



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

MORTGAGEE LETTER 2019 - 02

TO: ALL FHA APPROVED MULTIFAMILY MORTGAGEES

SUBJECT: New Guidance for Foreign National Participation in FHA-Insured Multifamily Programs

I. Introduction:

FHA-insured Multifamily mortgage loans made to borrower entities that include foreign nationals as either Active and/or Passive Principals (as defined in Section 8.3 of the MAP Guide and as clarified below) present unique risks to the government. In many cases, foreign national investors, particularly if passive, may be structured in upper tier entities of the borrower organization such that reasonable due diligence is either not clearly required by existing guidance, not provided in a manner that would permit a meaningful review, or both. In these cases, HUD usually does not receive sufficient information about the individuals who are involved in the borrower organization, or any current or past investor relationships that may exist which may be contrary to both HUD's interest as a mortgage insurer and the Government's interest more broadly. The objective of this guidance is to clarify and expand the mortgage credit underwriting requirements in Chapter 8 of the MAP Guide for Active and Passive Principals who are foreign nationals, as well as Domestic Principals, to avoid creating relationships with a foreign national investor that may have disclosed or undisclosed relationships which could be unlawful and/or jeopardize the interests of HUD.

Discussed below are the mortgage credit review parameters pursuant to which foreign nationals and foreign national entities may participate in the ownership structure of FHA-insured Multifamily projects as either Active, Passive or Domestic Principals.

II. Mortgage Credit

Underwriting

1. General Requirements for Foreign National Principals

As stated in Section 8.2 of the MAP Guide, foreign national individuals and business entities may participate as either Active or Passive Principals in FHA-insured Multifamily programs. However, the single-asset-entity borrower must be registered in the United States and in the State where its corporate office is located. At least one Principal with operational decision-making authority must be a United States citizen or a foreign national who is a lawful permanent resident of the United States, having an

immigration status granted by the United States government that enables that Principal to exercise operational decision-making authority.

As required under Section 8.3 of the MAP Guide, each foreign national individual or foreign national controlled private entity that is an Active or Passive Principal must be listed on the borrower's organizational chart.

2. Background Evaluations for Foreign National Principals

In addition to the existing requirements applicable to all Active and Passive Principals under Section 8.3 of the MAP Guide, the MAP Lender must perform a thorough and independent background evaluation for all foreign national Principals including:

- a. A review of organizational documents, personal resumes, history of past business relationships and litigation, and
- b. Research of the foreign national Principal on the following internet and database systems: SAM.gov (System for Award Management; Office of Foreign Asset Control (OFAC) and the MDDR (Multifamily Delinquency and Default Reporting). The analysis of a foreign national business entity is conducted at the business entity level in addition to the executive who is authorized to execute actions of the entity, as stated in Section 8.3 of the MAP Guide.

It is the MAP Lender's responsibility to confirm that foreign national entities are properly identified as Active or Passive Principals under Section 8.3 of the MAP Guide. This analysis is to ensure that Passive Principals have no decision-making authority or operational control, in addition to no financial or legal risk to HUD.

Based upon the content of the background evaluation, HUD may require additional information and/or an investigation to better assess the foreign national Principal in terms of risk to HUD. The MAP Lender will summarize the results of their background evaluation from the legal risk and the business relationships in the MAP Lender's Underwriter Narrative.

3. Domestic Principals

A Domestic Principal is an individual that acts on behalf of the partnership in cases where the remaining principals in the partnership are Passive foreign nationals. Similar to an Active Principal, Domestic Principals with operational decision-making authority must be a United States citizen who is a lawful permanent resident of the United States. This authority to act on behalf of the borrower presumes that the Domestic Principal has similar credit and financial strength and real estate development experience with those he/she is representing, such as an executive level officer (if employed by a real estate development organization). The MAP Lender has the responsibility to determine that the Domestic Principal has significant liquid assets and net worth (e.g., 3-5% of

the proposed loan amount¹) that are commensurate with the level of financial obligation of the loan being insured, notwithstanding the requirement for the other Active (or Passive) Principals to provide necessary equity. The Domestic Principal should also evidence a high level of experience in similar real estate projects to that being proposed.

Additionally, the MAP Lender must conduct a thorough underwriting of the Domestic Principal, focusing on the relationship of the Domestic Principal to the foreign national principal/entity, in the single asset entity. Specifically include any past partnerships and joint ventures, the length of time that the parties have known or done business with each other, and any financial or legal obligations created by one to the other.

4. E-2 Treaty Investors

Note that E-2 Treaty Investors, while permitted lawful admission to the United States, are not eligible as Active Principals or Domestic Principals, given their nonimmigrant classification and temporary status (subject to renewal every two years: <https://www.uscis.gov/working-united-states/temporary-workers/e-2-treaty-investors>). Their short-term status conflicts with the need for longer term operational decision-making authority and stability for foreign national Active and Domestic Principals within borrower entities due to the lengthy maturity terms of FHA-insured Multifamily loans.

B. Possession, Disclosure and Verification of SSN/ EIN (24 CFR 5.216) – Active Principals

1. Requirements for Active Principals

In accordance with 24 C.F.R. 200.6 and 24 C.F.R. 200.1101, those participating in HUD mortgage insurance programs as an applicant are required by 24 C.F.R. 5.216(c), (d) & (f) to possess and disclose social security number(s) (SSN), and the employer identification number(s) (EIN) for each corporate entity investing in the borrowing entity. Accordingly, the foreign national Active Principal is also required to possess and disclose their SSN or EIN.

- a. Accordingly, a foreign national Active Principal that is an individual must possess and provide his/her SSN.
- b. Similarly, a foreign national Active Principal that is a business entity must possess and provide its EIN.

2. Requirements for Passive Principals

¹ The use of a fixed amount is not meant to be prescriptive, but is used only to illustrate that the Domestic Principal who represents a foreign national in an insured transaction should generally meet the requirements of a sophisticated person in the context of an Accredited Investor as defined by the SEC.

A foreign national Passive Principal is not required to possess or provide an SSN or EIN.

3. Individual Tax Identification Number - ITIN

ITINs are for federal tax reporting only and are not intended to serve any other purpose. ITINs are assigned to individuals who are required to have a U.S. taxpayer identification number but who do not have and are not eligible to obtain an SSN. The IRS issues ITINs to help individuals comply with the U.S. tax laws, and to provide a means to efficiently process and account for tax returns and payments. The ITIN cannot to be used in place of the SSN or EIN for a foreign national Active Principal.

III. Previous Participation of a Foreign National MAP Guide Section 8.3.C.1 and Housing Notice H 2016- 15 Processing Guide

Foreign Nationals that are Controlling Participants (as defined in 24 C.F.R. 200.212 & 200.216 and H N-2016-15) for the Specified Capacity (owner, borrower, management agent, general contractor, as set forth in the regulations and notice) are required to register in the Business Partner Registration System of APPS (Active Partners Performance System). They will either prepare and submit the electronic filing of the Previous Participation Certification (Form HUD-2530) through APPS or submit a non-electronic (paper) filing of the Form HUD-2530. The Controlling Participant must file using either an SSN or EIN. Passive Principals are not required to file a Previous Participation Certification. See Housing Notice H 2016-15 and 24 CFR Part 200, Subpart H (2018) for more detailed information.

IV. Regulatory Agreement Section 50 Addendum - Foreign National Signatory

The MAP Guide requires that the individual signing in Paragraph 50 of the Regulatory Agreement must have the requisite control and involvement or interest in the project and possess a positive credit history and adequate financial strength relative to the size of the loan. The Domestic Principal or foreign national Active Principal who is a lawful permanent resident of the U.S. may each sign Paragraph 50 of the Regulatory Agreement in his or her individual capacity. A foreign national Active Principal Paragraph 50 signatory must either remain a lawful permanent resident of the U.S. for the life of the loan or be replaced with a U.S. citizen or lawful permanent resident of the U.S.

V. Waiver Authority

Waivers of the regulations cited in this Mortgagee Letter may only be granted by the Secretary or the Deputy Secretary of HUD.

PAPERWORK REDUCTION ACT

The information collection requirements contained in these documents have been approved by the

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If there are any questions, and/or concerns regarding this Housing Notice, please contact Wendy Carter at 202.402.2546 or Wendy.N.Carter@hud.gov, at HUD Headquarters, Office of Multifamily Production. Persons with hearing or speech impairment may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

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