



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING -
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Notice: H 2019-03

All Multifamily Regional Directors

Issued: 02-21-19

All Multifamily Branch Chiefs

All Multifamily Operations Directors

Expiration: This Housing Notice (“HN”)

All Multifamily Asset Management Directors

remains in effect until amended, revoked or superseded.

All Multifamily Field Counsel

All Contract Administrators

Multifamily Accelerated Processing (“MAP”)

Lenders

SUBJECT: Section 221(d)(4) and Section 220 New Construction and Substantial Rehabilitation Multifamily Projects with Low Income Housing Tax Credits (“LIHTC” or “Tax Credit”) Pilot Program

I. Purpose

With this Notice and related Mortgagee Letter, HUD is announcing a new phase to the Department’s Low-income Housing Tax Credit Pilot Program (the “New Pilot”) under the authority of the Housing and Economic Recovery Act of 2008, Public Law 110-289, in subtitle B of Title VIII, cited as “the Housing Tax Credit Coordination Act of 2008 (HERA)”, for streamlining the review process for FHA mortgage insurance application processing. The New Pilot covers New Construction and Substantial Rehabilitation projects under Section 221(d)(4) and Section 220 of the National Housing Act. This guidance describes how the New Pilot will work for such projects, including project eligibility criteria, underwriting criteria, application requirements and the HUD application review process.

The New Pilot continues and expands the Department’s support for the LIHTC program which is the primary source of creating new and preserving existing multifamily affordable housing units, and the primary tool for encouraging the investment of private capital in affordable rental housing. The New Pilot is particularly important at this period in the LIHTC market when the amount of equity invested in many projects has been reduced due to the lowering of corporate tax rates. The somewhat higher leverage available to a LIHTC project with an FHA insured mortgage can help fill the gap in the project’s sources of funds and make a project financially feasible to fund. The streamlined process in the New Pilot is intended to further align HUD’s Section 221(d)(4) and Section 220 platform with the programmatic requirements of the LIHTC program and further improve HUD’s responsiveness and application processing times.

II. Background

Housing Notice 2012-1 launched a pilot (the “Tax Credit Pilot” or “Pilot”), mandated by the Housing and Economic Recovery Act of 2008, Public Law 110-289, in subtitle B of Title VIII, cited as the Housing Tax Credit Coordination Act of 2008 (HERA), to streamline FHA mortgage insurance applications for projects with equity from the LIHTC program. The Tax Credit Pilot created a separate processing track for projects under the Section 223(f) refinancing program. The Pilot has been very successful and has resulted in a large increase in the number of insured mortgages provided under Section 223(f) that support projects with LIHTC.

The New Pilot introduces two modified processing tracks for Section 221(d)(4) and Section 220 new construction and substantial rehabilitation projects. The two processing tracks outlined below are defined as the “Expedited Approval Process” track and the “Standard Approval Process” track. Under the Expedited Approval Process track, HUD’s review will be limited, and HUD will rely on the Lender’s due diligence during both the underwriting and construction phases. Under the Standard Approval Process track, HUD staff will perform a more thorough review during the underwriting phase and rely on additional lender oversight during the construction phase. Unless explicitly amended or waived by this Mortgagee Letter, all other sections of the MAP Guide remain applicable to Section 221(d)(4) and Section 220 LIHTC transactions, and capitalized terms not defined herein shall have the meaning therefor defined, or as used, in the MAP Guide.

III. Eligible Project/Transaction Types

The New Pilot is limited to Section 221(d)(4) and Section 220 New Construction and Substantial Rehabilitation projects with LIHTCs. Taxable or tax-exempt financing may be used, accommodating either 4% LIHTC transactions associated with tax exempt bonds or 9% LIHTC transactions. The LIHTC is designed to provide either 30 percent or 70 percent equity. The 30 percent equity, which is known as the 4% tax credit, covers new construction and substantial rehabilitation and is available only in combination with tax exempt bonds. The 70 percent equity, or 9% tax credit, is available on a competitive basis and does not require tax exempt bond financing. Applications for both Insurance of Advances and Insurance Upon Completion will be considered. Three project types are eligible under this Pilot:

- A. Nine (9)% LIHTC, New Construction Projects. These transactions consist of projects to be built with a new LIHTC allocation and new equity investments. As with existing LIHTC transactions, 90% or more of the units must be restricted for LIHTC occupancy, and the market analysis, appraisal and underwriting must conclude that the achievable LIHTC unit rents will be at least 10% below comparable market rents for each unit type.
- B. Four (4)% or 9% LIHTC, Substantial Rehabilitation Projects with Project-Based Section 8 Housing Assistance Payment (HAP) Contracts covering at least 90% of the residential

units. These projects must have a 20-year HAP contract (or 15 years in the case of Project Based Vouchers) that is executed in advance of, or in conjunction with, the financing transaction. If a multi-year HAP contract term is already in effect, the Owner and HUD must terminate it (an “early termination”) and execute a new Renewal Contract with a minimum 20-year term.

C. Four (4)% or 9% LIHTC, Substantial Rehabilitation projects being re-syndicated with LIHTC/Tax Exempt Bonds without Section 8 rental assistance and which have reached the end of their initial tax-credit compliance period. 90% percent or more of the units must be restricted for LIHTC occupancy and the market analysis, appraisal and underwriting must conclude that the achievable LIHTC unit rents will be at least 10% below comparable market rents for each unit type.

Re-syndicated LIHTC projects without Section 8 assistance must demonstrate sustained occupancy, defined as maintaining debt service coverage of at least 1.0 and 85% or greater occupancy for the previous 6 months. HUD may consider properties with lower recent occupancy levels on a case-by-case basis. If currently HUD-insured, existing Management Occupancy Reviews (MOR), Monthly Accounting Reports (MAR) and Real Estate Assessment Center (REAC) inspections will be taken into consideration and are to be provided by the assigned HUD Account Executive.

Re-syndicated LIHTC projects without Section 8 rental assistance must be underwritten with an Effective Gross Income (EGI) no greater than 110% of that achieved in the last full calendar year before application, and with expenses no lower than 90% of the prior year’s operating expenses.

IV. Opportunity Zones

The New Pilot, which encourages long-term investments in low-income urban and rural communities supports development in Opportunity Zones. Opportunity Zones are generally census tracts in low-income communities experiencing economic distress, under the definition of “low-income community” used in the New Market Tax Credit program. In July 2018, the Internal Revenue Service published a list of more than 8,700 qualified opportunity zones in the 50 states and U.S. territories. The list was made available in Internal Revenue Bulletin No. 2018-28 and can be found at <https://www.irs.gov/pub/irs-irbs/irb18-28.pdf>.

V. Expedited Approval & Standard Approval Processing

Applications submitted pursuant to this HN will be processed under either the Expedited Approval Process or the Standard Approval Process track, depending on the transaction parameters. The FHA loan size for both Expedited Approval Process and Standard Approval Process transactions may not exceed \$25 million.

A. Expedited Approval Processing

Eligible 9% LIHTC, Section 221(d)(4) and Section 220 New Construction projects and 4% or 9% LIHTC, Section 221(d)(4) and Section 220 Substantial Rehabilitation projects with project-based Section 8 HAP Contracts may be processed under the Expedited Approval Processing, subject to the additional conditions described below.

The Loan-To-Cost (LTC) ratio on the first mortgage for 9% LIHTC, Section 221(d)(4) and Section 220 New Construction projects may not exceed 65% of mortgageable costs.

The LTC ratio on the first mortgage for a substantial rehabilitation, 4% or 9% LIHTC project with project-based Section 8 HAP contracts covering at least 90% of the residential units may not exceed 75% of mortgageable costs.

The goal of the New Pilot is to issue a firm Commitment under the Expedited Approval Process within 30 calendar days of HUD's receipt of an acceptable application and to close transactions within 60 calendar days of Firm Commitment issuance.

An acceptable application will result in an increased reliance by the Department on the Lender and therefore lender accountability, on the lender's due diligence, underwriting and construction monitoring activities. The lender is responsible for making a determination of the acceptability of the development team members, including the borrower and its principals, determining the recommended maximum mortgage amount and other key terms of the loan, engaging all third-party consultants and analysts (including an acceptable MAP Guide compliant appraisal, if required and if one has not been prepared for the Housing Finance Agency (HFA) and providing oversight.

An Appraisal report prepared for the HFA awarding the tax credits that is compliant with both the current Uniform Standards of Professional Appraisal Practice (USPAP) and the MAP Guide may be submitted with the application. The report must include valuation of the land, a restricted income analysis (the analysis must consider all Section 8 Project Based subsidies and other low-income rent restrictions) and cost approach to value.

If required, a market study that has been prepared for the borrower by a third-party market analyst is acceptable.

HUD's Designated Pilot Underwriter (DPU) will review the application by: a) performing the Active Partners Performance System (APPS) 2530 Property Submission review; b) reviewing the lender's conclusions as to the acceptability of the market; c) ensuring the project has an approved Affirmative Fair Housing Marketing Plan (AFHMP); d) conducting the Environmental Review; and e) reviewing plans, specifications, and the lender's certification for compliance with civil rights laws, applicable accessibility requirements, and lead safety requirements (found in 24 CFR part 35, subparts H, J, and K, as applicable and if the property was

built before 1978). Asset Management will conduct their management analysis review in accordance with Chapter 10 of the MAP Guide and other outstanding guidance. The DPU may consult with the Economic Market Analysis Division (EMAD) in assessing market conditions for the market-rate units, including comparable rents and absorption rate.

By regulation (24 CFR 50.32) Environmental Assessments covering over 200 units must be sent to the Field or Regional Environmental Officer for review and comment; therefore, these projects are not eligible for the Expedited Approval Process track.

Typical environmental risk factors that may be acceptable under the Expedited Approval Process include, but are not limited to: a) radon mitigation, b) asbestos remediation, c) Lead Based Paint (LBP) remediation, d) removal of intact Underground Storage Tanks (UST) with no evidence of release and soil contamination, and e) previously contaminated sites with a No Further Remediation or No Further Action letter at residential standards. If you have questions about what environmental risk factors are acceptable, please contact the Designated Pilot Branch Chief for further guidance.

During the construction phase, HUD will approve the initial and final draws, and all Permission to Occupy requests and will conduct construction inspections as directed in the MAP Guide.

HUD staff will not have to approve Change Orders but may reject changes within five business days of receipt of the change request from the lender. The HUD Inspector remains responsible for making a preliminary determination of technical acceptability before the change is submitted for approval to the lender.

Between Firm Commitment and Initial Endorsement, the lender is responsible for the review and approval of construction cost increases over 5% pursuant to items 1-5 below.

1. There are sources of funds in the transaction that can cover the associated cost increase without increasing the FHA insured mortgage;
2. The lender's Architectural, Engineering, and Cost (AEC) analyst has detailed the reasons for the cost increase in the Final AEC submission and has found them to be acceptable and reasonable;
3. The Reserve for Replacement recommendations remain valid or have been revised to account for changes in scope associated with the cost increase;
4. The contingency percentage approved for the transaction has been recalculated using the higher construction cost; and
5. There is no associated request to increase the FHA insured mortgage, other than additional loan proceeds that would be available based on the underwritten and approved Net Operating Income (NOI), due to a final placed rate of interest lower than the processing rate.

During the construction phase, HUD does not need to approve the release of funds from the Initial Operating Deficit (IOD), Working Capital, and all other escrow accounts. Non-Identity of Interest lenders (i.e. lenders which are not affiliated with the Syndicator, the equity investor or the borrowing entity) may release amounts from the IOD, Working Capital and other escrow accounts for uses specifically allowed by published HUD guidance and the relevant Escrow Agreements.

The IOD must be funded and controlled by the lender no later than the Substantial Completion Date. An IOD is not required for substantial rehabilitation transactions with stable occupancy, no permanent tenant displacement or “tenant-in-place” rehabilitation, and/or other situations with minimal lease up required to achieve break even and stabilized occupancy levels. When it is anticipated that the project’s net operating income will be inadequate to support the insured loan, the MAP Guide should be followed for sizing the IOD, regardless of the size of the tax credit equity investor required Operating Deficit Reserve (ODR). The investor required (ODR) may be credited to HUD’s higher IOD requirements. Any incremental investor-required ODR can be funded at a later date pursuant to the requirements of the Partnership Agreement or LLC Operating Agreement.

B. Standard Approval Process

Eligible 4% or 9% LIHTC, Section 221(d)(4) or Section 220 Substantial Rehabilitation projects being re-syndicated with LIHTCs/Tax Exempt Bonds without Section 8 rental assistance may be processed under the Standard Approval Process, subject to the additional conditions described below.

The LTC ratio on the first mortgage for a substantial rehabilitation, 4% or 9% LIHTC project without Section 8 PBRA may not exceed 75% of mortgageable costs.

The goal of the New Pilot is to issue a Firm Commitment under the Standard Approval Process within 60 calendar days of HUD’s receipt of an acceptable application and to close transactions within 60 calendar days of Firm Commitment issuance.

HUD’s review and approval process by HUD’s DPU includes reviewing the lender’s conclusions as to the acceptability of: development team members, including the borrower and its principals, the recommended maximum mortgage amount and other key terms of the loan, and the acceptability of the market; performing the APPS 2530 Property Submission review; the HUD-approved AFHMP; approving the Relocation Plan (including temporary relocation from pre-1978 housing associated with rehabilitation per 24 CFR 35, subparts G and J, and section 35.1345); and conducting the Environmental Review. HUD’s AEC review will consist of a review of the plans and specifications for compliance with the Fair Housing Act, other civil rights laws, lead safety requirements (found in 24 CFR part 35, subparts H, J, and K, as applicable and if the property was built before 1978), applicable physical accessibility

requirements, determining whether the scope of work is appropriate, confirming that costs are appropriate for the proposed scope of work, and conducting a replacement reserve analysis. The DPU may consult with EMAD in assessing market conditions for the market-rate units, including comparable rents and absorption rate.

All Standard Approval Process transactions must include a lender-engaged, USPAP and MAP Guide compliant Appraisal Report.

A market study that has been prepared for the borrower by a third-party market analyst is acceptable.

Projects involving environmental risk factors that will require extensive analysis and consideration by HUD are not eligible for the Expedited Approval Process but may be submitted under the Standard Approval Process track. Such risk factors include, but are not limited to:

1. Noise measurement above 65 dB,
2. Historic properties,
3. Contamination that will require construction period site remediation to achieve regulatory closure through a No Further Remediation/ No Further Action (NFR/NFA) letter beyond the typical risks allowed under the Expedited Approval Process track,
4. Project sites containing a floodplain or wetland that do not meet an exception at 24 CFR section 55.12(b) or (c),
5. Acceptable separation distance (ASD) risks from adjacent Above Ground Storage Tanks (ASTs) subject to HUD's regulation at 24 CFR Part 51 Subpart C, and
6. Acceptable separation distance risks from high pressure pipelines transferring flammable and combustible liquids and gases as referenced in MAP Guide 9.5.P.1.
7. The property having been built before 1978 and not having been found to be lead-based paint free by a lead-based paint inspection by a certified lead-based paint inspector or risk assessor, for which, abatement of all lead-based paint on the property is required by 24 CFR 35.630.

Asset Management will conduct their management analysis review in accordance with Chapter 10 of the MAP Guide and other outstanding guidance.

During the construction phase, HUD will approve the initial and final draws, and Permission to Occupy requests, and will conduct construction inspections as may be directed in the MAP Guide. The lender will approve interim draws.

Additional processing and construction monitoring guidance for substantial rehabilitation projects is further outlined in Sections X and XI below.

VI. Eligibility Requirements Applicable to Expedited and Standard Approval Process Tracks

- A. Lenders and underwriters must be skilled in underwriting and Closing multifamily housing loans with FHA multifamily mortgage insurance. Only lenders who have closed a LIHTC deal with HUD in the past 5 years will be eligible for the New Pilot. HUD will review the FHA insured loans Lenders have Closed in the previous 5 years and the number, name, location, original amount, HUD office where the application was processed and whether or not a loan is in default, an election to assign the loan to FHA for insurance benefits has been filed, or the loan has been assigned to FHA. If an FHA loan was sold since origination and is serviced by another Lender, please provide that information. HUD will also review the experience of underwriters, to determine if underwriters have a minimum 3 years recent experience, worked regularly in the multifamily lending business, and underwritten at least 3 funded multifamily loans within the previous 5 years.
- B. All underwriters employed by MAP-approved Lenders are required to attend HUD training on MAP Guide financed FHA-insured deals with LIHTC before they submit an Application for Firm Commitment under the New Pilot. Only lenders who have closed a LIHTC deal with HUD in the past 5 years will be invited to the training, and thus be eligible for the New Pilot.
- C. Lenders shall conduct sufficient due diligence to ensure that all development team members have significant, successful experience with multifamily housing development generally and FHA insurance programs and the LIHTC program specifically in order to participate in the New PILOT. Moreover, all development team members must have experience commensurate in both scope and scale to the proposed project to be submitted to HUD.
- D. All 2530 findings or flags must be resolved prior to submission of an application.
- E. At least 25%, but no more than 75% of the Developer's Fee must be deferred and paid from available project cash flow during the initial LIHTC compliance period.
- F. During the substantial rehabilitation period, on site or offsite tenant relocation is permitted, and is required during rehabilitation that involves the disturbance of painted surfaces if the property was built before 1978, in accordance with the occupant protection and worksite preparation standards at 24 CFR 35.1345, unless that paint is demonstrated not to be lead-based paint by a certified lead-based paint inspector or risk assessor, but relocation of any tenant from their unit may not exceed 9 months. The application for any project that entails relocation must include a detailed relocation management plan addressing on site staffing, a work and relocation schedule, and a plan and budget for relocation of tenants with funds for relocation expenses escrowed. Properties with rental assistance may require compliance with the Uniform Relocation Act (URA) and lenders are advised to obtain counsel experienced in this area and work with the Originating Office to determine if URA applies.
- G. The lender must submit a narrative Environmental Report/ Phase I Environmental

Site Assessment to provide information evidencing compliance with the National Environmental Policy Act (NEPA) environmental factors, the laws and authorities listed at 24 CFR 50.4, and any issues that might affect the acceptability of the project, including any issues of compliance with state environmental laws. The Environmental Report to HUD must identify any significant environmental issues to be resolved.

- H. If a Concept Meeting is held, environmental risk factors should be discussed in detail at the meeting to determine eligibility for either the Expedited Approval Process or Standard Approval Process track. If relevant to the project proposal, the DPU must contact any interested federally recognized tribes (see HUD Notice CPD-12-0006 and MAP Guide 9.5.D.7) within 5 days of HUD issuing a Concept Meeting Encouragement Letter to ensure a timely response. The DPU must also contact the State Historic Preservation Officer (SHPO) (see MAP Guide 9.5.D.4-6) and when necessary contact other consulting parties and the public at the same time.
- I. Lead-based paint abatement must be specified if the property was built before 1978 and has not been found to be lead-based paint free by a lead-based paint inspection by a certified lead-based paint inspector or risk assessor, in accordance with the Lead Safe Housing Rule (LSHR) at 24 CFR 35.630.

VII. Ineligible Projects

Projects not eligible for either the Expedited Approval Process or Standard Approval Process due to the additional complexity introduced by other factors include:

- A. Four 4% LIHTC, new construction projects;
- B. Rental Assistance Demonstration (RAD) projects;
- C. Projects involving Historic Tax Credits or New Markets Tax Credits;
- D. Projects involving adaptive re-use of non-residential structures;
- E. Projects involving significant demolition with new construction or rehabilitation;
- F. Projects involving gut rehabilitation;
- G. Projects involving inexperienced Development Team Members, including property managers.

VIII. Tax Credit Allocations, Investor Participation and Debt Commitments

The Firm Commitment application for any tax credit project must include written evidence from the appropriate state or local allocating agency of: a) A final allocation of 9% tax credits, or b) Acknowledgement of eligibility for 4% tax credits and/or acknowledgement of eligibility for an allocation of private activity bond cap.

However, the timing of tax credit and bond cap allocations varies by state and, in some cases, the Firm Commitment application must be submitted before the final allocations can be secured. In those cases, a reservation letter from the state or local allocating agency must be submitted as evidence that the proposed project has been reviewed and approved by the agency and that 9% tax credits, 4% tax credits and/or private activity

bond cap in amounts sufficient for project feasibility are available and have been reserved for the project. The reservation letter(s) must clearly state the process, timing and any conditions to be met for a final allocation of tax credits or bond cap.

The Firm Commitment Application for any tax credit project must include a Letter of Intent from an equity investor or syndicator detailing the terms, amounts and any conditions of the proposed investment and evidencing the active involvement of the investor partner in the specific transaction, which letter must remain in effect through the initial closing date.

The Firm Commitment application must also include Firm Commitments for all subordinate public and private debt financing that is proposed as additional sources of funds necessary for project feasibility. The commitments for all additional sources of funds must clearly state the process, timing and any conditions to be met for closing.

IX. Tax Credit New Pilot Application Processing: General

A. **Timing.** The Designated Pilot Underwriter will inform the lender of the target date for Firm Commitment issuance when the Firm Commitment application has been accepted for processing. The target for Firm Commitment issuance is 30 calendar days (Expedited Approval Process) or 60 calendar days (Standard Approval Process) from Firm Commitment application acceptance, and the DPU will work closely with the lender throughout the review process to meet or exceed that target.

Within 10 business days of accepting a Firm Commitment application for processing, the DPU will schedule a kickoff call with the lender and field counsel to discuss transaction features with a goal of minimizing complications and obstacles. When the Firm Commitment has been issued, the transmittal letter will indicate the lender-requested target date for Initial Endorsement. HUD's closing target date may be extended at HUD's discretion if there are delays in the closing process outside of HUD's control, including incomplete submission of closing packages, or the lender or borrower is not ready to close. The HUD Closing Coordinator will schedule a pre-closing conference call within one week of Firm Commitment issuance with Office of General Counsel (OGC) field counsel, the DPU, the Office of Labor Standards and Enforcement, lender, borrower's counsel and other parties to the transaction to discuss the steps and timing necessary to achieve Initial Endorsement by the targeted closing date.

B. **Designated Regional/Satellite Pilot Offices.** HUD Headquarters (HQ) will determine which offices will participate in the New Pilot based on their staff training, experience with tax credit lending and capacity to execute New Pilot transactions as described in this Mortgagee Letter.

C. **Workload Sharing.** FHA Multifamily Production has developed a Workload Sharing system to facilitate the transfer of projects among HUD's Satellite/Regional Offices in order to balance various offices' workloads. New Pilot projects will be processed in one

of the designated New Pilot Offices, but will close in the project's originating office, which is based on a project's geographic location.

- D. Designated LIHTC/Pilot Branch Chief and Designated Pilot Underwriters. Each participating New Pilot Office will designate a Branch Chief as LIHTC New Pilot Team Lead and a predetermined number of senior underwriting staff to serve as DPUs. Each Office will also designate a senior underwriter- trained on the Opportunity Zone program and corresponding transactions- within the New Pilot Team to serve as the DPU for projects located in Opportunity Zones. Designated staff must be experienced in underwriting and/or reviewing LIHTC transactions generally, and they must have attended a HQ sponsored New Pilot Training Session or an equivalent training approved by HQ prior to serving as a DPU.
- E. DPU. The DPU will serve as the lender's primary point of contact for the transaction, will have primary responsibility for HUD's application review and may consult with HUD technical specialists as needed to identify and mitigate risk issues. The DPU who reviewed the Firm Application will remain assigned to the transaction until Initial Endorsement and will work to support the Closing Coordinator in the Originating Office regarding amendments, closing document review and Housing concurrence to local OGC field counsel, as needed. To facilitate an efficient closing process, Housing's primary amendment and closing review responsibilities will not be delegated by the Closing Coordinator to multifamily staff members who are not familiar with the transaction.
- F. Application Fee and Project Number Request. The lender must request a project number following the instructions found in Mortgage Letter 2015-13.
- G. Application Submission. The application will be submitted to the Originating Office (i.e. the office with geographic jurisdiction over the project) in electronic format, along with two original paper copies.
- H. Application Completeness. The lenders' application- for Expedited and Standard Approval Processing, including the Lender's Narrative and exhibits, must be complete at submission. Within 5 business days of receipt, the DPU will advise the lender of missing application exhibits in the application. The lender will have 5 business days to correct the deficiencies. If the deficiencies cannot be corrected within the 5 business days, HUD will reject the application. Lenders may be directed to submit under regular MAP processing if the lender cannot demonstrate that they are ready to proceed to Firm Commitment issuance.
- I. Application Exhibits. See 'Exhibit A' for a list of required documents. If anticipated that there will be legal concerns or challenges during the closing review, then the lender may submit a draft set of closing documents with the Firm Commitment application.
- J. Firm Commitment Processing Only. All New Pilot applications will be one stage,

Direct-to-Firm applications. The DPU will review the application and exhibits and complete the processing and will either conduct or arrange for the environmental review.

- K. Concept Meetings. To establish the transaction's eligibility for the New Pilot and to discuss contemplated waiver requests, action required by HUD's Asset Management division, and transaction complexity and underwriting considerations, including environmental matters, a Concept Meeting should be held.

Concept Meetings are optional. If requested, Lenders must contact the Originating HUD office to schedule the meeting. Meetings will include a DPU and/or Underwriting Branch Chief from the New Pilot Office. Concept meetings may be held via teleconference or in person at either the Originating Office or the Pilot office, whichever is most convenient for the lender. If available, the AFHMP should be placed into review shortly after the Concept Meeting is held to avoid delays when the Firm Application is submitted.

Participation in a Concept Meeting does not necessarily mean that an application will be approved for submission under the New Pilot and staff may decide that a proposed New Pilot application is more appropriate for standard MAP Guide processing. At the Concept Meeting, the Lender should demonstrate that the project meets all of the New Pilot's eligibility criteria or make a compelling case in the Lender's Narrative for waiving any criteria that the project does not meet.

- L. OAMPO. All OAMPO functions typically processed in the field will continue to be conducted in the field. Concerns with renewal of HAP Contracts, rent increases, prepayment of existing FHA Insured loans, Flexible Subsidy Loan deferrals, 2530 approvals and other related waivers or approvals can be elevated to the Regional Director of Asset Management. HQ has designated Cindy Bridges, Account Executive, OAMPO, as the Point of Contact (POC) in OAMPO HQ for all New Pilot applications submitted under this Mortgagee Letter to address OAMPO policy questions raised by the Regional Offices.
- M. Architectural and Cost Reviews. These components of the application are eligible for streamlined processing, which involves a preliminary review based on less than 100% complete plans and specifications prior to Firm Commitment Issuance and a full review of complete, construction ready documents accompanied by a full lender architectural and cost report 30 days prior to Initial Endorsement.
- N. HAP Contracts. If a HAP Contract rent increase is requested and a Rent Comparability Study (RCS) is required, the lender must submit the RCS and an appraisal as part of the application. The income and expenses requested by the borrower and approved by the Project Based Contract Administrator (PBCA) should be consistent with the lender's conclusions and any discrepancies must be clearly explained.
- O. Underwriting Income and Expenses for PBRA Section 8 Projects. Section 8 HAP

renewal requests and rent adjustment requests must be delivered to the PBCA at least 60 days prior to the submission of the Firm Commitment application. The rents, expenses and debt service figures used in the lender's underwriting must be consistent with those in the Section 8 contract renewal request. If the debt service payment figure and/or any other line item in the income and expenses changes during the processing of the loan application, the lender must justify such changes in the application, and the borrower must provide the final figures to the PBCA once the Firm Commitment is issued. The PBCA will include the final debt service figure in the approved rents prior to closing of the loan.

- P. **Project Site Visit.** The DPU, or another designated HUD staff member, is required to perform a site visit to the project to assess whether: a) environmental conditions have been appropriately addressed, b) the proposed repair work and reserve for replacement schedule is appropriately estimated and sufficient to meet the project's physical needs over the term of the loan, and c) the borrower and management company have the capacity to effectively manage the property.
- Q. **Market Study.** The market study should be ordered and paid for by the lender. However, a market study that has been prepared for the borrower by a third-party market analyst is acceptable. The lender is responsible for the review and acceptability of all market studies submitted with the application. A separate market study, other than that which would be provided in the appraisal, is not required for projects with 90% or more project based rental assistance.
- R. **Waivers.** Processing of lender requests for programmatic or regulatory waivers may cause timeframes set forth in this Mortgage Letter to be delayed or extended.

X. Standard Approval Processing: Technical Discipline Areas

A. Architectural, Engineering and Cost (AEC) Review.

1. Role of the DPU and the HUD Construction Analyst (CA).

During the Firm Application review, the DPU will have the primary responsibility for reviewing the AEC components of the application.

For substantial rehabilitation projects, the AEC review will consist of a review of the plans and specs for compliance with the Fair Housing Act, other civil rights laws, lead safety requirements in 24 CFR part 35, subparts G, H, J, and K, as applicable (if the property was built before 1978 and has not been found to be lead-based paint free by a lead-based paint inspection by a certified lead-based paint inspector or risk assessor), and applicable physical accessibility requirements, determining whether the scope of work and costs are appropriate and conducting a reserve analysis. DPUs are encouraged to consult with the CA on questions or concerns and to mitigate risk. The CA will also assist in the review of the lender's AEC consultant's full report, which must be submitted with

the final plans, specs and costs at least 30 days prior to Initial Endorsement.

2. Streamlined AEC Review.

- a. The lender must submit a preliminary report with the Firm Application, followed by a full report with final plans, specifications and costs no later than 30 days prior to Initial Endorsement. The lender's submission of the drawings, specifications and cost estimates may be less than 100% complete, but the submission must include, at a minimum, the following information:
 - i. A review of the construction documents and a list of outstanding architectural review comments;
 - ii. An itemization of deferred submittals authorized by the lender's AEC analyst;
 - iii. A review and approval of Owner-Architect Agreements;
 - iv. An independent cost analysis and comparison to the contractor's trade payment breakdown along with a listing of outstanding cost review comments;
 - v. Completion of the AEC Sections of the Form HUD-92264;
 - vi. Completion of the Form HUD 92329 and consultant's detailed calculations used to complete the form; and
 - vii. An analysis of the future repair and replacement needs and recommendations for Replacement Reserve funding.

- b. The preliminary lender submission must contain the following certifications from the lender's AEC consultant:
 - i. Construction documents are clear, coordinated and biddable, as required by the scope of work and consistent with MAP Guide requirements and standards;
 - ii. Construction documents are sufficient to support construction cost estimation and the cost estimates include proper identification and segregation of off-site construction, demolition and unusual site conditions costs;
 - iii. Handicap accessibility, as required by the program type and regulations, is incorporated into the project design;
 - iv. Environmental compliance considerations are included and the construction costs include environmental remediation items;
 - v. Lead safety requirements are incorporated into the project design if the property was built before 1978;
 - vi. The correct Davis Bacon wage rate determination, in effect at the time, has been used by the general contractor in the cost estimate;
 - vii. 100% complete design is achievable in 60 days or less; and
 - viii. The costs on the contractor's trade payment breakdown will not increase by more than 5% between the preliminary submission and full submission.

- c. The final AEC report, in compliance with the requirements of the MAP

Guide, must be provided for HUD's review with the final plans and specifications and final costs 30 days before Initial Endorsement. This report must include:

- i. A detailed description and approval of changes in work scope and their associated cost impact that have resulted from any of the following during the period between the preliminary report submission and the full report submission: value engineering, changes required by permit review, alternative construction methods, substitution of materials or equipment, additions to work scope or improvements directed by the developer/borrower and changes required by other funding sources; and
- ii. A confirmation that Reserve for Replacement recommendations in the preliminary submission remain valid, or a submission of a revised recommendations with supporting analysis based on work scope changes.

3. Plans and Specifications.

Plans and specifications must document the entire scope of work, regardless of the classification of work and whether reconfigured space is involved. Design control flexibility for moderate rehabilitation involving repairs and Level 1 alterations in other parts of HUD's refinancing platform is not available to Section 221(d)(4) and Section 220 transactions submitted under the New Pilot. Half-sized plan sets are acceptable with the Firm Commitment application so long as they are appropriately scaled and dimensioned, allowing for detailed review of compliance with the Fair Housing Act, other civil rights laws, lead safety requirements (if the property was built before 1978), and applicable physical accessibility requirements. Final Plans submitted with the lender's full AEC report 30 days prior to Initial Endorsement must be full size sets and evidence local permit approval.

4. Flexibility on Forms HUD 2328 and 92448.

HUD recognizes that AIA forms G702/703 are widely used within the industry and the use of the HUD Trade Payment Breakdown (2328) and Contractor's Requisition (92448) generally requires that the contractor present costs and work progress in two separate forms. Eligible New Pilot transactions may use the G702/703 to present the trade payment breakdown and work progress in draw requests under the following conditions:

- a. The work scope is broken down and described within the divisions of work and trade items in sufficient detail to review costs and evaluate completion of work;
- b. Costs associated with land improvement, main building(s), accessory building(s), and contractor fees/soft costs are clearly segregated and subtotaled; and
- c. Forms HUD 2328 and 92448, though not filled in other than identifying

information for the project and participants, are attached to the G702/703 and signed evidencing the approval of HUD and all relevant parties, the associated certifications of the contractor and supervisory architect and acknowledgement of the “warning language” on the forms.

d. Use of the G702/703 form is optional.

5. Capital Needs Assessments (CNAs).

HUD requires that all CNAs prepared for the New Pilot be prepared, submitted and reviewed using the CNA e Tool. Guidance for preparing a CNA is found in Appendix 5 of the 2016 MAP Guide.

For new construction, the CNA must provide a description of the proposed construction (buildings, units, components, quantities) and an estimate of the expected durability of the proposed construction components with a corresponding plan to finance future capital needs.

For substantial rehabilitation, the CNA must include a physical inventory of the property and must characterize the condition and expected durability of that inventory for the purpose of budgeting for immediate and future capital repairs and replacements.

6. Construction Cost Increases above 5% between Firm Commitment and Initial Endorsement.

a. A threshold requiring further HUD approval in accordance with MAP Guide procedures in the event of construction cost increases above 5% will be applicable to the New Pilot. However, cost increases above 5% will likely be acceptable under the following conditions:

- i. There are sources of funds in the transaction that can cover the associated cost increase without increasing the FHA insured mortgage;
- ii. The lender’s AEC analyst has detailed the reasons for the cost increase in the Final AEC submission and has found them to be acceptable and reasonable;
- iii. The Reserve for Replacement recommendations remain valid or have been revised to account for changes in scope associated with the cost increase;
- iv. The contingency percentage approved for the transaction has been recalculated using the higher construction cost; and
- v. There is no associated request to increase the FHA insured mortgage, other than additional loan proceeds that would be available based on the underwritten and approved NOI, due to a final placed rate of interest lower than the processing rate.

B. Valuation Review

Appraisals. All Standard Approval Process transactions must include an appraisal report that is lender-engaged, compliant with both USPAP and the MAP Guide, and that presents a Net Operating Income (NOI) analysis using forms HUD-92273 and 92274, based on MAP Guide guidance, to inform Criterion 5 underwriting and HUD's review.

The DPU assigned to review the transaction will have primary responsibility for the valuation review. DPUs are encouraged to consult with the HUD appraiser to address concerns or risk issues, but the HUD appraiser will generally not be assigned to conduct a full valuation review.

C. Environmental Review

Projects involving environmental risk factors that will require extensive analysis and consideration by HUD are not eligible for the Expedited Approval Process track but may be submitted under the Standard Approval Process track. Such risk factors include, but are not limited to:

1. noise measurement above 65 dB,
2. historic properties,
3. contamination that will require construction period site remediation to achieve regulatory closure through an NFR/NFA beyond the typical risks referenced in Section V.A,
4. project sites containing a floodplain or wetland that do not meet an exception at 24 CFR section 55.12(b) or (c),
5. projects that have acceptable separation distance (ASD) risks from adjacent Above Ground Storage Tanks (ASTs) subject to HUD's regulation at 24 CFR 51 Subpart C,
6. projects that have acceptable separation distance risks from high pressure pipelines transferring flammable and combustible liquids and gases as referenced in MAP Guide 9.5.P.1, and
7. properties built before 1978 and not having been found to be lead-based paint free by a lead-based paint inspection by a certified lead-based paint inspector or risk assessor, for which, abatement of all lead-based paint on the property is required by 24 CFR 35.630.

The environmental review will be conducted by a trained HUD environmental reviewer (either the DPU or a staff person from the Technical Support Division) in accordance with MAP Guide Chapter 9. Environmental Assessments covering over 200 units must be sent to the Field or Regional Environmental Officer for review and comment; therefore, these projects are not eligible for the Expedited Approval Process track but may be submitted under the Standard Approval Process track.

D. EMAD Review

A market study that has been prepared for the borrower by a third-party market

analyst is acceptable. The lender is responsible for the review and acceptance of all market studies submitted with the application.

The DPU should consult with the Economic Market Analysis Division in assessing the determination of market conclusions, eligible income band, capture rate and absorption rate contained in the market study. Projects with insufficient demand for the units at the proposed rents should be rejected.

XI. Standard Approval Process: Construction Administration

A. Change Order Approval

Under the following circumstances, HUD does not have to provide final approval for change orders however, HUD's inspecting CA or contract inspector will make a preliminary determination of technical acceptability before the change is submitted for approval to the lender:

1. Betterments or improvements.
2. Equivalent changes involving a substitution of equal or better equipment/material when accompanied by a lender and Architect description of the substituted equipment/material, its comparability to the original and a certification confirming the substitution is equal to or better than the original.
3. Additive changes that: a) are not the result of errors/omissions of the architect, contractor or owner, b) do not exceed the lesser of \$50,000 or 10% of the contingency reserve, and c) do not, when added to previously approved change orders, result in usage of greater than 90% of the contingency reserve.
4. Time extension change orders for up to 30 days may be approved by the lender. Longer time extensions must be approved by HUD.
5. All other change orders that do not meet the above criteria require HUD approval.

The lender must sign and send copies of all approvals to HUD. HUD staff will not have to approve but may reject changes within five business days of receipt of the change request. HUD staff will inform the HUD Inspector of the disapproval. The HUD Inspector will modify the amount of the Contractor's Requisition to cover any noncompliance or construction removal.

B. IOD and Working Capital Administration

HUD does not need to approve releases from the IOD and Working Capital escrows except under the following conditions:

1. Releases requested for special and unique circumstances not allowed by the escrow agreements, regardless of the LTC ratio; and
2. Final release of remaining funds in both the IOD and Working Capital escrows, regardless of the LTC ratio.

Non-Identity of Interest lenders (i.e. lenders which are not affiliated with the Syndicator, the equity investor or the borrowing entity) may release amounts from the IOD, Working Capital and other escrow accounts for uses specifically allowed by published HUD guidance and the relevant Escrow Agreements.

C. IOD Calculation

An IOD is not required for substantial rehabilitation transactions with stable occupancy, no permanent tenant displacement or “tenant-in-place” rehabilitation, and/or other situations with minimal lease up required to achieve break even and stabilized occupancy levels. When it is anticipated that the project’s net operating income will be inadequate to support the insured loan, the MAP Guide should be followed for sizing the IOD, regardless of the size of the tax credit equity investor required Operating Deficit Reserve (ODR). The investor required (ODR) may be credited to HUD’s higher IOD requirements. Any incremental investor-required ODR can be funded at a later date pursuant to the requirements of the Partnership Agreement or LLC Operating Agreement.

D. Permission to Occupy

HUD will not delegate approval of Permission to Occupy to the lender or rely on the approvals of other professionals inspecting the property.

XII. Other Procedural Matters Specific to LIHTC Transactions

Bridge Loan structuring, secondary debt structuring and the treatment of Developer Fees for Tax Credit projects must follow guidance in the MAP Guide.

XIII. Role of HUD HQ.

Staff in the HQ Office of Multifamily Development will track and monitor projects processed under the New Pilot and will provide guidance to DPUs to help resolve issues and help manage the pipeline. The role of the HQ staff will also include:

- A. Holding monthly calls with New Pilot lenders and New Pilot Offices;
- B. Managing Loan Committee activity;
- C. Providing training to participating HUD and lender staff on the tax credit program, HUD lending policy and New Pilot program processing issues;
- D. Limiting the LIHTC New Pilot loan volume to \$250 million per fiscal year for at least three years following publication of this Mortgagee Letter;
- E. Tracking and monitoring LIHTC New Pilot activity to ensure compliance with the LIHTC New Pilot Notice, LIHTC New Pilot Mortgagee Letter, MAP Guide, and all applicable Handbook requirements. Project activity will be entered into and monitored at a HQ designated SharePoint site;
- F. Evaluating the impact of the LIHTC New Pilot, including its impact on application processing and construction timelines, the quality of the properties constructed, and the risk profile and performance of the loans guaranteed under the pilot, among

- other variables, in order to inform whether/how the New Pilot will be continued after three years; and
- G. Ensuring that all LIHTC New Pilot applications are available on SharePoint.

XIV. Issuance of Firm Commitment.

At completion of application processing and after receiving approval from the Originating Office Production Division Director, the DPU will present their recommendations to the LIHTC Pilot Loan Committee. Subject to the LIHTC Pilot Loan Committee's approval, either a Firm Commitment or a Rejection Letter, signed by the Originating Office Production Division Director, will be issued.

XV. Closing

The closing of New Pilot transactions will take place in the Originating Office, using the Section 221(d)(4) loan closing process described in the MAP Guide. Lenders should consider beginning preparations for closing by ordering the title and survey and by preparing the loan documents before issuance of the Firm Commitment.

XVI. Other Underwriting Guidance for Section 221(d)(4)/ Section 220 New Pilot Transactions

Unless specifically addressed in this Mortgage Letter, application requirements, underwriting standards and HUD review processes for New Pilot transactions will be governed by the 2016 MAP Guide.

XVII. Implementation

This Mortgage Letter is effective immediately. If there are any questions regarding this Mortgage Letter, please contact Elizabeth H. Arteaga, Housing Program Officer, Office of Multifamily Production at (202) 402-3584. Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877- 833-2483).

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

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EXHIBIT A

Section 221(d)(4)/ 220 LIHTC New Pilot Application Exhibits Checklist

Section 1: Underwriting

- 1-1
 - A. FHA Application Fee
 - B. Transmittal Letter
 - C. Completed Application Checklist
 - D. Completed Eligibility Checklist

- 1-2
 - A. Lender's Underwriting Narrative for New Construction and Substantial Rehab.
 - B. Lender Certifications (Pilot Form)
 - C. FHA Summary Report (LIHTC Wheelbarrow 2.0, Excel file)

- 1-3
 - A. Form HUD-92013
 - B. Form HUD-92013 D, if applicable
 - C. Lender's version Form HUD-92264 Multifamily Summary Appraisal Report w/
 - 1. Operating Deficit Calculation
 - 2. Listing of Mortgagor's Other Fees
 - 3. Listing of Contractor Other Fees
 - D. Form HUD-92264-A, Supplement to Project Analysis

- 1-4
 - A. Waiver Request(s)
 - 1. Request for Waivers Form HUD-2
 - 2. Supporting Documentation
 - 3. Section 220 only, provide evidence of eligibility

Section 2: Third Party Reports

- 2-1
 - A. Appraisal Report, with supporting forms (Appraiser Version)
Forms HUD-92273 and HUD-92274

- 2-2
 - A. Market Study, if required.

- 2-3
 - A. Environmental Review
 - 1. HEROS EA or CEST form and HEROS Partner Worksheets
 - 2. Environmental Report/ Phase I ESA
 - 3. Phase II ESA (if applicable)
 - 4. Approved Remediation or Corrective Action Plan (if applicable)
 - 5. Specialty Reports (if applicable and not included in Phase I ESA)

- 2-4
 - A. Architectural & Cost Review
 - 1. Architectural & Cost Report
 - 2. CNA e-Tool
 - 3. Engineer & Specialty Reports (including Soils Report & Foundation Analysis)

- 2-5
 - A. Other Reports
 - 1. Relocation Plan, if any, and resume of Relocation Professional
 - 2. Rent Comparability Study, if any
 - 3. Lead Safety
 - a. Completed Lead Disclosure Form, including any attachments (if the property was built before 1978)
 - b. Lead-Based Paint Inspection Report and, if available, Lead Risk Assessment Report (for a Section 221(d)(4) or Section 220 Substantial Rehabilitation Project if the property was

built before 1978)

Section 3: Management Agent

- 3-1 A. Organizational Chart, Identity of Interest only
- 3-2 A. HUD Management Forms
 - 1. Resume of Management Agent including Schedule of Managed Properties
 - 2. Form HUD-9832, Management Entity Profile
 - 3. Form HUD-9839 A, B or C, Management Certification
 - 4. Management Plan and Sample Lease
 - 5. Management Agreement (Draft if New Agent or New Property)
 - 6. Evidence of Fidelity Bond Insurance
 - 7. HUD-935.2 Affirmative Fair Housing Marketing Plan

Section 4: Property Documents

- 4-1 A. If Purchase:
 - 1. Purchase and Sale Agreement
 - 2. Amendments and/or Extensions to Purchase and Sale Agreement
- B. Last Arm's Length Certification
 - 1. Purchase Contract or Settlement Statement
- C. Current Rent Roll, if any
- 4-2 A. Preliminary Title Report (disclose all liens and secured transactions)
- B. Existing/Proposed Easements and Maintenance Agreements
- C. ALTA/ACSM Survey and Surveyor's Report (Form HUD-91073M)
- D. Location Maps and Photographs
- 4-3 A. Evidence of Zoning Compliance
- 4-4 A. Municipal services and other utility assurance letters
 - 1. Electricity
 - 2. Natural Gas or Heating Oil
 - 3. Telephone
 - 4. Cable Television
 - 5. Water and Sewer Service
 - 6. Garbage Collection
 - 7. Storm Sewer
- 4-5 A. Commercial Space and Income Calculations
 - 1. Commercial Leases
- 4-6 A. Ground Lease
- 4-7 A. Evidence of Real Estate Tax Abatement/Exemption

Section 5: Mortgage Credit

- 5-1 A. Organizational Chart
 - 1. List of Principals
 - 2. Development Team Resumes
- B. Contractor's resume or AIA A305
- 5-2 A. Organizational Documents (including Articles of Incorporation, Draft Partnership Agreement or Operating Agreement, if available)

- 5-3 A. Consolidated Certifications- Borrower (Form HUD-91070M)
- 5-4 A. Previous Participation Certifications for all Principals
B. Identification and Certification of Limited Liability Investor Entities
- 5-5 A. Credit Reports: Mortgagor, Principals, IOI Management Agent
B. Verification of Cash to Close/WC
C. Form HUD-92013-SUPP
- 5-6 A. Mortgagor/Property Financial Statements
 1. Audited/Certified Financial Statements for past three years
 2. Certified YTD Financial Statement w/ supporting schedules within 90 days of submission
 3. Certification of existing indebtedness
- 5-7 A. Controlling Principal(s) and GC Financial Statements
 1. Certified YTD financial statement w/ supporting schedules within 90 days of submission
 2. Past 3 Years of Audited/Certified financial statements (entities)
 3. Current Certified financial statements (individuals)
 4. REO & Maturing Debt Schedules
 5. Other Business Concerns
- 5-8 A. Other Funding Sources
 1. Commitment Letter(s) for subordinate public and private debt
 2. Tax Credit Final Allocation Letter
 3. Tax Credit Investor Letter of Intent
 4. Tax Credit Reservation Letter
 5. HUD-2880, Applicant/Recipient Disclosure/Update Report
 6. Equity Bridge Loan Term Sheet
 7. Draft Disbursement Agreement

Section 6: Construction and Architectural Documents

- 6-1 A. Plans and Specifications
 1. Half-size set of Plans (scaled appropriately)
 2. Specification Manual
 3. "As-Is" Sketch Plans (Sub-Rehab)
 4. Detailed Scope of Work and Architect's Work Write-Up (Sub-Rehab transactions), including if the property is pre-1978, lead-based paint abatement unless the property does not have such paint.
 - 6-2 A. Soils Report and Foundation Analysis
 - 6-3 A. Contractor's and/or Mortgagor's Cost/Trade Breakdown (on Form HUD 2328 or AIA G702/703)
B. IOI Disclosure and 50-75 percent rule disclosure
 - 6-4 A. FF&E Schedule and Budget
 - 6-5 A. Assurance of Completion w/Commitment Letter from Surety or Bank for LOC
 - 6-6 A. Owner-Architect Agreement(s) (AIA B108 including HUD Amendments)
B. Design Architect Certification
 - 6-7 A. Information Regarding Offsite Storage of Approved Materials
B. Offsite Improvements/Construction
-