Credits. The Syndicator is usually the general partner of a Fund that is the limited partner in a LIHTC limited partnership.

Tax Credit Recapture
See Recapture.

Taxable Gain
See Capital Gain.

Taxable Loss
See Capital Loss.

Tax Rate
The rate at which exit taxes are calculated. For corporate taxpayers the Federal tax rate is usually assumed to be 35%. An additional state tax rate may also be applied.

Term
The length of time before a loan is due to be repaid.

Total Benefits
Amount of benefits, generally Low Income Housing and/or Historic Tax Credits plus losses that the Limited Partner is expected to receive. Often discounted back to reflect a targeted return on investment.
**Transaction Costs**
Expenses related to sale or transfer of a property or a partnership interest. Costs may include items such as title work, appraisal, accounting fees, legal fees, transfer taxes and transfer fees.

**Transfer Tax/Fee**
A fee that is charged by a governmental entity upon sale (transfer). This fee may be incurred if the project is sold, but may be avoided in some states if the partnership interests are sold instead.

**Upper Tier**
The investment partnership where the syndicator is the general partner and investors are the limited partners. Some syndicator reserves may be held at this level.

**Yield Maintenance**
A method that allows an investor to receive additional benefits in order for it to obtain its projected tax benefits. In a year 16 transaction, this could be payment of cash to the limited partner to increase its total benefits to the amount originally projected. In earlier years, it could be an adjustment to a capital contribution.
APPENDIX B: ENERGY

EFFICIENCY FINANCING OPTIONS

Additional Energy Efficiency Financing Options

The following financing options may or may not be compatible with HPD-originated loans. Project sponsors should consult with HPD to understand which tools are available with each specific Year 15 arrangement.

Loan Programs

HDC Program for Energy Retrofit Loans (PERL): PERL is a partnership between HDC and the New York City Energy Efficiency Corporation (NYCEEC) to facilitate energy improvements and clean heat conversions.

- Administrator: NYC Housing Development Corporation and NYCEEC
- Eligible Properties:
  - HDC must hold first mortgage and/or property is participating in an HPD program
  - Property meets or exceeds minimum historical Debt Service Coverage ratio
  - Good standing with HDC and HPD with no defaults or delinquencies in the past 3 years
  - Demonstrated potential for at least 15% energy savings
  - Property’s heat and hot water payments are made by the building owner
- Assessment Type: ASHRAE Level II Audit
- More Information: PERL Term Sheet

Rebate and Grant Programs

NYSERDA Multifamily Performance Program (MPP): This program provides rebates for comprehensive building energy retrofits. Higher incentive amounts are available for affordable properties.

Note: This program will be discontinued for market rate buildings on December 31, 2015

- Administrator: New York State Energy Research and Development Authority (NYSERDA)
- Eligible Properties:
  - Buildings must have 5+ units and 4+ floors
  - At least 50% of the buildings gross heated footage must be residential space
  - The building must pay into the System Benefits Charge (SBC)
  - Cannot receive funds from incentives or rebates from utility programs or have received such funds in the last 12 months
- Assessment Type: ASHRAE Level II
- Rebate Amounts: Base $950 per unit, plus performance payouts:
  - 20% - 22% energy reduction: $200/unit
  - 23% - 25%: $250/unit
26% - 28%: $300/unit
29% + $350/unit

• Owner Contribution: Any upgrade amount not covered by incentives. Rebates are reimbursements, so costs must be covered upfront by owners.
• More Information: NYSERDA MPP Program

ConEd Multifamily Energy Efficiency Program (MEEP): Consolidated Edison (ConEd)'s MEEP provides both free, direct-install measures, such as lightbulbs and smart strips for units, and rebates for more comprehensive common-area equipment, such as HVAC upgrades and building management systems.
  • Administrator: Consolidated Edison
  • Eligible Properties: Properties must have 5-75 units, pay into the SBC, and at least 50% of the gross heated space must be residential
  • Assessment Type: ConEd performs a free “energy survey”
  • Rebate Amounts: Aside from the free, in-unit measures, ConEd will cover 50% of total project costs
  • Owner Contribution: Eligible project cost minus incentives
  • More Information: ConEd Multi-family Energy Efficiency Program

Weatherization Assistance Program (WAP): WAP assists income-eligible families and buildings by reducing their heating and cooling costs and addressing health and safety issues in their homes through energy-efficiency measures. Currently, work performed under WAP must be performed before or, preferably, after work subsidized by HPD.
  • Eligible Properties: tenants must be at or below 60% of the state median income to qualify.
  • Assessment Type: WAP providers will perform an comprehensive audit
  • Rebate Amounts: 75% of project costs for multifamily buildings
  • Owner Contribution: 25% of project cost
  • More Information: Weatherization Assistance Program

National Grid Multifamily Rebate Program: Similarly to ConEd, National Grid offers both a free, direct-install program that offers in-unit measures such as faucet aerators and low-flow shower heads, and additional rebates for larger measures, such as new, efficient boilers.
  • Eligible Properties: Properties must have 5-75 units and be a residential National Grid customer
APPENDIX C: ENERGY STAR NO- AND LOW-COST CHECKLIST FOR SAVING ENERGY AND WATER IN MULTIFAMILY HOUSING