



OFFICE OF HOUSING

ADMINISTRATIVE MEMORANDUM  
OFFICE OF MULTIFAMILY HOUSING PRODUCTION

FOR: All Multifamily Mortgagees  
All Third-Party Project Design and Needs Assessment Providers  
All Multifamily Regional and Satellite Office Directors & Production Staff

FROM: Patricia M. Burke, Director, Office of Multifamily Production

SUBJECT: Clarification of Multifamily Insured Mortgage Project Eligibility-Restrictions on  
“Subdivisions for Rent”

DATE: May 14, 2021

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**A. BACKGROUND AND PURPOSE**

In recent years we have seen a growing number of inquiries and proposed applications for new construction of large groups of single-family homes, often configured as patio homes or zero lot line homes of the type normally offered for sale, but now proposed as a multifamily for rent property to be built. Further versions of this pattern have been advanced such as duplexes or triplexes, sometimes configured as attached, multi-story townhouses as opposed to single unit structures. Proponents have argued that these projects are eligible because they are located on a single site with 5 or more units even though historically such buildings were more often offered for sale not for rent.

Heretofore, statutes and HUD practice have followed traditional distinctions drawn between the single family and the multifamily markets and these distinctions are embedded in HUD’s multifamily business practice even if not always consistently described. (See the often cited 24 CFR 200.73 which defines the “5 units per site” rule, establishes other minimum eligibility criteria and authorizes the Commissioner to establish additional standards.) The observed trend in some markets to construct projects with large numbers of single-family buildings or unit-types typically offered for sale but instead offered for rent is blurring traditional distinctions between the single-family and multifamily markets and also challenging how these distinctions are reflected in HUD Multifamily rules and business practices. Our present purpose is not to evaluate the merits of recent trends but rather to provide HUD staff and our stakeholders with a consistent, national response to “subdivisions for rent” until such time as the duration and the long-term ramifications of “subdivisions for rent” are known.

## **B. ISSUES ARISING FROM “SUBDIVISIONS FOR RENT”**

We have reservations on “subdivisions for rent” for multiple reasons. First, we are uncertain how such projects should be valued and underwritten. Notwithstanding the contrary opinions and market research initiated by some of the leading investors in and builders of “subdivisions for rent,” we consider the phenomena too recent for confident value and performance expectations, especially in the absence of even a single turn in housing market cycles since the initial advent of “subdivisions for rent” following the financial crisis of 2007-2008. We believe more market results are needed to determine how “subdivisions for rent” will behave over time. Secondly, and perhaps more importantly, we see “subdivisions for rent” as a challenge to numerous statutory and regulatory terms and definitions established over decades to distinguish between single family and multifamily housing markets. These distinctions have various purposes and are embedded not only in Federal programs but also in state and local regulation of land-use and similar issues. The distinctions made between single-family and multifamily often implicate fundamental eligibility and key aspects of regulatory compliance. A ready example of this problem is the exemption of buildings with less than 4 units from the design and construction requirements of the Fair Housing Act. This exemption is clearly intended to exempt the single-family market from the definition of “covered buildings” that otherwise are required to provide features of accessible design. It was not intended to exempt multifamily housing. Federal statutes and regulations (and likely also state and local provisions) contain dozens of similar distinctions drawn between multifamily and single-family “properties” “projects,” and “buildings.” Each distinction is intended to apply a requirement, exempt from a requirement or to determine eligibility. Examining the ramifications of each of these laws and rules is a major task, and the duration and extent of the phenomena we have labeled “subdivisions for rent” does not now justify the effort required to adjust or amend the laws and rules. Under these circumstances we are not prepared to say that “subdivisions for rent” are generally eligible for multifamily mortgage insurance.

## **C. INTERIM INSTRUCTIONS**

Accordingly, except for a few “subdivision for rent” proposals accepted per the implementation section below, we will not consider any new construction of “subdivisions for rent.” Any proposed site plan should have a preponderance of structures of 4 or more units, which may include groupings of attached, multi-story townhouses (sometimes aka row houses.) Single-family structures should not be included. Structures with 2 or 3 units may be included but may not be more than half of the buildings (buildings, not units). These limits should also apply to refinancing of any market-rate projects.

For existing affordable or assisted housing, we will continue to refinance or rehabilitate properties with single-family and other smaller buildings, often on scattered sites and/or sites with fewer than 5 units consistent with past practice approving regulatory waivers for such sites. New construction of affordable or assisted housing on scattered sites that require a regulatory waiver (i.e., less than 5 units per site) or with building configurations inconsistent with this Administrative Memorandum is not encouraged.

#### **D. ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

Consultation with HUD's Office of General Counsel for Fair Housing and Equal Opportunity indicates that HUD Multifamily is not prohibited from applying the Design and Construction Requirements of the Fair Housing Act to buildings of less than 4 units when such buildings are included in an application for multifamily mortgage insurance. However, this matter is deferred pending further consideration of eligibility of "subdivisions for rent" when and if this trend ripens into generally accepted practice. But now, consistent with past practice, the Fair Housing Act Design and Construction Requirements will be applied to structures with 4 or more units consistent with 24 CFR 100.201.

Given the frequent presence of multi-story townhouses in projects reviewed under this Memorandum, it is important to remind all practitioners that the Fair Housing Design and Construction Requirements do not apply to multistory townhouses, except when a townhouse is part of a building with an elevator available to all tenants of the building. However, this townhouse exemption is not replicated for Federally assisted projects where separate, Section 504 requirements apply to the entirety of the assisted project.

#### **E. IMPLEMENTATION AND TRANSITION FOR PROJECTS IN PROCESS**

The Office of Multifamily Production first advised lenders of its concerns about "subdivisions for rent" in a written question and answer (Q&A) provided to the MBA in July of 2020. This was followed by further correspondence with specific lenders and a written statement on "subdivisions for rent." This statement identified a threshold requiring that half of all structures contain "5 or more" units whereas this Administrative Memorandum modifies that threshold to half or more of structures must contain "4 or more" units which phrasing aligns with the language of the Fair Housing Act characterization of buildings subject to the Design and Construction Requirements.

New construction applications for "subdivisions for rent" may not proceed unless the lender is already invited to apply for mortgage insurance. Those proceeding are expected to comply with the accessibility requirements for ground floor units, excepting multi-story townhouses but including buildings less than 4 units, in consideration of HUD's willingness to honor its invitation to apply following a concept meeting.

Applications for refinancing or acquisition of market rate projects that do not conform to this Administrative Memorandum may proceed if the application was received prior to March 18, 2021, a date selected to conform to the effective date of the 2020 MAP Guide.