



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Original signed July 11, 2007

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers

/S/

FROM: John L. Garvin, Senior Advisor to FHA Commissioner/Acting
Deputy Assistant Secretary for Multifamily Housing
Programs, HT

SUBJECT: Previous Participation Certificate (PPC) Operating Procedures
Limited Liability Corporate Investor

This memorandum supersedes the memorandum entitled, "Previous Participation Certificate (PPC) Operating Procedures Limited Liability Corporate Investor" dated June 21, 2007.

The President recently signed into law the Preservation Approval Process Improvement Act of 2007. This law requires the Department to take certain actions in regard to the Previous Participation operating procedures until HUD submits the proposed new rule to the House and Senate authorizing committees for review. The proposed rule is undergoing review and will be published and implemented as soon as possible. The proposed rule will be published in the Federal Register with the appropriate comment period.

In summary, the law requires HUD to suspend immediately all filing requirements for limited liability corporate investors who own, or expect to own, an interest in entities which have received or are expected to receive Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code. The law also directs HUD to suspend mandatory electronic filing of previous participation certificates.

This memorandum provides instructions and reporting requirements regarding implementation of the law as it relates to Limited Liability Corporate investors and streamlines the earlier guidance following additional review and consultation with the Hub Directors.

Identification and Certification of Eligible Limited Liability Corporate Investors (LLCI)

The Field Office will request from each entity which claims to be a limited liability corporate investor the following certification:

I, Name of Authorized Signer, am authorized to certify to each and every item stated below.

I certify that **Name of LLC** is:

- a. An eligible limited liability corporate investor as noted in the Preservation Approval Process Improvement Act of 2007 and as defined herein;
- b. Investing in **name of owner/mortgagor entity,** which made a complete application to the State Tax Credit Agency (TCA) to receive Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code or to which the TCA issued an allocation or letter of intent to allocate Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code;
- c. A company organized under a State limited liability company statute, an investor corporation, an investor limited partnership, or an investor limited liability limited partnership; and
- d. An investor with limited or no control over routine property operations or HUD regulatory and/or contract compliance, even if the investor may take control (albeit not routine or repetitive control) of the ownership entity or assume the operating responsibilities in the event of the default of the operating partner or upon specific events all defined under the investment contract/agreement.

I further certify that should any of the facts that support the certifications above change or the company for which this certification is made withdraws from participation in the owner/mortgagor, I will notify HUD immediately providing full disclosure and explanation of the change(s).

Signed: _____ Date: _____

Approved: _____ Date: _____
(Field Office Hub/PCD Director)

1. In order to know which entities in the ownership entity may be qualified LLCIs, the field office must review the contents of the owner/mortgagor organization chart and obtain the above certification from each LLCI entity, which holds any interest greater than 25% in the ownership entity. The field office must request the organization chart or description of the ownership entity from the operating principal (the general partner, managing member, majority/controlling stockholder, board chairperson, etc). The Handbook allows for such information to come from the principal's attorney.
2. Once an entity provides a complete, signed certification as described above, the field office Hub or PC Director will countersign on the certification below the LLCI signatory. The Hub or PC Director will issue a letter which names the LLCI entity, the person who signed on behalf of the LLCI entity, the full address of record of the LLCI entity, the proposed ownership interest in the owner (a percentage owned in the owner entity; see exhibit 1 for an example) and states that the entity will not be required to file a PPC submission in accordance with the Preservation Approval Process Improvement Act of 2007. A copy of the letter and certification will be retained in the docket file for the property and a copy sent to the Office of Asset Management in HQ, Attention: PPSD. HQ copies must be dispatched at the end of each week.
3. Where an entity is determined not to qualify as an LLCI, the field office will issue a letter which names the LLCI entity, the person who signed on behalf of the LLCI entity, the full address of record of the LLCI entity, the proposed ownership interest in the owner (a percentage owned in the owner entity; see exhibit 1 for details) and states that the entity does not qualify as an LLCI and must; therefore, complete all PPC submission requirements. Provide a brief explanation of reason(s) they do not qualify. A copy of the letter and certification (if received) will be retained in the docket file for the property and a copy sent to the Office of Asset Management in HQ, Attention: PPSD. HQ copies must be dispatched at the end of each week.

If there are any questions concerning this memorandum, e-mail your questions to James E. Collins (james.e.collins@hud.gov)

Attachments

Exhibit 1 (revised)

Determining the LLCI Percentage of Ownership (refer to Figure 1 below)

Assume first that the ownership entity comprises 100% of the total interests available. Assume next that the operating participant (e.g., general partner, managing member, etc.) has a 1% interest in the total 100% available. Assume last the “limited partners” control/own the remaining 99% interest.

Tier one comprises the GP and the limited partner. Other tiers are created in two ways:

1. Via a pass through entity, and/or
2. Via a transaction where another entity provides investment funding.

Refer to Figure 1 below

ABC Limited Partnership is the 100% owner of the project.

Tier 1; ABC I, INC owns 1% and ABC LLC owns 99%.

Tier 2; Serenity LLC (a pass thru) owns 100% of the stock in ABC I, Inc and ABC LLC, II (a pass thru) Owns 100% of ABC LLC. ABC LLC II owns 99% of ABC Limited Partnership.

Tier 3; Andrew, Barbara, and Clyde own respectively 24%, 26% and 50% of Serenity LLC. Barbara and Clyde must file a PPC, Andrews does not. ABC III LLC is the 1% interest managing member of ABC LLC, II, while ABC Fund II, LLC owns 80% of ABC LLC, II. ABC III LLC owns 0.9% ($0.01 \times 0.99 = 0.009$) of ABC Limited Partnership and is a managing member; ABC Fund II, LLC owns 79% ($0.80 \times 0.99 = 0.792$) of ABC Limited Partnership.

Figure 1

