FREQUENTLY ASKED QUESTIONS #5

FHA LOW INCOME HOUSING TAX CREDIT PILOT PROGRAM

May 30th, 2013

10% BELOW MARKET RENTS IN NON-ASSISTED PROJECTS

Question 1. Will HUD consider unassisted projects with rents less than 10% below market?

Answer. Thus far HUD has not accepted such projects into the Pilot Program. However we may consider waivers when the rent advantage is less than 10%, and the market risk is offset by other factors. We anticipate the requirement will be waived only on a limited, case by case basis. Such waiver authority is reserved to the Director of Multifamily Development in HUD HQs and will only be considered when a) there is at least some rent advantage, b) the loan receives a unanimous recommendation by the Hub Director and Loan Committee, and c) the associated loan risk is appropriately mitigated by some combination of the following factors: Highly desirable location/market, historically high occupancy rates for both the project and the market area, limited or no new competitive inventory in or expected to enter the primary market area, well capitalized owners, and highly experienced owners and management teams.

PHYSICAL AND SUSTAINING OCCUPANCY IN 3 YEAR RULE WAIVER PROJECTS

Question 2. The Pilot's Processing Guide (page 6) states that projects built or substantially rehabbed less than three years ago must meet the requirements of ML 2012-13, and that the projects must demonstrate 12 months of occupancy of 85% or greater. The ML requirement is only 3 months of sustaining occupancy. What is the sustaining occupancy for Pilot projects under the three year rule?

Answer. The Pilot Notice contains an error: 3-year-rule Pilot projects only have to meet the criteria of ML Letter 2012-13 (with the exception of the alternate financing provision). Projects must achieve Sustaining Occupancy for a period of 3 consecutive months immediately prior to the date of Endorsement and a debt service reserve of at least 4 months of Principal, Interest and MIP must be funded at Closing. Alternatively, the reserve is not required if the project has sustained an average minimum 85% physical occupancy for 6 consecutive months prior to application submission, and that level is maintained through application processing as confirmed by a Certified Rent Roll submitted within 30 days of Endorsement. The reserve, if required, will be released once the project has maintained break-even occupancy for 6 consecutive months after Endorsement.

202 PROJECTS AND SENIOR HOUSING REQUIREMENTS

Question 3. Are 202 projects eligible for the Pilot Program? They cannot meet the dual requirement stated in the last FAQ, that senior housing under the Pilot must have been continuously FHA-Insured and continuously assisted with Section 8.

Answer. Yes, Section 202 projects being recapitalized in connection with new allocations of Tax Credits may be eligible for the Pilot Program. Lenders should confirm occupancy requirements are consistent with the age restriction limit for Section 223(f) loans: That is that 100% of the units have heads of households who are 62 years of age or older, and the project does not discriminate against non-elderly family members within those households. In unusual cases, there may be narrow exceptions to the occupancy requirements, and the issue should be discussed at the Concept meeting and resolved prior to submission of an application.

USE OF CRITERION 11 IN LOAN SIZING

Question 4. On a 223(f) LIHTC transaction with no other gap or secondary financing, is a subsidy layering review required? Is Criterion 11 in loan sizing required? Are they required when there is secondary financing?

Answer. Tax Credit equity solely in combination with FHA-insured debt is exempt (by the HERA statute) from a subsidy layering review. A subsidy layering review is required when other public funds are combined with the FHA mortgage, such as HOME Loans, secondary financing provided from state or local grants, or capitalized debt supported by above market budget based Section 8 rents. Criterion 11 on the Supplement to Project Analysis (HUD Form 92264-A) is a worksheet to assist with loan sizing, including subsidy layering when applicable, and is optional. In every case, regardless of the sources of supplemental public grant, loan, or equity funds, the lender and underwriter must review the Sources and Uses statements for both mortgageable and non-mortgageable funds, to ensure that costs are not being funded twice and that costs funded directly or indirectly from mortgage proceeds are appropriate and necessary to complete the transaction.

TREATMENT OF DEFERRED DEVELOPER FEES

Question 5. Are Deferred Developer Fees treated as private secondary debt and included in the 92.5% debt limit?

Answer. Deferred Developer Fees may be treated as equity, in which case they are not secured with the property and may be paid only through surplus cash. Alternatively they may be converted to notes secured by the property and paid only through surplus cash, but then they must be included as debt in the 92.5% value calculation. The 92.5% limit on debt is a fundamental of the 223(f) program, intended to ensure that the owner has some equity in the project. However subject to loan committee review and approval, Hubs have authority to waive the limit on a case by case basis for non- identity of interest transactions.

<u>SELLER NOTES</u>

Question 6. To maximize Tax Credit basis, substantial seller notes are often a prominent financing feature, particularly in acquisition/ rehab projects. Combined with other debt they may cause the total to exceed the 92.5% limit. Are there any situations in which a seller note might be excluded from the calculation of the 92.5% debt limit?

Answer. Yes, acquisition debt can be excluded from the 92.5% calculation whenever the seller of the land taking back the note is a public entity. Otherwise, if the obligation is to be secured by the project it must be included in the 92.5% limit.

<u>DEBT STRUCTURING RULES OF THUMB</u>

Question 7. Many projects generate lots of questions about a wide variety of debt structuring scenarios. Are there any simple but accurate rules of thumb we can apply to determine if a given project meets HUD's 223 (f) requirements for the Pilot?

Answer. The following summarizes HUD's requirements:

1) The 92.5% loan to value rule limits all private secondary financing.
2) All debt secured by the property, including private acquisition debt and deferred developer fees converted to debt, is to be included in the 92.5% calculation.
3) The only project debt that can be allowed to exceed the 92.5% limit is public debt.
4) Private, unsecured debt owed by the project or the partners is generally prohibited above the 92.5% loan-to-value limit, but may be considered on a case-by-case basis so long as it is documented by a surplus cash note, and so long as HUD agrees the proposed structure does not undermine or potentially jeopardize the long term success of the project or ownership stability.