



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

September 27, 2013

Mortgage Letter 2013-37

TO: All FHA-Approved Multifamily Mortgagees

SUBJECT: Revised Instructions - Hurricane Sandy/Superstorm Response –
Expedited Processing for FHA Multifamily Mortgage Insurance Applications

I. Background/Purpose

Mortgagee Letter (ML) 2013-08 issued February 5, 2013, and Housing Notice H 13-05 issued on February 12, 2013, provide broad authority to waive program and processing requirements other than regulatory and statutory provisions. This authority is intended to facilitate recovery efforts by ensuring the timely availability of Multifamily FHA mortgage insurance in New York and New Jersey, states especially hard hit by Hurricane Sandy and a subsequent storm.

The Department is issuing this new Mortgagee Letter along with a Notice to provide additional guidance based on our initial experience and feedback. This Mortgagee Letter supersedes Mortgagee Letter ML 13-08 in its entirety.

These expedited procedures apply to multifamily properties requesting financing under the Section 220, 221(d)(4), 223(a)(7), 223(f), 231 and 241(a) multifamily mortgage insurance programs. This Mortgagee Letter is not applicable to the Healthcare programs administered by the Office of Healthcare Programs (Section 232, or refinancing of Section 232 pursuant to Sections 223(f) or 223(a)(7)).

The Mortgagee Letter is effective immediately, as discussed below in the section titled “Implementation”.

II. General Provisions and Lender Requirements

Applications submitted under the terms of this Mortgagee Letter will receive priority processing. Other than for the environmental review procedures which are described in the following paragraph, the procedures set forth in the Low-Income Housing Tax Credit Pilot Program (Mortgagee Letter and Housing Notice 2012-1) will apply to all multifamily mortgage insurance applications (regardless of whether the transaction involves tax credits) received in the Presidentially declared disaster areas in New York and New Jersey during the period from the date of publication of this Mortgagee Letter through December 31, 2013.

The environmental review procedures specified at Section V.H of both Mortgagee Letter 2012-1 and Housing Notice 2012-1 will not apply to this Housing Notice. Environmental reviews will be conducted by a HUD appraiser per the requirements of Chapter 9 of the Multifamily Accelerated Processing (MAP) Guide. In addition, as part of Floodplain Management review, the lowest floor

of new construction or substantially improved¹ structures located in areas affected by Hurricane Sandy must be elevated at or above the Base Flood Elevation based on the most recent FEMA data, plus one foot of freeboard. The most recent FEMA data would include Advisory Base Flood Elevations (ABFEs) or Preliminary Flood Insurance Rate Maps (P-FIRMs), when available. If higher elevations are required by locally adopted code or standards, those higher standards would apply. Sandy affected areas that are in Coastal A zones according to the most recent FEMA data must utilize Zone VE construction practices in accordance with the FEMA Coastal Construction Manual, as recommended by FEMA.

Outside of V Zones and Coastal A Zones, non-residential structures or mixed use structures that are not critical actions as defined at 24 CFR 55.2(b)(2) may be designed and constructed such that below the Base Flood Elevation, using the best available flood data plus one foot, the structure is floodproofed. All non-residential and mixed-use structures must be floodproofed consistent with the latest FEMA National Flood Insurance Program guidance.

This Mortgagee Letter revises certain provisions of the Tax Credit Pilot Program in order to meet the goals of the Hurricane Sandy Executive Order. To the extent this Mortgagee Letter does not address issues, facts or circumstances which may arise while processing affected applications, the New York Multifamily Hub Director has authority to waive, provided such waiver does not involve regulations or statutes, any and all provisions of Mortgagee Letter 2012-1, the MAP Guide and other administrative provisions as necessary and appropriate to facilitate expedited processing of mortgage insurance applications submitted pursuant to this Mortgagee Letter. Such waiver requests should be prepared by the lender as part of the application submission on a draft HUD-2 form, citing the specific waiver provisions requested. Regulatory waivers must be approved by the FHA Commissioner; statutory provisions cannot be waived. HUD will not grant waivers or modifications of nondiscrimination or equal opportunity requirements. The New York Multifamily Hub Director shall obtain the advice of the Departmental, Housing or New York Regional Environmental Officer regarding the waiver of any environmental requirements of Chapter 9 of the MAP Guide to ensure that such waiver does not involve any of the statutory or regulatory requirements as implemented by 24 CFR Parts 50, 51, and 55. Any MAP approved lender in good standing with the Department can submit applications for

¹ See definition of substantial improvement at 24 CFR §55.2(b)(8) (“(i) *Substantial* structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: (1) Before the improvement or repair is started; or (2) If the structure has been damaged, and is being restored, before the damage occurred; or (B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be onsite at any one time for a commercial or industrial project. (ii) *Substantial improvement* may not be defined to include either: (A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or (B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places. (iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered “minor improvements”).

financing, including applications in New York and New Jersey. The previous guidance noted that while any MAP approved lender in good standing with the Department can submit applications for financing, including applications in New York and New Jersey, only lenders approved for participation in the Low-Income Housing Tax Credit Pilot program can apply for expedited processing in areas impacted by Hurricane Sandy. In hindsight, this provision is overly restrictive. Waivers should be granted for qualified lenders to participate, even if they are not participating in the Tax Credit Pilot program. Such waivers should only be granted for lenders that:

- Have demonstrated experience in the impacted areas,
- Must be deemed to be in good standing, and in compliance with all FHA and MAP program requirements, with no unresolved findings as a result of HUD or other governmental audit, investigation, or review. If the Department determines that a lender is not in good standing whether as a result of lawsuits, cause determinations, or letters of findings relating to discrimination or equal opportunity that have been issued or filed against the lender, or otherwise, and if these matters have not been resolved to HUD's satisfaction by the time the application for financing is submitted, the lender may be ineligible for expedited processing.
- Have certified the specific underwriter(s) who will be preparing applications for submission have viewed in their entirety the three Tax Credit Pilot training web casts conducted November 13th, 19th, and 27th, 2012, and reviewed the material posted at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/map/maphome/taxcredit, and,
- Have attended a one-day orientation by Multifamily Development staff in HUD Headquarters.

Approved lenders are listed on HUD's website at

http://portal.hud.gov/hudportal/documents/huddoc?id=List_of_Lenders.pdf.

Please contact Mr. Daniel J. Sullivan at (202) 402-6130, or Mr. Terry W. Clark at (202) 402-2663, to confirm a lender requesting a waiver is in good standing. The Lender should contact either Mr. Sullivan or Mr. Clark to schedule the required orientation for their underwriter(s), and any other key staff who will be working on applications subject to the expedited processing procedures.

Industry feedback from lenders, capital markets, and Ginnie Mae representatives, have advised that the previous provision requiring no trade profit (otherwise known as trade premium or marketing gain) on the sale of Ginnie Mae securities is overly restrictive and will not in fact ensure the most favorable financing terms due to current, minimum interest rate floors established by the capital markets. Accordingly, HUD will allow trade profit so long as the following conditions are met:

- Trade profit does not exceed 2 percent. Lenders may request waivers of this restriction for loans in which the original principal balance is less than \$5,000,000.

- An estimate of these fees are submitted separately but concurrently with the Firm Commitment application, and a financing plan detailing the source and use of such fees is submitted with the draft closing documents after rate lock. The sources and uses statement included with the financing plan must include the lender's certification and a Section 1010 warning statement. The lender's estimate at Firm Commitment and certified statement at closing are confidential and not subject to release or disclosure by HUD.

Prior to submitting the application, the lender will submit the name and contact information of the MAP approved Underwriter and the proposed third-party reviewers for prior approval. Third-party reviewers (Appraiser, Market Analyst, Physical Inspection, Architectural and Cost Consultants, and Environmental Consultant) must have acceptable prior experience in either the New York or Philadelphia Multifamily Hubs.

As with all MAP Applications, the third-party appraisal must be provided by an independent appraiser licensed in the state with jurisdiction, and must be commissioned by, and under the responsible supervision of the lender.

The lender will submit an original and one hard copy of the application to the New York Multifamily Hub Director or alternative address specified by the Hub Director, and an electronic copy of the application. The application should include a standardized Lender Underwriting Narrative, data transmission spreadsheet, and a separately bound mortgage credit binder with privacy sensitive financial and other information. The lender submission should include a draft of the requested Firm Commitment form including appropriate special conditions. Furthermore, the application should include all of the environmental submissions as described in Chapter 9 of the MAP Guide.

The application fee (\$3 per \$1,000 of requested mortgage amount) will not be waived, but may be deferred with payment due at such time HUD is ready to issue a Firm Commitment. Standard processing time from issuance of the Firm Commitment to closing will be 30 calendar days, provided the application complies with the requirements of this Mortgagee Letter and the applicable portions of HUD Notice and Mortgage Letter 2012-1. The lender will request closing either by mail or in the HUD Office with jurisdiction (either New York, Newark, or Philadelphia). The Department will close loans within 14 days of receiving complete and correct closing documents. The lender and borrower are strongly encouraged to submit draft closing documents with the Firm Commitment submission.

It should be noted that there is a possibility that the HUD insured mortgage might be combined with a Community Planning and Development (CPD) Disaster Recovery Grant and/or other public sources to fund the project, and that there may be conflicting requirements between CPD and Housing. The lender must identify these issues in their underwriting narrative, and the New York Hub Staff must consult with Office of General Counsel and Multifamily Development staff in headquarters to ensure any conflicting requirements are appropriately reconciled.

III. HUD Processing

A concept meeting or conference call between the lender, borrower, other development team members, and HUD is encouraged but not required.

Standard processing time from application receipt to decision (either issuance of a Firm Commitment with or without modifications, or rejection of the application) is 30 calendar days, including an initial screening. The standard processing time will be waived in the case of environmental issues that require additional time, such as for situations involving floodplain management, site contamination, or historic preservation issues.

A supervisor, or other senior, experienced HUD reviewer (Designated Underwriter), identified by the New York Multifamily Hub Director will review the application, relying on the lender and third-party representations and certifications. The Designated Underwriter may or may not request technical assistance from other HUD staff as they deem necessary. The Director of the Office of Multifamily Development will identify additional support should workload demands require staff from outside the New York Multifamily Hub to assist with processing.

For New Construction and Substantial Rehabilitation loans, HUD Architecture and Engineering staff review will be limited to compliance with applicable accessibility requirements, including, but not limited to, those requirements under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, unless additional review is required or requested by the Designated Underwriter. Multifamily Housing and the Office of Fair Housing and Equal Opportunity (FHEO) will review the proposed Affirmatively Fair Housing Marketing Plan (AFHMP) for compliance with HUD regulations and consistency with HUD guidance. (See, e.g., 24 CFR 200.620 and 200.625.) In addition, marketing and outreach plans must address how the project will be marketed to persons displaced by Superstorm Sandy, in particular persons displaced from the site where the project will be developed.

The HUD Appraiser's review will be limited to completion of the Form HUD-4128 (Environmental Assessment and Compliance Findings for the Related Laws) with analyses and protocols specified in Chapter 9 of the MAP Guide, and such other review or analysis requested by the Designated Underwriter.

Prepayment approvals and requests for waivers, including Section 8 rent increase requests and contract replacements will be accelerated and handled by the HUD Headquarters Director of the Office of Multifamily Development or Asset Management as appropriate.

Hub and National Loan Committee reviews will be expedited as necessary to facilitate timely execution of Firm Commitments. The Director of the Office of Multifamily Development has authority to waive such Loan Committee reviews upon request of the New York Multifamily Hub Director.

All loans processed pursuant to this Mortgagee Letter will be reviewed on a post-commitment basis. The Office of Risk Management (ORM) will complete these reviews with such assistance as needed by HUD Headquarters Multifamily Development or other staff as appropriate or necessary. ORM will provide the Deputy Assistant Secretary for Multifamily Housing Programs and the New York Multifamily Hub Director with a summary of loans reviewed and any findings every 6 months or more frequently as appropriate.

IV. Implementation

The Mortgagee Letter is effective immediately for all new Pre-application and Firm Commitment applications submitted prior to December 31, 2013, for multifamily mortgage insurance in counties within New York and New Jersey which are designated by FEMA as eligible for Individual Assistance pursuant to a Presidentially declared disaster area. (Those counties identified as of October 30, 2012, are included in Attachment 1). The New York Multifamily Hub Director may also consider transactions in other areas in New York and New Jersey if, they determine priority processing would indirectly assist in addressing the financing or housing needs within the FEMA designated counties. The Department's response to Hurricane Sandy will be evaluated during 2013 and the authority extended, modified, or withdrawn as appropriate depending on conditions at that time. The New York Multifamily Hub Director has authority to process applications currently in the pipeline, subject to the first sentence above, with such waivers as necessary to facilitate use of the procedures included in this Mortgagee Letter.

V. Conclusion

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0029 and 2502-0582. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The Department reiterates the importance of reviewing and issuing Firm Commitments within 30 days, and generally relying on the Lender's due diligence, third-party analysis, and underwriting. Applications should be thoroughly screened and evaluated upon receipt and rejected if they contain material deficiencies.

If there are any questions regarding this Mortgage Letter please contact Daniel J. Sullivan, Deputy Director, Office of Multifamily Development, at (202) 402-6130. Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Carol J. Galante Assistant Secretary for Housing –
Federal Housing Commissioner

