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| Question 1: Page 2 of 24 – Section III.A – “the market analysis, appraisal and underwriting must conclude that the achievable LIHTC unit rents will be at least 10% below comparable market rents for each unit type.”  Under the current MAP Guide, the appraisal and underwritten LIHTC achievable unit rents need to be at least 10% below comparable market rents for each unit type.  Is HUD requiring that the LIHTC achievable rents concluded in the market study also be 10% below the appraiser’s unrestricted market rents for each unit type? | | |
| *Reply: To remain consistent with the MAP Guide HUD will not require that the market analysis conclude that the achievable LIHTC unit rents be at least 10% below comparable market rents for each unit type. The MAP Appraiser’s comparable rent analysis and conclusions will be used to determine the discount to market.* | | |
| Question 2: 9% LIHTC New Construction - Market Analysis, Appraisal, and Underwriting must conclude that the achievable LIHTC rents will be at least 10% below comparable market rents. If the LIHTC investor requires the project to have rents below the achievable rent and that the required rent is 10% below market, would the project still qualify? | | |
| *Reply: As long as the MAP Appraiser determines that the LIHTC rents are at least 10% below comparable market rents, the project may qualify under the Pilot.* | | |
| Question 3: Section III Paragraph A – The notice uses the language ‘achievable’ LIHTC rents will be at least 10% below market.  We prefer the term ‘underwritten’ LIHTC rents.  For example, you may have a scenario where max rents are achievable but you choose to underwrite a lower rent to ensure that you are 10% below market. | | |
| *Reply: The term ‘achievable’ and/or ‘attainable’ is used throughout our guidance. The Appraisal must demonstrate that the LIHTC rents being achieved are actually at least 10% below market. HUD will not accept transactions in which the underwriter has artificially constrained the underwritten LIHTC rent to 10% below comparable market rent established by the MAP Appraiser.* | | |
| Question 4: Confirm if a new LIHTC 9% sub rehab, without PBRA, is eligible. | | |
| *Reply: LIHTC 9% substantial rehabilitation transactions that convert an unrestricted market rate apartment property to a LIHTC-restricted property are not eligible under the Pilot due to the complexities involved in confirming qualified occupancy, income qualification of existing tenants and potential involuntary relocation issues that may arise due to over-income existing tenants. A LIHTC 9% sub rehab transaction without PBRA is only eligible under the Pilot if the transaction involves re-syndication of an existing LIHTC transaction.* | | |
| Question 5: Page 3, B – The Notice requires a new 20-Year HAP Contract, regardless of whether there is a multi-year contract in effect.  Would HUD consider properties with more than 15 years remaining on the HAP Contract, as is currently allowed for LIHTC projects? | |
| *Reply: Properties are no longer required to have a 20-year HAP contract executed in advance of, or in conjunction with, the financing transaction. If a multi-year HAP contract term is already in effect, the Owner and HUD do not need to terminate it and execute a new Renewal Contract for a minimum 20-year term (unless the Section 8 Renewal Guide requires it). Properties with a minimum of 15 years remaining on the HAP Contract, as of the anticipated final endorsement date, are eligible under the Pilot.* | |
| Question 6: Page 5 of 24 – Lender is responsible for review/approval of construction cost increase over 5% after Firm Commitment under certain circumstances.  My questions pertain to the following: If the loan is criterion 11 constrained and below the LTC threshold, would HUD allow for the FHA loan to increase (outside of the final locked rate being lower than the processed rate that would increase the DS constrained loan)?  I believe the answer is No.  If the Lender/Borrower was willing to have HUD review the changes for approval, would HUD entertain an increase in the loan amount to offset the increase in the costs (provided the LTC is below the acceptable threshold for expedited processing)? | |
| *Reply: HUD will consider an increase in the loan amount to offset increased mortgageable costs. The LTC ratio must remain within the Pilot limits. The NOI approved at Firm Commitment should not be increased. The Lender is responsible for analysis and justification to demonstrate that the proposed mortgage increase does not increase the risk of the transaction.* | |
| Question 7: A change (from FC to IE) in construction cost increases over 5% is approved by the lender. What if construction costs decreases w/in 5%? | |
| *Reply: A reduction in cost would generally be acceptable, so long as the LTC ratio remains within the Pilot limits and the Lender adequately demonstrates that the cost decrease is not the result of value engineering or diminishment in quality that will compromise the transaction HUD originally approved.* | |
| Question 8: Pg 5, Last paragraph – Numbers 1 and 5 are somewhat contradictory, aren’t they? You could have an increase in construction costs and have that be covered by the increase in mortgage proceeds due to a lower locked interest rate, could you not? | |
| *Reply: A cost increase may be covered by an increase in non-FHA subordinate financing or LIHTC equity, and thus presents minimal risk to HUD, but may also be covered by an increase in mortgage proceeds due to a lower placed rate of interest if there are no additional subordinate sources or LIHTC equity available or those non-FHA sources are insufficient to fill the gap. HUD will consider an increase in the loan amount to offset increased mortgageable costs. The LTC ratio must remain within the Pilot limits. The NOI approved at Firm Commitment should not be increased. The Lender is responsible for analysis and justification to demonstrate that the proposed mortgage increase does not increase the risk of the transaction.* | |
| Question 9: Page 6, 2nd paragraph – During the construction phase, HUD does not need to approve the release of funds from the IOD, WC, and all other escrow accounts.  (a) What other escrow accounts could exist? | | | |
| *Reply: Offsite escrow, tenant relocation escrow, other 3rd party required escrows.* | | | |
| (b) When does the “construction phase” end – 100% inspection, commencement of amortization, final endorsement, etc.? Definition of Construction Phase is needed. | | | |
| *Reply: The final trip report determines when the construction period ends and project operations begin.* | | | |
| (c) The escrows will most likely still be in place post construction phase. At that point do we follow MAP guide guidance? | | | |
| *Reply: Yes, the MAP Guide must be followed unless modified by this Notice.* | | | |
| (d) The guidance then seems to suggest this allowance is not allowed for lenders related to the syndicator/investor. To be clear, the guidance is that if the syndicator and lender are affiliates, then the lender can’t process the draws per the PILOT guidance, but the project can still be a PILOT deal?  Please confirm. | | | |
| *Reply: Correct.* | | | |
| (e) The guidance then seems to suggest this allowance is not allowed for lenders related to the syndicator/investor. Please confirm. | | | |
| *Reply: Correct.* | | | |
| (f) Notice is silent to retainage reduction so presumably MAP Guide rules apply in that HUD must approve. | | | |
| *Reply: Correct, the MAP Guide applies unless changed in this Notice.* | | | |
| Question 10: Are Working Capital waivers still allowed for tenant-in-place rehabs when it can be shown there is sufficient construction period income to pay for Working Capital-allowed items? | | | |
| *Reply: A waiver of the 2% Working Capital Escrow requirement for substantial rehab deals with Section 8 rental assistance and LIHTC restrictions covering more than 90% of the units may be granted when the Lender can demonstrate there will be sufficient income generated by the property during the rehab period to cover items typically funded by the Working Capital Escrow. Waivers can be granted at the Regional Office level.* | | | |
| Question 11: For Standard Processing, no mention on IOD requirements? Is it different than Expedited or the MAP Guide? | |
| *Reply: Section XI.B and C of the Notice address the IOD administration conditions and the IOD calculation for deals submitted under the Standard Approval Process track.* | |
| Question 12: For Standard Processing, no mention of delegation of escrow approval. Is that intentional? | |
| *Reply: Section XI of the Notice addresses the IOD and Working Capital Administration conditions for deals submitted under the Standard Approval Process track.* | |
| Question 13: Deferred Developer Fee  (a) Page 8 of 24 - Section VI.E – at least 25%, but no more than 75% of the developer’s fee must be deferred and paid from available project cash flow during the initial LIHTC compliance period.  Why is there a requirement to limit the developer fee pay out?  There is no such requirement under the current MAP guidelines.  This could be very problematic for developers. | | |
| *Reply: Section VI.E of the Notice has been rescinded. In an effort to encourage the development of affordable housing, and to keep in line with current MAP Guide policies that do not expose the Department to any additional risk, HUD will not set limits on the Deferred Developer Fee.* | | |
| Question 14: Page 9 of 24 – Section VII – what does HUD mean by “significant demolition” or “gut rehabilitation”? E & F talk about projects involving significant demolition or gut rehabilitation.  What is the threshold for significant demolition?  Seems like that could be very subjective.  What is the difference between a substantial rehabilitation and gut rehabilitation?  Again seems very subjective. | | |
| *Reply: Per the MAP Guide, gut rehabilitation is when a rehabilitation scope of work retains little more than the structural frame of a building.*  *In general, significant demolition relates to demolition of large multistory buildings on a proposed new construction site. However, existing buildings of any size that may contain environmental risks complicate the environmental review and make it difficult to characterize the environmental issues on a site given the potential for unforeseen environmental risks below the foundation of that building. The intent is to allow relatively “clean” sites under the Pilot to avoid environmental risks which may require a review by someone other than the DPU and/or the FEO or REO.* | | |
| Question 15: Section X, 2a – vi. Refers to the HUD 92329.  Isn’t this now done in the C.N.A. eTool? | | |
| *Reply: Yes, the form HUD 92329 may now be completed via the CNA e-Tool.* | | |
| Question 16: X.A.3 – Do final plans need to evidence local permit approval 30 days prior to Initial Endorsement if permits are not required until initial endorsement? | | |
| *Reply: Local permit approval is not required 30 days prior to Initial Endorsement however, assurance that the permitting process will be achieved by closing should be provided. The plans and specifications should be sufficiently complete to go through the permitting process and to receive the permit by initial closing.* | | |
| Question 17: V.A.5 & X.A.6.v – Would a waiver of the mortgage increase be possible if the mortgage had been limited by a requested loan amount? | | |
| *Reply: Mortgage increase requests (not including those resulting from interest rate reductions) may take additional review time and can delay the closing process. Since the intent of the Pilot is to review and close deals quickly, mortgage increase requests will be considered on case-by-case basis. The LTC ratio must remain within the Pilot limits. The NOI approved at Firm Commitment should not be increased. The Lender is responsible for analysis and justification to demonstrate that the proposed mortgage increase does not increase the risk of the transaction.* | | |
| Question 18: Change Order Approval – HUD does not approve, but the HUD inspector must make a preliminary determination of technical acceptability before the change is submitted to the lender. HUD may reject changes w/in 5 business days of receipt of the change request. If rejected, HUD will inform the HUD inspector of the disapproval and the HUD inspector will modify the amount of the Contractor’s Requisition to cover any noncompliance or construction removal.  What form is the technical acceptability evidenced in? | | |
| *Reply: The HUD inspector may not approve or disapprove change orders, but they are required to review contemplated changes with the architect, contractor and owner before the change is submitted for approval to the lender and the HUD office.* | | |
| Question 19: Betterments or Improvements  (a) The guidance for equivalents would seem to also apply to betterments/improvements? | | |
| *Betterment changes are those that are economically justified. They must either:*  *a. Increase net income;*  *b. Reduce long-term project maintenance and/or operating expenses; or*  *c. Otherwise enhance the mortgage security.*  *3. Equivalent changes are those proposed because:*  *a. A specified item is not readily available and the substitution provides equivalent or better utility and performance, or*  *b. The proposed substitution reduces the contract price but provides equivalent or better utility and performance.* | | |
| Question 20: Is there a reason to limit volume to $250 million per year for 3 years? | | |
| *Reply: This was established to limit HUD’s exposure to risk.* | | |
| Question 21: How much of the $250 million are you expecting to utilize each year? | | |
| *Reply: We expect to meet the $250 million threshold.* | | |
| Question 22: Exhibit A – Section 5-7.A – Requests REO / Maturing Debt Schedules for GC – is an REO required for a GC? | | |
| *Reply: Per the MAP Guide 2016- Questions and Answers issued July, 2016, 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.* | | |
| Question 23: Exhibit A doesn’t refer to situations where you have a non-profit sponsor.  It seems implied that for anything the notice is silent on you refer back to the MAP Guide but thought we would note this. | | |
| *Reply: A list of required exhibits for Nonprofit Mortgagors was inadvertently omitted from ‘Exhibit A’ of the Notice. Please refer to the MAP Guide, specially chapter 8.8.H, for documentation requirements.* | | |
| Question 24: Exhibit A 4-1 – Should the existing HAP Contract be a required exhibit here?  Understood that you have to terminate existing HAP and get new 20-year contract. | | |
| *Reply: Since HUD has copies of existing Section 8 HAP Contracts, we cannot require that copies be provided. However, providing it will expedite the HUD review process.* | | |
| Question 25: Exhibit A 5-5 – Verification of EIN is not included in this section and seems like it should be. | | |
| *Reply: At this time, we only have authority to collect this information on the form HUD-2530.* | | |
| Question 26: Soils report is already included under Exhibit 2-4.  Is this repetitive? | | |
| *Reply: This exhibit was listed twice inadvertently. Please include the document under Section 6-2 A and make reference to it under Section 2-4.A.3.* | | |
| Question 27: In a comparison of Exhibit A with what is required in the MAP Guide, the following items were noted as missing from Exhibit A. Should these still be included in the application?  Missing Exhibits   * Verification of EIN/SSN * General Contractor’s License * General Contractor’s Liability Insurance * Architect's License * Architect's Professional Liability Insurance * Developer's Agreement * Marketing and Leasing Plan for New Construction * Asbestos Reports for Sub-Rehabs * REAC Report   Missing Forms   * Architect Accessibility Letter * Architect Energy Letter * Architect 5H.3 (Insurance Cert) * Architect Foundation Cert * GC's 92010, Equal Employment Opportunity Cert * Occupancy History for last 3 years, if sub-rehab * 5372 | | |
| *Reply: Since many of the exhibits and forms listed above are not included on the application checklist for Multifamily New Construction/Substantial Rehab, they were not included under ‘Exhibit A’ to the Notice either. However, if they are required elsewhere in the MAP Guide, then they must be submitted in the application. Please note that we collect EIN/SSN information on the form HUD- 2530 and we have copies of the REAC Inspection Report.* | | |
| Question 28: 5-8.A.7 calls for HUD 2880. This form is generally used for Subsidy Layering Reviews, which are not required for FHA financing. Is this form really needed? | | |
| *Reply: Form HUD 2880 is not required to be submitted under the Pilot.* | | |
| Question 29: Page 3 of 24 (paragraph above IV Opportunity Zones) – “Re-syndicated LIHTC projects without Section 8 must be underwritten with EGI no greater than 110% of that achieved in the last full calendar year before application and with expenses no lower than 90% of the prior year’s operating expenses.”  Is there any leeway for the Lender to utilize a recent T-12 instead of the last full calendar year NOI when applying the EGI / operating expense thresholds? |
| *Reply: HUD requires the last full calendar year to make this determination.* |
| Question 30: Page 5, 3rd paragraph – c) LBP remediation is an “acceptable” environmental risk factor. See page 7 of the Standard process? |
| *Reply:* A project that contains Lead Based Paint may proceed under either the Expedited or the Standard Approval Process if the application includes the LBP inspection report, and regulated lead-based paint abatement is specified, with lead safety requirements incorporated into the project design and included in the construction costs as required in the MAP guide. |
| Question 31: Page 7, Environmental Conditions  (a) Identifies the types of Environmental risk factors that are not eligible for Expedited. Includes not being LBP free, but the Expedited track allows LBP remediation? |
| *Reply:* A project that contains Lead Based Paint may proceed under either the Standard Approval Process or the Expedited Process if the application includes the LBP inspection report, and regulated lead-based paint abatement is specified, with lead safety requirements incorporated into the project design and included in the construction costs as required in the MAP guide. |
| (b) Paragraph 7: Clarification- So all types of Pilot eligible transactions use standard processing (including 9% new construction and 4/9% SR of > 90% S8), for example if there are environmental issues?  #7 says LBP remediation is not eligible for expedited but the expedited section says LBP remediation is OK. |
| *Reply:* A project that contains Lead Based Paint may proceed under either the Standard Approval Process or the Expedited Process if the application includes the LBP inspection report, and regulated lead-based paint abatement is specified, with lead safety requirements incorporated into the project design and included in the construction costs as required in the MAP guide. |
| (c) LBP – The Notice seems to indicate that all LBP must be completely remediated/removed in order to the considered for both Expedited and Standard Processing? Is this correct? This is a heavier requirement than under the MAP Guide. Currently, LBP can be managed under an O&M plan, if present and not being remediated. What about seniors projects where LBP is not as great concern as in family projects? This requirement makes the Pilot less attractive and more expensive. |
| *Reply: The LIHTC notice doesn’t impose additional LBP requirements. However, in contrast to rehabilitation projects that have assistance of no more than $25,000 per unit, for which the Lead Safe Housing Rule allows interim controls of LBP hazards, substantial rehabilitation projects require LBP abatement under the Rule, in accordance with Congressional direction to HUD.* |
| (d) Excluding projects from expedited processing that involve LBP remediation does not make sense.  LBP remediation has been around for decades and presents no greater complexity than asbestos abatement.  Also most inner city per-1978 structure rehabilitation projects feature some form of lead risk reduction.  This needs to be revised to say “regulated lead-based paint abatement.”  The concern is most pre-1978 properties have some degree of LBP removal during rehabilitation, but this does NOT constitute abatement.   This environmental exclusion will bar most pilot projects from entering the new process. |
| *Reply: A project that contains Lead Based Paint may proceed under either the Standard Approval Process or the Expedited Approval Process if the application includes the LBP inspection report, and regulated lead-based paint abatement is specified, with lead safety requirements incorporated into the project design and included in the construction costs as required in the MAP guide. As recommended by this questioner, we will be describing the LBP abatement as “regulated.” This reflects that the abatement is regulated by HUD’s Lead Safe Housing Rule (24 CFR part 35) and the EPA’s LBP activities rule (40 CFR part 745). In contrast to rehabilitation projects that have assistance of no more than $25,000 per unit, for which the Lead Safe Housing Rule allows interim controls of LBP hazards, these substantial rehabilitation projects require LBP abatement under the Rule, in accordance with Congressional direction to HUD.* |
| Question 32: Pg 9, G – Is this any different than the Phase I’s provided under the current MAP guidance? Or is this stating that there needs to be a separate Lender’s Environmental narrative included outside of the section in the underwriter’s narrative. Clarify the Phase I ESA w/HEROS meets this requirement. | |
| *Reply: All environmental reviews for the pilot should be completed following the standard MAP process. Lenders are strongly encouraged to have their 3rd Parties enter the environmental information directly into HEROS to help streamline the process.* | |
| Question 33: The LIHTC Pilot indicates that a property with noise over 65 dBs is not eligible for expedited processing.  If we were working on a Substantial Rehab (existing buildings) and the noise level at the building was over 65 dBs but the building materials resulted in noise attenuation to 45 dBs on the interior, would the property be eligible for expedited processing still (since the buildings are already attenuated below 45 dBs)?  For a Sub Rehab where an outdoor amenity has a noise level above 65 dBs, would the property no longer qualify for expedited processing (since noise attenuation measures would be required)?  I’m assuming yes but looking for confirmation.  Sometimes, a borrower may relocate the outdoor amenities with the sub rehab to a location below 65 dBs, would the property then qualify for expedited processing? | |
| *Reply:* If new construction or conversion of a non-residential building to residential, projects may not be submitted under the Expedited Processing track if noise is over 65.  For rehabilitation of an existing residential building, MF will consider whether the project can use the Expedited Processing track on a case by case basis at the entrance conference. The factors MF will consider are as follows:  Does the rehab require an Environmental Assessment Level of Review or a Categorically Excluded Level of Review? EAs are required for rehab that change unit density by more than 20% or where the estimated cost of rehab is more than 75% of the total estimated cost of replacement after rehab. Projects that are at the CEST level of review will likely be approved to use the Expedited Track.    For EA level rehabilitation projects, the lender must provide the noise measurements and the proposed noise mitigation at concept meeting. The lender should also provide information about any outdoor noise sensitive uses at the site. MF will determine whether the project will require additional technical evaluation and if the answer is yes, the project may not proceed under the Expedited Track.    Multifamily will decide at concept if they will allow existing projects into the expedited track. | |
| Question 34: Change Order Approval – HUD does not approve, but the HUD inspector must make a preliminary determination of technical acceptability before the change is submitted to the lender. HUD may reject changes w/in 5 business days of receipt of the change request. If rejected, HUD will inform the HUD inspector of the disapproval and the HUD inspector will modify the amount of the Contractor’s Requisition to cover any noncompliance or construction removal.  (a) What form is the technical acceptability evidenced in? | | |
| *Reply: The HUD inspector may not approve or disapprove change orders, but they are required to review contemplated changes with the architect, contractor and owner before the change is submitted for approval to the lender and the HUD office.* | | |
| (b) How does this rejection process work in reality given many change orders are requested after work is completed? | | |
| *Reply: Work contemplated by a change order should not be initiated until after the Change Order has been submitted and approved by all required approving parties.* | | |
| (c) Change orders, how is the lender going to be notified of the CA or contract inspector has made a preliminary determination of technical acceptability. With this be provided through the trip report or sign-off of the change order? | | |
| *Reply: The lender maintains primary responsibility for reviewing and determining if a change order is acceptable. The lender should initiate discussions with the HUD Contract Inspector to determine if the change order is technically acceptable.* | | |
| (d) Last paragraph, the lender shall be copied on the rejection email to the CA or contract inspector, along with the reason for rejection. This will improve the overall process. What will the appeal process involve? | | |
| *Reply: Any appeal of a Change Order disapproved by HUD must follow MAP Guide requirements.* | | |
| Question 35: Time Extensions - Lenders can approve up to 30 days.  (a) What documentation should the lender retain? | | |
| *Reply: Refer to Chapter 12 of the MAP Guide.* | | |
| (b) What if the time extension exceeds 30 days? Can lender approve the first 30 days and then request HUD to approve the remaining time? | | |
| *Reply: If the extension request exceeds 30 days, HUD must approve the request.* | | |
| (c) Is this a cumulative 30 days or only 30 days at a time? | | |
| *Reply: The lender is limited to an extension of up to 30 days per any one request. However, continued extension requests of 30 days or more will require oversight by HUD staff.* | | |
| Question 36:The eligibility requirements for “expedited processing” create a fairly small box. The stated processing goal for “standard processing” is 60 days. So, I’m not clear how standard processing via the Pilot provides any timing advantages over standard MAP processing, other than allowing the lender greater flexibility with construction servicing and Escrow administration. It also takes away the advantage of a lower deferred developer fee and mortgage increases with cost increases, at least on the face. | | |
| *Reply: The Standard Approval Process is designed to serve as a learning opportunity for HUD to determine where it can or should allow additional flexibility within HUD’s programs.*  *The deferred developer fee requirement found in the Notice has been rescinded. Please see responses provided to questions within this Q&A related to mortgage increases and cost increases.* | | |
| Question 37: For projects that have 10% market rate units, is a blended vacancy acceptable for underwriting – e.g., 3% for HAP units and 7% for the market rate units or 5% for the LIHTC units and 7% for the market rate units? | | |
| *Reply: This example exceeds the underwriting requirements of the MAP Guide. However, as this is a more conservative approve, it will be accepted by HUD.* | | |