

# NH&RA Spring Developers Forum

## FHA Tax Credit Pilot Program

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# General Background & Eligibility

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- Implemented in 2012
- Purpose: Streamline FHA loan applications on new tax credit deals (sub rehab)
- Utilizes FHA 223(f) loan parameters while allowing for repairs above the high cost factor limits
- Properties where at least 90% of the units are project based Section 8
- Preservation Projects (projects re-syndicated with new credits and new equity investors)
- Deals processed under the 3-year rule waiver that is currently in effect

# Key Features

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- Allowance for up to \$40,000/unit in rehab – include GC profit, General Requirements, Overhead & 10% contingency
- Proposed repair work may exceed the 12-month time limit for completion of non-critical repairs required by the Section 223(f) program. Temporary relocation of tenants should not exceed 30 days.
- Expedited Processing
- Reduced Documentation compared to an FHA 221(d)(4)

# A Work in Process

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- **Since Notice H 2012-1 was issued on 02/03/12 launching the program HUD has released 5 FAQ's: 05/23/12, 07/10/12, 10/16/12, 04/05/13 and 05/30/13.**
- **The most recent is an undated Memorandum released on 02/28/14 which addresses several issues raised in deals to date and includes 6 policy changes subject to HUB Director approval (waiver) and 6 clarifications of existing policy (no waiver required)**

# Pipeline of Deals

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- **21 projects have closed**
- **77 deals in the pipeline**
- **37 qualified MAP Lenders**
- **9 Pilot HUBS with specialty trained Pilot underwriters:  
Atlanta, Boston, Chicago, Denver, Detroit, Fort Worth, Los Angeles, San Francisco, Seattle**
- **56% of projects are section 8, 23% are resyndications and 21% are three year rule**
- **68% are family, 32% are elderly**

# Pipeline of Deals

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- **Average processing time: 99 days**

- **Where is the current activity**

|           |    |               |    |
|-----------|----|---------------|----|
| - Atlanta | 8  | Fort Worth    | 9  |
| - Boston  | 16 | Los Angeles   | 21 |
| - Chicago | 11 | San Francisco | 12 |
| - Denver  | 2  | Seattle       | 6  |
| - Detroit | 9  |               |    |

# Policy Change #1

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## Total Debt Load Allowed Under 223(f)

- **223(f) policy limits the total debt load to 92.5% of appraised value**
- **Total debt has included the FHA loan, seller take back notes, deferred developer fees converted to debt, and other partner debt, but excluding subordinate debt issued by a public source**

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# Favorably Inclined to Waive If....



# Policy Change #1

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- **223(f) policy limits the total debt load to 92.5% LTV.**
- **Debt is “soft” cash flow note**
- **Payments may not exceed 75% of surplus cash**
- **Debt is documented in a promissory note**
- **Debt IS NOT secured with a lien against the property or evidenced by any recorded instrument (HUD will allow security against ownership interests)**
- **Debt is subject to automatic resubordination**

# Policy Change #2

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## Three Year Waiver Transactions

- **Three year waiver rule expiration date of 09/18/14. The firm application needed to be submitted by this date.**

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# Favorably Inclined to Waive If....

## Policy Change #2

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- **Three year waiver rule expiration date of 09/18/14**
- **If building permits are obtained before 09/18/14 the project will be “grandfathered” and remain eligible for a three year rule waiver. Allowed only under the Pilot Program.**
- **All the requirements of Mortgagee Letter 2012-13 still apply, except for providing evidence of unsuccessful attempts to secure other permanent financing.**

# Policy Change #3

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## IOI and Mortgage Calculations

- **Where there is an IOI between the buyer and seller, the MAP Guide required treatment as a refinance rather than an acquisition**
- **When treated as a refinance proceeds above 80% LTV can only pay off outstanding debt and not purchase price**

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# Favorably Inclined to Waive If....

## Policy Change #3

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- Where there is an IOI between the buyer and seller, the MAP Guide required treatment as a refinance rather than an acquisition
- ALL LIHTC transactions involving an IOI have the ability to be treated as an acquisition rather than a refinance
- Change allows the LTV test go from 80% to 85% (87% if project based contract on more than 90% of units)
- Recognition of sales price as an eligible cost (Eliminates the “cost to refinance” loan test)

# Policy Change #4

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## Completion Assurance

- **Assurance of Completion Escrow in the amount of 20% of the rehabilitation cost in addition to the estimated non-critical repair escrow to be funded at closing.**



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# Favorably Inclined to Waive If....

## Policy Change #4

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- Assurance of Completion Escrow in the amount of 20% of the rehabilitation cost in addition to the estimated non-critical repair escrow
- Reduced to 10%
- Can be provided in the form of an irrevocable LOC or cash
- May be used as a construction contingency at any time

# Policy Change #5

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## Timing of Repair Escrow Funding and General Equity Pay In Schedule

- **100% of Non-Critical Repair Costs to be funded at closing**

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# Favorably Inclined to Waive If....

## Policy Change #5

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- **100% of Non-Critical Repair-Costs to be funded at closing**
- **At least 20% of the LIHTC equity is paid at closing**
- **A disbursement agreement that the rehab escrow, including loan proceeds and initial equity remaining after closing and acquisition, and subsequent equity installments is disbursed in approximate pari passu proportions**
- **Completion Assurance Escrow can be funded on a similar basis**

# Policy Change #6

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## Tax Credit and Bond Cap Allocation Timing

- **Owner was required to have its 9% Tax Credit Allocation or Bond Cap Allocation at the time the firm submission package was submitted.**

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# Favorably Inclined to Waive If....

## Policy Change #6

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- **Owner was required to have its 9% Tax Credit Allocation or Bond Cap Allocation at the time the firm submission package was submitted.**
- **No longer required**
- **A Firm Commitment can be issued with a condition that the owner secure its allocation prior to closing**



# Clarifications of Policy

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- **FHA Lenders' Underwriting Requirements for Syndicators and Principals**
  - Syndicator's Fund Level Financials
  - Identify all of the principals
  - Identify replacement GP or Managing Member
- **Tax Abatements**
  - HUD will recognize the abatement in both the value and NOI test for tax credit transactions in ANY FHA program even if the abatement runs with the owner rather than with the land, so long as the owner is nonprofit sponsored.

# Clarifications of Policy

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## - **Use of Form 2530**

- These forms are no longer required for tax credit syndicators, investor members of LLCs, investor partners of limited partnerships or any other passive investor as long as there is no identity of interest with the general partner.

## - **Pre-Approval of Special Limited Partners**

- A substitute general partner may be pre-approved at closing through a new “Rider to the Security Agreement for LIHTC Properties”. Would still require a modified TPA to transfer, but should be a quicker process

# Clarifications of Policy

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- **Due Diligence with Respect to Nonprofit Boards**
  - 2530s are only required for board officers and not board members), and neither personal financial statements nor credit checks are required for any members or officers of the board (applies only to the tax credit program).
- **Building Permits**
  - Building permits should be required only in time for closing. Firm commitments can be issued with conditions requiring building permits prior to closing.

# Tax Credit Policy: Applicability Matrix (March 26, 2014)

| <b>PART I: POLICY CHANGES WITH WAIVER REQUIREMENTS</b>   |                                |                           |  |                            |  |
|--|--------------------------------|---------------------------|--|----------------------------|--|
| <b>Policy Matter</b>   | <b>HTC Pilot Projects Only</b> | <b>All LIHTC Projects</b> | <b>All Affordable Projects<sup>1</sup></b> | <b>Applicable Programs</b> | <b>Waiver Requirement &amp; Approval Level</b> |
| 1. Total Debt Load Allowed Under 223(f)  |                                | X                         |  | 223(f)                     | Yes: Hub Director                              |
| 2. Three Year Waiver Transactions  | X                              |                           |  | 223(f)                     | Yes: Hub Director                              |
| 3. IOI and Mortgage Calculations   |                                | X                         |  | 223(f)                     | Yes: Hub Director                              |
| 4. Completion Assurance  |                                | X                         |  | 223(f)                     | Yes: Hub Director                              |
| 5. Timing of Repair Escrow Funding and General Equity Pay In Schedule  |                                | X                         |  | 223(f)                     | Yes: Hub Director                              |
| 6. Tax Credit and Bond Cap Allocation Timing   |                                | X                         |  | All                        | Yes: Hub Director                              |
| <b>PART. II CLARIFICATIONS OF POLICY</b>   |                                |                           |  |                            |  |
| 7. Clarification of FHA Lenders' Underwriting Requirements for Syndicators and Principals  |                                | X                         |  | All                        | No   |
| 8. Tax Abatements  |                                | X                         |  | All                        | No   |
| 9. Use of Identification and Certification of Eligible Limited Liability Investor Entities Form for Passive Investors <sup>2</sup> |                                | X                         |  | All                        | No   |
| 10. Pre-Approval of Special Limited Partners   |                                | X                         |  | All                        | No   |
| 11. (a) Due Diligence: 2530 only for Board Officers  | X                              |                           |  | 223(f)                     | No   |
| (b) Other Creditworthiness Due Diligence Generally Limited to Nonprofit Entity Sponsor   |                                | X                         | X  | All                        | No   |
| 12. Building Permits   |                                | X                         | X  | All                        | No   |

<sup>1</sup> "Affordable" means properties receiving Project-Based Section 8 through either a Housing Assistance Payment (HAP) Contract or Project-Based Section 8 Vouchers, for greater than 90 percent of the units, or supported with Low Income Housing Tax Credits, deep mortgage subsidies such as Section 202 or 236, or subject to use restrictions comparable to those of the LIHTC program for at least 15 years following the closing of the FHA transaction.

<sup>2</sup> This form replaces the former "LLCI" form.