MAP GUIDE 2016 – Questions and Answers

GENERAL QUESTIONS

Q1. *In the Appendix for Chapter 4 there is a new table of contents for the application packages. Will these be provided in Excel or Word for lenders to use easily? Or should lender create them on their own?*

A1. The new table of contents is presented in Excel format on the HUD website.

Q2. *There is new language added to Section 3.1.O.6 modifying the exception to the prohibition against meal services. The exception criteria in paragraph 6.a.2. now allows one mandatory meal per day. Please confirm this change in policy is correct.*

A2. Confirmed, the exception criteria now allow one mandatory meal per day for a narrowly defined set of properties, as long as the project meets the remainder of the conditions set forth in subsection 3.1.O.6.

Q3. *Clarify Section 3.1.0.1 of the MAP Guide on Elderly or Age Restricted Housing. If the property allows a "mixed population" including elderly and non-elderly disabled (e.g., a Section 236 property, or a Section 202 project operating continuously since prior to October 1, 1991), does the 2016 MAP Guide require the lender to submit a waiver for the loan to be processed? Or, does this section now allow the "mixed population" properties to be processed without the need for a waiver because it falls under one of the three occupancy categories listed as eligible for FHA mortgage insurance?*

A3. The text in 3.1.0.1.A. deals with the application of statutory definitions of "elderly" to allow properties to restrict occupancy to head of households 62+ (so long as they allow occupancy by non-elderly family members including children). A project that has been operating continuously since prior to October 1, 1991 (the effective date of Title VIII, Subtitle A of "Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101-625) and is subject to a project based Section 8 contract, a regulatory agreement, or a use agreement executed in accordance with statutory authority would meet the MAP Guide requirement. No waiver would be required so long as the lender provides the contract or agreement permitting the use with the application and, assuming that the proposed occupancy regime will continue in accordance with existing agreements in place prior to October 1, 1991.

Q4. *We're looking at an existing 75-unit project, 100% affordable built with 9% LIHTC credits and conventional debt. The project restricts the age of all residents to 62 and older. Section 3.1.O.1.C states that housing for persons 62 and older can only be Section 231 but our project is a refinance not a new construction or sub rehab. Can a Section 223(f) loan be used to refinance a Section 231 loan or a non-FHA insured project that restricts age to all residents 62 and older?*

A4. No. If the tax credit extended use agreement limits occupancy only to residents aged 62 years and older, as opposed to FHA's longstanding definition of 62+ (head of household including occupancy by non-elderly family members - including children), then the project cannot be insured under Section 223(f). This requirement would not be met by

applying a more restrictive age threshold than that required under HOPA (62 vs 55). If the project has low income housing tax credits (but no project based rental subsidies), and has had three years of historical operations under the 55+ HOPA exemption, then HUD can consider refinancing the project using the Section 223(f) program.

Q5. *Section 3.6.C includes underwriting criteria for Section 241(a) loans, which refer to the 90% statutory program limits. However, the chart of underwriting criteria in Section 3.10.B includes Section 241(a) and has lower criteria (and separate criteria for affordable vs. market). Which criteria should we apply?*

A5. Apply the 90% ratio.

Q6. *When computing the HUD-92264A, when should we use the exact factors that are printed in the MAP (1.15, 85%), as opposed to non-rounded factors (e.g. 1/90% = 1.1111 and 1/85% = 1.17647)?*

A6. Either way is acceptable. The difference is not material.

Q7. *Does the new MAP Guide allow a 90% LTV and 1.11 DSCR for Section 202 & 202/8 loans in addition to projects with 90% or greater rental assistance?*

A7. Yes, the guidance permits 202 and 202/8 loans as well as those projects with 90% rental assistance to receive a LTV of 90% and a DSCR of 1.11 so long as the HAP contract or a use agreement preserving low income rents is in place for at least 15 years after closing (per the general affordability definition).

Q8. *Map Guide 12.8.D says that the lender must require the borrower to escrow funds with the lender for any additive change orders. In the past, it has also been acceptable to present a letter from the general contractor indicating that the GC has been paid fully by the borrower for the change order, thus allowing the borrower to pay timely and avoid the escrow process. Is it possible to add this option to the FAQs for the new MAP Guide?*

A8. Yes, it is acceptable for MAP Lenders to inquire of general contractors to confirm that they have been paid for change order work. This can then be acknowledged by a letter from the general contractor, and is an appropriate way to manage the construction progress and track budgeting.

Q9. *Please clarify if management agent information (the entirety of Section 3 on the checklist) is required for a 241(a) Firm or straight to Firm application. We recently were required to provide all new management forms and a 935.2a on a 241(a). This seemed excessive given that the agent did not change and had already been approved by HUD. We had assumed the requirement would be similar to a 223(a)(7) which does not require forms if the management agent has not changed.*

A9. Updated management agent documentation is not generally required to process a Section 241(a) loan with an existing HUD approved management agent. However, the Lender, as part of their underwriting review, must determine if updated information on the management agent is necessary or required to adequately assess the risk of the transaction (for example, if as a result of organizational changes, an identity of interest between the owner and management agent has been created). These underwriting conclusions should be included in the Lender's narrative. If HUD in their review disagrees with the Lender's

analysis, a deficiency (or rejection) letter would be issued and submission of the management documents would be required.

Q10. *The 2016 MAP Guide, Sections 4.2.A.5 and 4.2.B.4 state that a reopening fee of 50 basis points is required. Prior Firm Commitments noted a reopening fee of $.50 per $1,000 or 5 basis points of the amount of the expired Commitment. Also, the old Firm Commitments note that a request for reopening must be received within 90 days of its expiration. The new MAP Guide is silent on this issue; do we still have another 90 days from the 180-day expiration to request a reopening, and how long does the newly issued commitment last?*

A10. Firm Commitments may be extended for 180 days per Section 4.2 of the MAP Guide (plus a discretional 60 calendar days for good cause). At the expiration of all permitted extensions, a reopening fee is required. The reopening fee for refinance and new construction/substantial rehabilitation programs is $.50 per $1,000 of the loan amount. The request for reopening must be received within 90 days of the expiration of the Firm Commitment plus all extensions. The new commitment will remain in effect for 180 calendar days.

Q11. *If a borrower elects to pay a reopening fee of 50 bps, are there additional exhibits beyond an updated market study, updated appraisal, and updated costs that would be required?*

A11. In addition to updated third party reports, all mortgage credit documentation, including financial statements, credit reports and an updated HUD Form 92013- SUPP are required. The lender's narrative should confirm that no substantive changes have occurred in the underwriting or the development team as a result of the extension of time.

Q12. *It appears that Section 3.1.I calculates the FHA Inspection Fee at 0.5% of Total for All Improvements (and no longer adds BSPRA or SPRA). Is that accurate*?

A12. Yes, the FHA Inspection fee is to be calculated on Total of All Improvements and no longer adds BSPRA and SPRA.

Q13. *Could you clarify whether HUD's intent is to allow a developer fee in non-LIHTC cases meeting the definition of "affordable housing" at MAP Guide 3.1.L?*

A13. Generally, we have treated the terms "affordable" and LIHTC synonymously in terms of our underwriting criteria. Accordingly, a non-LIHTC affordable transaction underwritten to LIHTC rents and/or a project with greater than or equal to 90% project based Section 8 rental assistance could include a developer fee as part of the insured loan, as long as there exists additional subsidy, e.g., through HOME or a similar source. This is conditioned on the project having been granted a current subsidy (as opposed to existing or past contributions) and/or a twenty-year Section 8 HAP contract (or a lesser term but with an ability to extend to 20 years or 15 years if project based vouchers).

Q14. *HUD added new certification language in Section 3.1.GG. Is it HUD's expectation that in addition to being included on lender documents such as the narrative, that this language is added to all certifications executed by the borrower (ex. Financial statement certification)?*

A14. Yes, all certifications submitted by the Lender in support of MAP applications should take the form of the revised certification.

SCRIVENER ERRORS AND OMISSIONS

Q15. *Chapter/document pages at the top of each page would be helpful. In addition, the Appendix does not have page numbers*.

A15. The enhanced version posted 2/12/2016 has page numbers in both the Guide text and the appendices. http://portal.hud.gov/hudportal/documents/huddoc?id=4430GappHSGG-bm.pdf.

Q16. *I have a question about how to submit hard copies of the applications. There seems to be a discrepancy between the checklists and the appendix:*

- *Both the 221(d)4 and 223(f) checklists say to submit the hard copies of the application in 3" accordion folders.*
- *The Appendix (page 55 of 341) says that the application should be bound in three ring binders, not more than 3" wide (does this mean we can use smaller binders if there is not enough paper to fill a 3" binder?)*

A16. The reference to accordion files is erroneous. Please use three ring binders not more than 3" wide to file the insurance applications.

Q17. *Sec.3.1.H & Sec.18.3.B.1. It's not clear whether there has been a change in how HUD wants the App Fee paid for (a)(7)'s. In Sec.3.1.H the new guide states that App Fee for (a)(7) is 15 bps, and this is repeated a few times in various places without any mention of having to pay the 30 bps and get the other 15 bps refunded post-closing. However, in Sec.18.3.B.1, there is a mention of App Fee "net of any amount refunded post-closing" (B.3.1.).*

A17. The application fee for a Section 223(a)(7) project is 15 bps. The reference to refunding net amounts was an anachronism.

Q18. *On page 81 of the MAP Guide posted 1/29/16 in the section on large loans in the chart for market rate 223fs it says that for loans less than $75M the DSC is 1.20. This contradicts the guidance on Criteria 5 on page 73, which says Market Rate is 1.176 DCR and Appendix 3, which also says 85% of NOI or 1.176 for DCR on market rate 223fs. The affordable DSC should be reduced from 1.176 to 1.15 for consistency with page 73 and Appendix 3.*

A18. These were scrivener errors and have been corrected in the enhanced version of the MAP Guide on our website.

Q19. *There is an incorrect reference to a HUD Form on Page 244 of 288 of the MAP Guide*.

A19. The correct Form is HUD 92476.a-M, Escrow Agreement for Operating Deficit, instead of HUD Form 92489a-M.

Q20. *The reference on Page 10 of 341 of the MAP Guide Appendix 2 refers to the following link: http://epls.arnet.gov/. Is this link active?*

A20. The link referenced above is no longer active. To access the listing of individuals and entities debarred by HUD, use the System for Award Management website at http://sam.gov.

Q21. *The link identified in the MAP Guide in Section 2.3.c for MAP underwriter training does not work. What is the correct link?*

A21. The current link is http://portal.hud.gov/hudportal/documents/huddoc?id=maplendertrainmemo.pdf
MAP training announcements will be posted on the MAP home page website when trainings are scheduled.

Q22. *What is the correct regulatory reference for pg. 27 of the MAP Guide?*

A22. The correct reference is 24 CFR Part 200, subpart Y (e.g. 24 CFR 200.1530(b)(6)).

Q23. *In Chapter 12, Section 17, A. should the Appendix referenced be 5H?*

A23. No, the reference should be to 5G, "Capital needs assessment".

Q24. *Paragraph 3.10.B.2 of the 2016 MAP Guide does not read correctly. It states that "New construction/substantial rehabilitation projects with both a loan amount at or above $25M should have a minimum amount of Initial Operating Deficit Reserve to help assure success of these projects during their early, most vulnerable stages of rent-up. Are there criteria other than the loan amount at or above $25M?*

A24. No. The sentence refers only to new construction/substantial rehabilitation projects with a loan amount at or above $25M.

Q25. *Section 8.3D.1 of the 2016 MAP Guide indicates that credit reports, HUD 92013-supp forms, and financial statements are not required of board members or officers of nonprofits. However, in Appendix 8, section D.1.B.2 it is indicated that residential credit reports and HUD form 92013-Supps are required for officers of the nonprofit. What is the correct guidance concerning this apparent contradiction in requirements?*

A25. Section 8.3.D.1 of the 2016 MAP Guide is correct. The Appendix will be corrected in the next MAP Guide revision.

Q26. *The minimum vacancy and collection loss rates described in Sections 3.1 and 7.7 differ from the vacancy loss rates for various (but similar) property types described in Section 14.18. Which chart is correct?*

A26. The charts should have been consistent. To determine the appropriate vacancy rate, use the least restrictive description of property type as compared between Section 3.1, 7.7 and 14.18. For instance, to achieve a 5% vacancy rate, the chart in Section 14.18 is least restrictive in that it requires that the property meet the minimum LHITC set-aside requirement with attainable LIHTC rents at least 10% below comparable unit market rents (a 10% discount to market). To achieve a 3% vacancy rate, all three charts are substantially identical save for the requirement in Section 14.18 requiring the achievement of 90% occupancy for 6 months prior to the start of rehab. We will accept the least restrictive requirement in this case as well; however, the length of time that the project has achieved a 90% occupancy level will remain a consideration in the overall underwriting.

Q27. *What is the correct time limit for file retention for MAP Quality Control? In Section 2.10 it says 7 years and in Appendix 2.A.4.G. it says 3 years. Which is correct?*

A27. Seven years is correct. Appendix 2 will be revised with the next MAP Guide revision.

Q28. *There is a minor error in the reference in Appendix 11. The reference to the Master Set and Sets 2 and 3 are signed and initialed, as per Section 5.7.C. Should it be 5.8.C?*
A28. Yes, the reference should be 5.8.C instead of 5.7.C.

Q29. *Section 8.14.M.4.a states that "30% of the total tax credit equity be contributed at 65% completion and 45% paid at stabilization. This conflicts with the percentages listed in Section14.15 of the MAP guide. Should we use the amounts stated in Section 14.15?*
Q29. Yes, use the pay in percentage amounts listed in the table located in Section 14.15. In the event of a conflict between Chapter 8 and Chapter 14 regarding the underwriting of particular LIHTC projects, Chapter 14 will control (Section 8.1).

AFFORDABLE TRANSACTIONS/LIHTC/RAD

Q30. *Is the Band of Investment Approach to determine value for the Section 223(f) LIHTC Pilot transaction still valid?*
A30. The annual net operating income (NOI) remaining after the payment of expenses is considered to be the primary source of value to the project. The preferred method of capitalizing the NOI into a value estimate is Direct Capitalization. There are several acceptable techniques for deriving capitalization rates. Rate Extraction based on recent (preferably within the past year) comparable sales is the most preferred. Band of Investment should be considered and may be acceptable, as long as the appraiser develops a market basis for the equity dividend portion of the calculation. The appraisal should also contain discussion of how the chosen capitalization rate compares to rates listed in commercially available published reports.
The Band of Investment approach remains a permissible and appropriate approach in determining value for Section 202 refinances, as well as RAD and PILOT projects. Note that in all cases market derived rates should be discussed, even if it is later concluded that they are not the best information.

Q31. *In Section 3.1FF- Underwritten Occupancy (p. 66) of the new MAP Guide, it appears in-place rehab but not new construction projects that meet the following requirements; 100% of LIHTC units and attainable tax credit rents less than 10% below market rents qualifies for a 3% minimum vacancy and collection loss rate. Appendix 3.A-Specifications and Limitation by Program (p.42) appears to contradict the MAP Guide as it appears both new construction and sub rehab projects may qualify for the 3% minimum vacancy rate. Please clarify.*
A31. The appendix should have included the prefatory phase "in place rehab". This will be changed in the next MAP Guide revision. The 3% minimum vacancy only applies to in-place rehab with occupancy above 90% and 90% of the units set aside as LIHTC units with a 10% below market rent advantage. The 3% minimum vacancy and collection loss rate is not applicable for new construction.

Q32. *For 4% LIHTC deals using tax-exempt bonds, would the 5.0% limit on total loan fees they may charge on any loan greater than $2 million include the bond issuance fees?*

A32. The 5.0% maximum lender fee limitation does not include bond costs.

Q33. *For a property whose current Tax Credit rents are higher than 10% below market, is it possible to underwrite the Tax Credit rents artificially at 10% below market to achieve the higher 87% LIV limit?*

A33. No, the LIHTC rents being achieved must actually be at least 10% below market to qualify for the 87% LTV.

Q34. *Section 14.16.E.1 of the MAP Guide requires that an equity bridge loan must be paid "at Final Endorsement for 221(d)(4) (the time of the final equity pay-in)." If the final equity pay-in for LIHTC developments is at the time of the property's stabilization, which can be well after HUD's Final Endorsement, can the equity bridge loan remain after Final Endorsement, assuming it is shown that it will be paid off with the final equity pay-in?*

A34. No. For Section 221(d)(4) projects, the third net equity installment must be received and the bridge loan must be repaid no later than Final Endorsement (or no later than 10 years following Final Endorsement in the case of an equity bridge loan provided by a not-for-profit, public sector, or quasi-public sector entity). Accordingly, tax credit equity or other proceeds received prior to Final Endorsement must be in an amount sufficient to repay the bridge loan.

ARCHITECTURAL AND COST

Q35. *Given the new Guidance, it looks like HUD is moving away from the seismic Zones (i.e. zone 3 or 4) and now using more precise methods available (spectral accelerations). If you fall below these thresholds, nothing may be required (i.e. zone 2). However, is the lender expected to hire someone familiar with spectral accelerations to determine that? Also, I believe the bench-marking will be applicable to post 1976 construction, however, will still need to be evaluated by the design professional like before? We expect the older buildings to require the full analysis, regardless. In essence, the results will be very similar, but the procedure is different since a new code is referenced and this code uses spectral accelerations not Zones. Is this all accurate? Please confirm.*

A35. Mostly confirmed but please read Appendix 5C closely. No special expertise is required to follow the instructions provided in Appendix 5C to obtain the "Design Earthquake Spectral Response Acceleration Parameters" from the National Geographic Survey website. If the parameters obtained exceed the limits described in the appendix, then professional engineering assistance will be needed.

Q36. *Are seismic studies required on 223(a) (7) projects?*

A36. Generally, a seismic study is not required for a 223(a)(7) project, as the assumption is that a study would have been completed as part of the original insurance application. However, if the "Design Earthquake Spectral Response Acceleration Parameters are exceeded (see prior question) and a study was not completed, then the issue should be referred to asset management such that corrective actions may be taken as necessary and appropriate.

Q37. *Should the rate of expense inflation be applied to the minimum annual balance in the first 10 years (as previously required by ML 2012-25, but not specifically indicated in the updated guidelines)?*

A37. Yes. The new MAP Guide (Appendix 5G, VII, C) enables lenders to estimate inflation for both a current period as well as a longer, extended period as part of the CNA analysis of Reserve for Replacement (RfR) needs. The rates selected should reflect current and likely future conditions, and should be consistent with but not lower than rate(s) of inflation used to trend future operating expense. The minimum balance calculated for the first year in an Estimate Period is inflated in each following year by the selected rate of inflation. The HUD RfR Financial Factors worksheet and the future CNA e Tool both make these calculations automatically.

Q38. *Confirming correct understanding of the minimum balance in years 11-20. For example, for a $10MM loan at 3.50% for 35 years, about $1.95MM is amortized by year 11. So the max that a balance could go negative in year 11 would be half of that? And in year 12, the balance could be negative by no more than ~$1.08MM, and increasing every year?*

A38. Yes, the amount of amortization that can be applied against shortfalls in reserve balance in years 11-20 is cumulative – that is, 50% of the total principal amount paid down from year 1 to any year where a shortfall exists.

Q39. *Because of changes to the loan amount and interest rate, the amortization is likely to change over the course of loan processing. Must the Lender's analysis match the analysis prepared in the CNA, and must the reserve requirements be re-analyzed upon determination of a final interest rate?*

A39. To the extent that the loan amount or interest rate at endorsement is significantly different from the processing rate, a revised analysis would be required.

Q40. *5.2.C. Energy Professionals.*
All applications for insured mortgages must provide verified utility consumption data for energy and water use, either for a prior 12-month year (no half or partial months) or for the projected 12-month year following completion. Is this required for 223(a)(7)? Can it be considered a non-critical repair that has to be done within a year after closing?

A40. Utility benchmarking is not yet required. A sampling regime will be specified when benchmarking is implemented.

Q41. *We are a consultant that prepares CNA's for MAP Lenders. We have a property that we plan to inspect this month. Our client told us they would not be submitting this to HUD until July. So, we assume the new guidelines apply and we will need to submit the CNA utilizing the E-Tool.*

A41. The CNA e Tool is not ready for use but we expect that it will be available in 2016. Therefore, Capital Needs Assessments will not be accepted through the CNA e Tool until HUD publishes further instructions by Housing Notice and/or Mortgagee Letter.

Q42. *Appendix 5.G.VIII.D.5 states that, "for existing, proposed and substantial rehabilitation properties, a schedule of deposits to the reserve for replacement escrow account including both an initial deposit, if any and annual deposits," should be included with the CNA.*

Since an initial deposit to R4R may now be included in the schedule of deposits for proposed and substantial rehabilitation properties, will the initial deposit amount be mortgageable, meaning should the initial deposit be included in total replacement cost for Criterion 3? If so, in which line of Section G of the HUD-92264 should the initial deposit be included/listed?

A42. The initial deposit amount may be included in the mortgage, however an initial deposit to the Reserve for Replacement account is only applicable to refinance transactions and substantial rehabilitation projects that are less than gut rehab, as defined in the MAP guide. The amount should be detailed in Section G, line 71 on the Form HUD 92264.

Q43. *In those 223(f) applications when an architect is required, will the design fees be a mortgageable expense, meaning they can be included in the eligible costs of the transaction for Criterion 7 and 10? If so, could you confirm that they should be included in line 7.c and line 10.c "Other Fees" on page 2 of the HUD-92264A?*

A43. Where an architect is required for a 223(f) project, the design and supervision fee may be included in the cost basis and loan amount. As such, both fees should be included in lines 7.c and 10.c, identified as "Other fees" on the Form HUD 92264-A, as applicable.

Q44. *Section 5.1.C.1 states that the $1,500/unit limits exclude any costs required to make properties accessible for persons with disabilities. Section 5.10.B repeats this policy but also excludes the cost of life safety repairs. Confirm whether the cost of life safety repairs is excluded from the $1,500/unit limit.*

A44. Life safety repairs are presumed to be completed prior to submission of an application under the 223(a)(7) program. If not, our Enforcement Center would address it. Assuming the project is not in violation of the regulatory agreement and being considered for a 223(a)(7) refinancing, there would not be any life safety problems and we would proceed with the limitation of $1,500+ cost of accessibility corrections.

Q45. *The scope of work required for the 241 (a) third party reports is not clear. Please clarify.*

A45. The requirements of the Section 241(a) program are generally consistent with the NC/SR program. Therefore, the applicability of third party reports will generally be consistent with the NC/SR requirements.

VALUATION

Q46. *MAP Guide (Pg. 173 7.8.C.3 Reserve for Replacement) - states "must address any variance between the market reserve cost use on the appraisal and the FHA required deposits included in the underwriting." Please define the term "required deposits."*

A46. The term required deposits, in this context, means the annual deposits necessary to meet the estimated minimum balance in reserve requirements over the term of the reserve schedule as defined in Appendix 5G.VII.C.2.d. This amount is used in sizing the appropriate loan amount for Criterion 5 and may be different than the appraiser's estimate of annual reserve amounts based upon comparable properties in the project's market area.

Q47. *Section 7.7 - Trending of Rents. The following language was added to the current MAP guide: "Estimate GPI based on in-place rents at the subject property as evidenced by*

current rent rolls". Does this mean rents must match those on the rent rolls and cannot be increased?

A47. Rental estimates shall be made as of the date of the appraisal (or market study) and may not be trended to a future date. The statement that in-place rents as evidenced by current rent rolls is merely an extension of this logic. However, rents may be adjusted based upon market conditions or improvements to be made as part of the refinancing that will increase marketability. To the extent there is a material difference, the underwriter would need to analyze and mitigate any risk, which would include a stress test analyzing the worst case scenario in which underwriting rent increases do not materialize.

Q48. *There appears to be an inconsistency between Section 7.7 of the MAP Guide and Appendix 3 regarding the occupancy rate used for commercial space in an acquisition/ refinance. Can you clarify?*

A48. For Section 223(f), the commercial income will be valued based upon the lesser of that indicated by market, the actual occupancy rate of the project or 90%.

Q49. *Are the appraiser's concluded project rents still required to fall within the central 60% range? The 2011 MAP Guide specifically states in section 7.7.B.5.a that rents will be from the central 60% range of the comparable adjusted rents. The same section in the January 2016 MAP Guide (7.7.C) does not specifically make reference to the central 60% range. Please confirm if the central 60% test is still a requirement.*

A49. The specific requirement that the rents are drawn from the central 60% range of the comparable adjusted rents has been eliminated, although that may be an underwriting "best practice."

Q50. *In which situation may the tax abatement run with the non-profit owner instead of the land: When the project is subsidized by LIHTC alone, LIHTC+ Project based Section 8, or Project Based Section 8 alone?*

A50. The tax abatement may run with the non-profit owner instead of the land in situations when the project is assisted with LIHTC, LIHTC and project based Section 8, or project based Section 8 when the number of units that are rental assisted equals or exceeds 90%.

Q51. *Chapter 7, Section 16 of the MAP Guide appears confusing or in conflict with recognizing value (for criteria 3) for property tax abatements that run with the sponsor. Section 7.16 does not appear to discriminate between tax abatement that runs with a non-profit, simply stating the abatement must run with the real estate (not sponsorship) to secure additional loan proceeds under Criteria 3. Section 7.18 appears to make a distinction for non-profit sponsors. Explain the difference.*

A51. Section 7.16 states that the tax abatement must run with the real estate if the abatement is to be recognized in determining value (Criterion 3). Section 7.17.A.1 (valuation for Section 8 and LIHTC processing) requires the development of a market value ignoring Section 8 rents, LIHTC rents, etc. If a tax abatement exists that runs with the land, then the abatement can be recognized in determining value. Recognition of a tax abatement for both Criterion 3 and Criterion 5 is permitted under Section 7.17.C.4 only in the event that the project is a LIHTC and involves a non-profit. A non-profit alone would not benefit from the abatement for Criterion 3 without LIHTCs, or project based Section 8 (as noted in Q/A 50).

Q52. *For the "as-is" valuation of a property with a HAP contract for a 221(d)(4) transaction, if the current HAP rents are below market, which rents, market or HAP, are used in the valuation? How would the value be determined in a Section 223(f) LIHTC pilot deal, assuming any repairs required are completed and rents are at market which may be higher than the current HAP contract rent levels?*

A52. To determine "as-is" value for a substantial rehabilitation project, use current income and expenses, including rents derived from a rental assistance contract (HAP) or lower market rents (if applicable, as set forth in Section 7.13.C). The rationale is that a buyer would purchase the project "as-is" in its current state, with the rental assistance contract being a key element in determining the income stream (except in the case of above market Section 8 rents, where the creation of any additional value would be based upon the subsidy, and not the real estate).

In the case where HAP rents are below market at time of submission of the application but will be raised to market as a result of the re-capitalization, the as-is value should assume market rents so long as the rent levels are approved by Asset Management and are consistent with the conclusions of both the Rent Comparability Study and loan underwriting. In all cases, any development advantages such as tax credits and other subsidies should be excluded.

For a Section 223(f) LIHTC project, both market rents and expenses are used to determine value (Criterion 3) assuming that all proposed repairs have been completed (recognizing, of course that not all repairs affect value). For loan sizing purposes based on the debt service approach (Criterion 5), use income and expenses based upon the terms of a new (or renewed) HAP contract. Expenses for Criterion 5 may differ from those developed for Criterion 3 based upon different administrative costs associated with regulatory requirements related to HAP and/or LIHTCs, as applicable.

Section 7.17.D (Project Based Section 8 and LIHTC Processing) refers to the as-is valuation of LIHTC deals, and is essentially consistent with 7.13.C (exclusion of subsidies/grants/LIHTC/ in determining value) and provides specific examples of these exclusions (affordable restrictions, regulatory agreements and tax regulations). Language concerning the recognition of a rental assistance contract in determining value was not specifically included, as the language in 7.13.C (which universally defines as -is value) controls here as well.

Q53. *How is the "as is" value determined for a sub-rehab RAD transaction?*

A53. RAD transactions are an exception to the guidance found in Section 7.13.C. Under the RAD program, Section 7.13.E of the MAP Guide states that for Section 221(d)(4) sub-rehab projects, CHAP rents (regardless of whether the rents are above or below market), historical occupancy, and operating expenses should be used to set "as-is" value.

Q54. *In Section 7.9.H.5 instructs for underwriting purposes, where a public body sells sites/projects to the developer for a specific re-use purpose, the value of land improved is the lesser of:*

a) amount determined by comparison with other similar sites

b) dollar amount paid by the purchaser under the purchase contract plus additional costs

c) actual values noted in MAP's appraiser's narrative

In the event the land is contributed by a public body to the mortgagor in exchange for an ownership interest in the mortgagor, will HUD allow the warranted value of the land in the Criterion 3 cost build up? The land will be transferred into the new owner. Terms of the contribution will be set forth in the joint venture agreement.

A.54. No, Criterion 3 does not include a provision of adding in the value of the land. Moreover, this type of arrangement would permit the loan amount to be inappropriately inflated in situations where there is less than an arms-length arrangement between the public body and the developer. Therefore, the lesser of the criteria set forth in Section 7.9.H.5 controls when land is contributed to the project by a public body.

Q55. *Section 7.13.H, in the new MAP Guide does not include method B (((mortgage + "as-is" value) X 50%) + demolition + offsite costs) for calculating Sub Rehab construction period interest. Is method B still a valid method for calculation?*

A55. Yes, method B is still valid as an estimate of construction period interest. The estimate of construction interest for a sub-rehab proposal is the greater of method B or an amount determined by an actual draw schedule. The lender should identify which method they are using for this calculation (See 7.11.A.g and 7.13.H; both sections refer to the calculation of construction interest). We will update this issue in the next revision of the MAP Guide.

Q56. *Mortgagee Letter 2010-21 required that Lender's engage a different Appraiser and Market Analyst on new market rate deals. I do not see this requirement in the new MAP Guide. Was this and oversight and still a requirement or was it left out of the new MAP Guide because this is no longer a requirement?*

A56. No, the requirement that the appraiser and market analyst are different individuals (though not necessarily from two different companies) remains in effect. The concept of obtaining two professional perspectives for projects subject to lease up risk remains an important risk mitigant to HUD.

<u>MORTGAGE CREDIT</u>

Q57. *MAP Guide Pg. 209 - 8.2 Acceptable borrowers. "Limited Partnership (LP) with one or more general partners and one or more limited partners." Does this mean that an LP with just one GP is not acceptable?*

A57. A limited partnership must have at least one GP and at least one LP, and must also conform to the laws of the jurisdiction in which it was established.

Q58. *MAP Guide Pg. 211. 8.3.B. Can you clarify the following: "Active principals of a borrowing entity with less than a 25% ownership interest (10% for corporations) but possessing a substantial financial interest and/or having decision making authority are subject to underwriting review?" How would you define a substantial financial interest if it were less than 25%?*

A58. A substantial financial interest is an interest that would create an ability by the investor to direct the operations of the borrower, or influence, either directly or indirectly, the

decision-making authority of the managing member or general partner. This is a matter of judgment, and must be determined by a critical underwriting analysis of the organizational chart and an identification of the various partners and their relation to the borrowing entity and to each other.

Q59. *MAP Guide Pg. 218. 8.4.D. In the most recent FAQ's to the checklists, bank statements were listed as sufficient to verify account balances and cash to close. Is that still the case?*

A59. Yes, this is still the case.

Q60. *Did you all really intend to get rid of the liquidity / net worth requirements for all loans unless they are greater than or equal to $75MM?*

A60. Specific liquidity and net worth requirements by tiered loan amounts under $75M have been eliminated. As a matter of underwriting however, liquidity and net worth requirements in an amount necessary to meet financial obligations for each specific transaction remain in place. For example, a thinly capitalized borrower attempting to develop a $74.5M new construction project would likely not be accepted by the Lender's underwriter and would be rejected.

Q61. *Please clarify if the general contractor is required to submit an REO Schedule? The general contractor's REO schedule has not been a requirement previously. The first paragraph states: "The Borrower (if fully capitalized) and/or its Principals and the general contractor must submit with the loan application current financial statements to include…. a REO schedule and the schedule of mortgage debt."*

A61. A general contractor with an identity of interest in the borrower entity is required to provide an REO schedule where it has a significant financial interest or contribution and has a role to direct the project operations; however non-IOI general contractors or general contractors with only a nominal equity interest in the Borrower entity do not. We will clarify this in the next revision of the Guide.

Q62. *There seems to be an inconsistency with the nonprofit sponsor and borrower exhibits. There is a discrepancy as to whether Form HUD-3433 is required for a nonprofit sponsor and a profit-motivated borrower entity.*

A62. Paragraph 8.8.D addresses the mortgage credit underwriting of a Nonprofit Sponsor and Borrower who will remain as mortgagor as part of the FHA insured transaction. The Form 3433 was originally developed to aid in the analysis of a non-profit entity participating in the 202/811 direct loan program. This form is not necessary nor required to be completed as part of the application submission; however, some of the questions in the Form 3433 may be useful in the analysis of the nonprofit Sponsor/Borrower.

Q63. *This paragraph pertains to the cost of initial deposit to the Reserve for Replacements that are eligible for inclusion in the maximum insurable mortgage. It states that the borrower must submit a list of escrows currently on deposit for the project and that the escrow account and reserves must stay with the project. Does this only apply to currently HUD insured projects?*

A63. The requirement to submit a list of escrows currently on deposit applies to both FHA insured and non-insured projects. The disposition of escrow funds will depend on the type and terms of the transaction and must be detailed.

Q64. *What if the transfer of the escrows and reserves would lead to overfunding of items (i.e. taxes, insurance, and reserves)?*

A64. The balance of the existing reserve is applied to fund the initial deposit to the reserve for replacement (IDRR). Any excess is applied as a reduction of the cost of refinancing under Criterion 10 (Form HUD 92264-A) or as an additional source of funds.

Q65. *In Section 8.3.B.3 (d), the MAP Guide indicates that certain identified "Passive Principals" are not subject to credit review. In Section 8.3 C, it states "Individuals and entities that are excluded from underwriting review are also excluded from previous participation review". Under the new MAP Guide, are Passive Principals excluded from Previous Participation review? (Except when they qualify as "Other Principals" in 8.3 B 2(a) exceeded the $250M threshold or (b) qualify as a financial partner.)*

A.65. The passive principals described in Sections 8.3.A.2 and 8.3.C.2.d.5 are principals who have an ownership interest of 25% or more in the Borrower, who exceed the $250 million threshold, or who are a key financial partner file for previous participation review. Individuals and entities (passive principals) referred to in Section 8.3.C, more specifically described in Section 8.3.B.3.d, are excluded from the credit and previous participation review.

Q66. *Section 8.3.C.2.c. and Section 14.10 A of the MAP Guide both identify officers of the non-profit separately from board members who serve as officers of the board. Is it HUD's intent that all Officers who serve on the Board of a non-profit plus Officers who work for the company in a management capacity submit for Previous Participation clearance?*

A66. HUD is in the process of revising its previous participation regulations and the MAP Guide was written in anticipation of these changes. The current HUD regulations take precedence over the guidance described in the MAP Guide until such time as the new regulations are published.

All Officers (and Board members) must file for previous participation review, whether the Officers function in a management role for a nonprofit organization/company or are Board Members serving as Officers on a Board of Directors. It is the MAP Lender's responsibility to identify the Officers. If a project is submitted under the LIHTC PILOT program, only the Officers are required to file for previous participation review.

Q67. *Is the Consolidated Certification a requirement on applications, and if so is it on all applications or just (f) & (d)4?*

A67. The Consolidated Certification (HUD-91070M) is required for all MAP programs and is to be submitted with the Firm Commitment application.

Q68. *Section 8.8.1.b of the MAP Guide seems to require credit reports for management agents, whether or not they may have an identity of interest or an equity interest with the borrower. Can you clarify this policy?*

A68. The language in the MAP guide requiring credit reports for the management agent is overly broad. Credit reports are required for the management agent in cases where there is an identity of interest between the owner and the management agent, or in cases where the management agent holds an equity interest in the borrower. Also, receipt of negative information concerning the performance or capacity of the management agent could require a credit review. In cases where these circumstances do not exist, then credit review of the management agent is not necessary, and HUD will consider a waiver of this requirement.

APPENDIX – Q/A

Q69. *Appendix 4A & 4B does not list the Byrd Certification. Is this form still required to be submitted?*

A69. We have corrected the checklists to include the Byrd certification which are available on HUDclips.gov.

Q70. *In Appendix 4A & 4B item 5-6 [page 60 & 67] Credit Reports item #C. Verification of EIN/SSN. Is a W-9 an acceptable verification of an Employer Identification Number or Social Security Number?*

A70. Yes, a W-9 is acceptable.

Q71. *At the top of the first page of the Checklist on 4A & 4B, the words "corrected version 11/23/15" are highlighted in yellow. Is this checklist acceptable for use?*

Q71. The highlighted area should have been deleted before it was published. This is the final version and therefore permissible to use.

Q72. *According to the checklists, 5-3A. The application requires a Consolidated Certification from the Borrower. Please confirm that a Consolidated Certification (Checklist Appendix 4A and 4B) is not needed from the Active Principals and General Contractor.*

A72. The "Consolidated Certifications – Borrower" is required only for the Borrower entity. It is not required to be submitted by either the active principals or the general contractor.

End of document.