



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

All Regional Directors, Field Office Directors
Multifamily Regional Center
Multifamily Program Center/Satellite Office
Directors, Supervisory Project Managers

NOTICE H 2023- 12

Issued: December 4, 2023

Expires: This Notice remains in effect until
amended, superseded or rescinded.

Cross Reference:
Mortgagee Letter 2023-24

SUBJECT: Eliminating the Assurance of Completion on a Section 223(f) with New LIHTC

Purpose and Background

This Housing Notice serves to implement a change in the processing of Section 223(f) insured project loans that are combined with new Low Income Housing Tax Credits (LIHTC). The MAP Guide (2020) requires an additional 10% assurance of completion to be added to the Escrow Agreement for Deferred Repairs (form HUD-92476.1M) for 223(f) affordable projects, including projects with LIHTC. We are eliminating this additional 10% assurance of completion requirement for 223(f) transactions with new LIHTC proceeds for project loans that include a payment and performance bond, or letter of credit, and a reasonable contingency escrow as required by the LIHTC investor/syndicator and accepted by HUD.

Multifamily Production has considered the current affordable rental housing market conditions utilizing LIHTC and determined that removing the 10% assurance of completion escrow from 223(f) new LIHTC transactions will further incentivize borrowers and lenders to use HUD's 223(f) financing authority to promote affordable housing, with minimal increased risk to the Department. Notwithstanding the elimination of the assurance of completion, and pursuant to the requirements of the LIHTC program and HUD's 223(f) financing authority, repairs, including but not limited to critical repairs, accessibility modifications, and any other necessary or non-critical repairs must still be completed.

Lender Responsibilities

The lender must calculate the aggregate total of all costs to ensure that the cost of all completed repairs does not exceed the statutory threshold of a 223(f) transaction with post-closing repairs and alterations. Currently at application, the non-mortgageable 10% contingency

is utilized to ensure the project does not exceed the threshold guidelines. With the elimination of the 10% assurance of completion escrow, the lender must evaluate the projected costs to ensure repair costs do not exceed the qualifying statutory threshold for the 223(f) program.

Eligibility Criteria

This change only applies to 223(f) applications for projects that are utilizing the new LIHTC with payment and performance bonds or a letter of credit. This change does not apply to health care projects under Section 232. Eligible projects must also have a reasonable contingency as required by the tax credit investor/syndicator and accepted as adequate by HUD.

Required MAP Guide Modifications

The Multifamily Accelerated Processing Guide Housing Guidebook 4430.G, the MAP Guide ¹, will be amended to reflect these policy changes. The effective date of this change is the date of the Housing Notice. All applications that have not received firm commitments can revise their application to reflect this change.

Policy Assessment

Three years from date of publication of this HN, HUD will conduct a review to assess whether the change is achieving its policy objectives, whether the loans insured under the policy change are furthering HUD's core mission, and whether the overall risk profile of the FHA portfolio is impacted by this change. HUD reserves the right to further modify this policy at any time subject to providing notice of any such modification.

For questions about this Housing Notice, please contact Willie Fobbs, III, Director, Office of Multifamily Production at Willie.Fobbs@hud.gov.

Paperwork Reduction Act

The information collection requirements in this Housing Notice are already approved as OMB Approval number 2505-0029 for multifamily mortgage insurance application forms and OMB Approval number 2505-0514 for the Multifamily Accelerated Processing Guide, 4430.G, and therefore the collection under this Housing Notice is already approved under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a currently valid OMB control number.

Julia R. Gordon
Assistant Secretary for Housing—
Federal Housing Commissioner

¹ See the MAP Guide at https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430