



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

OFFICE OF HOUSING

July 5, 2016

MEMORANDUM:

Multifamily FHA MAP Lenders
HUD Multifamily Production Staff

A handwritten signature in black ink, appearing to read "D. J. Sullivan".

FROM:

Daniel J. Sullivan, Acting Director, Multifamily Production

SUBJECT:

MAP Guide 2016 Implementation and Clarifications

The MAP Guide published on January 29, 2016 (2016 MAP Guide) is effective for Multifamily FHA mortgage insurance applications submitted on or after May 31, 2016. As noted in the transmittal, waivers to delay implementation may be considered on a case by case basis for a limited time period.

This memorandum provides guidance in response to requests from for clarification and addresses certain "scrivener errors" contained in the 2016 MAP Guide, as originally published. In addition, *Questions and Answers* are attached, addressing operational issues and additional clarification to the 2016 MAP Guide. These issues/errors will be corrected or clarified in the next version of the MAP Guide.

I. Chapter 3: Assurance of Completion Requirements for New Construction/ Substantial Rehabilitation

The 2016 MAP Guide inadvertently omitted guidance formerly found in the August 2011 version of the MAP Guide (2011 MAP Guide), at Chapter 3, Section 3.4.M about Assurance of Completion Requirements for New Construction and Substantial Rehabilitation projects. That guidance, as revised next below, is hereby incorporated into the 2016 MAP Guide:

"Assurance of Completion. The general contractor shall provide an assurance of completion of construction on forms approved by HUD.

1. For non-elevator buildings, or elevator buildings with four (4) stories or less, where the cost of construction or rehabilitation is more than \$500,000, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD's estimated cost of construction or rehabilitation including an assumed builder's profit on BSPRA transactions (see Section G Line 50, Form HUD-92246, less architect's design and supervisory fee and mortgagor's other fees). Alternatively, the

completion assurance agreement may be secured by a cash deposit or Letter of Credit in the amount of 15% of the HUD estimated cost of construction or rehabilitation.

2. For elevator buildings of five (5) stories or more, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD's estimated cost of construction or rehabilitation including an imposed builder's profit on BSPRA transactions. Alternatively, the completion assurance agreement may be secured by a cash deposit or Letter of Credit in the amount of 25% of the HUD estimated cost of construction or rehabilitation."

II. Chapter 5: Contractor's Estimated Progress Schedule.

The guidance regarding the general contractor's estimated progress schedule formerly found in Chapter 5, Section 5.7.B.3 of the 2011 MAP Guide was inadvertently omitted and is hereby incorporated into the 2016 MAP Guide. The subsection is added to Chapter 5 of the 2016 MAP Guide, as subsection c., to Section 5.8.C. 3, as follows:

"c. The Lender must use the schedule to determine when construction is falling behind, triggering a meeting of all parties to the contract, including the bonding company if appropriate. The meeting is to determine the reason for delays, advise of the consequences of the delay and develop a plan to get construction back on schedule."

III. Chapter 7: Effective Date of the Market Study.

The guidance regarding the effective date of a market study, formerly found in Chapter 7, Section 7.4.B of the 2011 MAP Guide, was inadvertently omitted and is modified and hereby incorporated into the 2016 MAP Guide as follows:

"Effective Date of the Market Study. For pre-applications, the effective date of the study must be within 120 days prior to the date of the pre-application package. For Firm Commitments, the effective date of the study must be within 180 days prior to the issuance, re-issuance or amendment of the Firm Commitment. Expired reports must be updated as needed by re-surveying all relevant data.

Comprehensive reports submitted at pre-application can be updated with a letter update which addresses changes in demographics, competitive and pipeline information including recalculation of Net and Effective Demand, and discussion of current occupancy levels and price position.

In cases where Firm Commitments are delayed and the market has remained stable, HUD may, at its discretion, consider waivers to allow the lender's underwriter to resurvey the data and provide updated market study information. The effective date for the market study can be the date that the analyst completes his/her research on active and proposed competitive properties, but not to exceed 30 days from the date of the site inspection."

IV. Chapter 14: Compounding Interest on Secondary Financing.

Chapter 14, Section 14.14.A.5 of the 2016 MAP Guide was amended but inadvertently omitted in formatting for posting. The amended Section is hereby incorporated into, and replaces that Section contained in the 2016 MAP Guide in the entirety as follows:

“5) The debt is documented in HUD’s form of Surplus Cash Note (92223M) or subsequent version with simple interest. HUD will consider compounding of interest if the lender provides a thorough analysis demonstrating that project cash flow will be sufficient to avoid accruals of interest that would undermine the long term financial and physical integrity of the project, and all other risks have been adequately mitigated.”

V. Chapter 8 and Chapter 14: Secondary Financing for Section 221(d)(4) LIHTC Projects.

Section 14.14 of the MAP Guide refers to the structuring of secondary debt in a LIHTC transaction, and as such is intended to govern all LIHTC transactions, regardless of the SOA (14.14.A). This section permits, among other things, debt to be secured against the property in an amount equal to 100% of total project costs as long as the subordinate debt is subject to automatic re-subordination in any refinancing of the first mortgage. However, subsection 8.7.C.3.b. of the MAP Guide (governing secondary debt from a private source for NC/SR projects) appears to prohibit in all cases the recording of secondary debt against a property.

Subsection 8.7.C.3.b. is hereby clarified and as amended is incorporated into the 2016 MAP Guide as follows:

“b. It is documented in a promissory note that is not recorded and not secured with a lien against the property. This prohibition on a lien does not apply to LIHTC transactions.”

Industry commenters raised questions about various sections of the 2016 MAP Guide that differ from the 2011 MAP Guide. The following additional clarifications or amendments are provided to address some of those comments:

VI. Chapter 7: Valuation Analysis and Market Study Guidance

Section 7.6.I.3 was amended in the 2016 MAP Guide to standardize policy with respect to capitalization rates used by the lender and HUD underwriter for loan sizing and structuring purposes such that the capitalization rate may not be lower than the mortgage debt service constant (including MIP). This is an underwriting parameter and programmatic limitation that has been inconsistently applied in the past. The appraiser is not bound by this guidance and the development of the capitalization rate in the appraisal should reflect the actual market conditions as of the effective date of their report. Generally, the only time this guidance will have an impact on the lender’s structuring and sizing of the loan is on a cash out transaction in which Criterion 10 applies in determining the loan amount and valuation of the property becomes directly relevant – in most other cases the mortgage based on the capitalized value would be no lower than the debt service constrained mortgage. We acknowledge that interest rates, and thus the debt service constant is prospective and

not fixed at the time of submission of the firm commitment application. As long as the processing rate is no more than 25 basis points (plus or minus) lower than the note rate, then the requirement is recognized as being met. To the extent that this policy prohibits executing established tax credit or affordable housing policy or the impact of local tax exemptions in high cost markets (by reducing valuations to the extent that otherwise viable projects become unfeasible), then HUD would entertain a request to waive this guidance on a case by case basis. These exceptions would include LIHTC or subsidized transactions, or other local/case specific circumstances of variances in net operating income. Field staff should submit and discuss such cases with the Technical Support Division in HUD Headquarters.

VII. Chapter 14 – Low Income Housing Tax Credits and Other Tax Credit Program Guidance

Section 14.15 of the MAP Guide describes the pay-in schedule for all LIHTC transactions. The minimum equity installment at Initial Endorsement equals 20% of Total Equity, with benchmarks for contribution of 37.5% and 62.5% of Net Equity detailed in this section. Waivers of the initial equity pay-in and subsequent payment amounts will not be considered, and neither bridge loans nor other sources, such as publicly funded loans or grants may be used to fund the initial 20% equity pay-in amount. The second and third equity installments are based on a percentage of Net Equity, not Total Equity.

The Net Equity amount equals total LIHTC equity less the initial equity pay-in amount plus any permitted reductions. The total permitted reductions cannot exceed 25% of Total Equity. A more detailed description of the reductions from Total Equity that may be used to calculate Net Equity is described in Section 14.15.A of the MAP Guide. Should there be any conflict in a particular transaction regarding the pay-in requirements for LIHTC transactions between Section 8.14 and Section 14.15, then Section 14.15 shall govern.

Section 14.16 of the MAP Guide provides guidance as to the means by which an Equity Bridge Loan (“EBL”) may be used to effectively defer the pay-in of equity during a project’s development and stabilization phases. Section 14.16.A affirms existing policy that the borrower of the insured loan may also be the borrower on the EBL. EBLs may not be secured by a lien on the real estate or on any other Mortgaged Property as defined in the Security Instrument, although they may be secured with a pledge of Tax Credit equity and/or of limited partners’ or investor members’ interests in the project’s ownership entity.

Section 14.16.C of the 2016 MAP Guide states that “[i]n the event HUD acquires title to the Project by foreclosure or deed in lieu of foreclosure, the bridge loan documents automatically terminate and the Borrower shall be released of all of its obligations with respect to the EBL.” This section is replaced in the entirety with the following and incorporated into the 2016 MAP Guide as follows:

“In the event HUD acquires title to the Project by foreclosure or deed in lieu of foreclosure, the bridge loan documents automatically terminate with respect to the FHA Borrower, and the FHA Borrower automatically shall be released of any and all of its obligations with respect to the EBL.”

VIII. Chapter 18 - Section 223(a)(7)

All of Section 18.3.L of the 2016 MAP Guide (inclusive of Sections 1, 2 and 3), which describes Refinancing Partial Payment of Claim (PPC) Properties is corrected and rewritten in the entirety, and as rewritten is incorporated into Section 18.3.L. as follows:

“A recast first mortgage loan is the FHA-insured mortgage loan that remains after a Partial Payment of Claim (PPC) has been made, or, for the purpose of this Memorandum, is the FHA-insured first mortgage loan originated under a Mark-to-Market debt restructuring transaction (M2M Transaction). Because 223(a)(7) of the National Housing Act requires that a mortgage refinanced under 223(a)(7) be documented through an amendment to the existing insurance contract and an insurance claim has already been paid under that insurance contract, the insurance contract is limited and the principal amount of a proposed 223(a)(7) is correspondingly limited to the original principal amount of the recast first mortgage loan, not the original principal amount of the loan prior to the PPC or M2M Transaction This amendment will be included in the next revision of the MAP Guide.”

Please retain this guidance as if it were included in the 2016 MAP Guide. *Questions and Answers* and *Scriveners Errors* are attached to this Memorandum. Please send any additional questions and comments to MAPGuide2016@hud.gov. Thank you.

Attachment: MAP Guide 2016 Questions and Answers